PEOPLE SMUGGLING:
NO CRIME TO BRING THE BOATS

Successive Australian governments have used people smuggling to attempt to criminalise asylum seekers themselves. People associate people smuggling with illegal activity, when it is not illegal to claim asylum at all.

Yet, the penalties for people smuggling offences – up to 20 years jail for boats carrying more than five passengers – are now at the level of such crimes as terrorism, rape and murder! For assisting asylum seekers!

Kevin Rudd put people smuggling at the centre of his anti-refugee rhetoric in April 2009, when he declared that people smugglers were the "absolute scum of the earth". Tony Abbott says it is an "evil trade".

But there is no evidence that international criminal networks are organising asylum boats to Australia. Often travel arrangements are made by local or refugee communities, motivated by a mix of profit and altruism. Indeed, several UNHCR-registered refugees have served sentences in Australian jails for people smuggling offences.

One such UNHCR Iraqi-Iranian refugee, Hadi Ahmadi, had twice attempted to get to Australia himself. In 2010 he was convicted for assisting 911 asylum seekers to come to Australia – yet 886 of them were found to be refugees.

Ten of 16 people convicted for people smuggling between 2001 and 2006 were indeed refugees themselves.

One of the refugees assisted by Ali Jenabi (whose story is told in Robin de Crespigny's book *The People Smuggler*) recently said, "I think he is the best smuggler. He had a good heart. He was not hard, not a greedy person".

In 2010, the Labor government introduced legislation to create a new offence of providing advice and material support to assist an asylum seeker to get to Australia, even if that assistance is entirely for humanitarian reasons. The new offence is clearly aimed at family members, refugee communities and supporters and makes them potentially subject to ASIO surveillance.

There are mandatory sentences of a minimum five years jail (of which three years must be served before any chance of parole) for people smuggling offences. While the government has stopped imposing these against the poor Indonesian fisher folk who crew the asylum boats, they are still imposed on anyone helping organise boats to Australia.

This requirement has been attacked by judges for failing to account for the circumstances of those charged. In March 2014 a Victorian judge pointed out the ridiculousness of sending Lamis Hameed Sami Alli Baighi to jail, a refugee himself who helped organise his family members to get here.

Business model?
Governments have tried to blame a "people smugglers' business model"– as if it was people smuggling that was driving asylum seekers to seek protection in Australia, talking of "a sophisticated million-dollar product" marketed by smugglers.
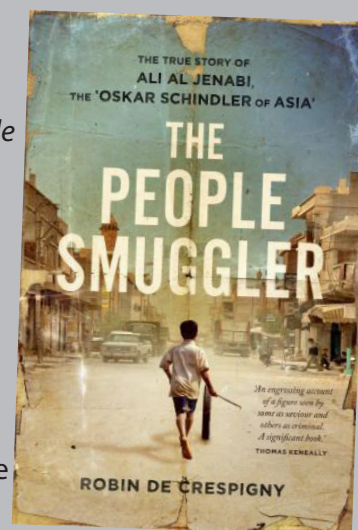
But the fact is unauthorised travel to Australia is driven by the needs of people fleeing persecution in Afghanistan, Pakistan, Burma and Sri Lanka. Individuals such as Hadi Ahmadi and Ali Al Jenabi provide a humanitarian service to asylum seekers desperately needing protection but who are denied the possibility of official entry to Australia.

Many asylum seekers remain stranded en route to Australia in poor countries that have not signed the Refugee Convention and do not accept refugees, like Malaysia and Indonesia.

The simple fact is that without unauthorised travel agents, many asylum seekers cannot get to Australia.

Ali Jenabi: smuggling refugees to freedom

People smuggler and refugee Ali Al Jenabi's story is told in the book *The People Smuggler*, by Robin de Crespigny. The book projects Ali's brave and authentic voice in a way that is captivating and compelling. It is a powerful story about some of the realities about people smugglers and why refugees use them.

HOW GOVERNMENT POLICY CAUSES DEATHS AT SEA

Governments are now trying to claim the humanitarian high ground, saying that efforts to "stop the boats" are designed to stop asylum seekers making dangerous boat journeys and avoid deaths at sea. They are nothing of the sort.

This was exposed graphically in the boat turnbacks of Rohingya asylum seekers from Indonesia, Thailand and Malaysia in May this year. At least 300 drowned as a result, yet the Australian government endorsed the turnbacks. Immigration Minister Peter Dutton declared that "countries in the region have a sovereign right" to do so. Instead of any concern for the lives of asylum seekers, the Abbott government was happy to let them drown.

The Liberal government is fond of saying that 1200 asylum seekers died at sea in the six years of the Rudd-Gillard governments.[1]

But almost all the deaths at sea have been caused by the appalling response of Australia's search and rescue services, who have been told to prioritise stopping boats, not saving lives. Tony Kevin, author of *Reluctant Rescuers*, has written that the "rescue response is ad hoc and unpredictable… we act when we choose to". As a result, "Hundreds of people have died when they could and should have been saved".[2]

As recently as June 5, 2013, at least 55 drowned due to the lack of response from the authorities. Although the boat's engines were dead when it spotted on Wednesday, it was only 40 hours later that Border Protection Command alerted the search and rescue authorities. This is a continual pattern. In July 2013 customs waited over five hours after getting a distress signal before directing one of its ships to go to rescue an asylum boat. Nine people are thought to have died.

'Stopping the boats'

Tony Abbott claims that his hardline turnback policies have stopped the boats. But they have not stopped entirely. Immigration Minister Peter Dutton admitted to 15 boat turnbacks in 2013 and 2014 in January this year. There have been at least another five boats that we know about in 2015 up to June.

Among these are boats that the government has handed straight back to their persecuters, returning boats directly to Vietnam and Sri Lanka.

Unless there are alternative routes to permanent resettlement in Australia, asylum seekers will have no option but to take boats from Indonesia to Australia.

Processing in Indonesia

If the government processed asylum claims directly in Indonesia and guaranteed resettlement in Australia, there would be no need for asylum seekers to risk boat journeys.

But successive governments have refused to systemically resettle refugees from Indonesia.

Between 2001 and 2009 Australia accepted just 532 people – an average of less than 60 a year. It now has an annual quota of just 450 a year. And it has announced that there will be no further resettlement of any asylum seekers registered with the UNHCR in Indonesia after 1 July 2014.[3]

This goes nowhere near dealing with the number of asylum seekers stranded in Indonesia. In February the UNHCR said there were 7315 registered asylum seekers and 4400 recognised refugees in Indonesia.[4]

The Expert Panel established by the Gillard government in 2012 recommended raising the refugee intake to 3200 people "from the region" a year to deal with this problem. But the government has failed to act.

Regardless of the alternative measures put in place, there may still be asylum boats that continue to need to travel to Australia. For example boats have travelled from persecution in Sri Lanka and Vietnam directly to Australia. There are real measures the government could take if it was serious about saving lives, not about punishing people and trying to stop them coming. All asylum seekers should be welcomed.

1. The best figures say that the total was about 1100: "Factcheck: did 1200 refugees die at sea under Labor" *The Conversation*, March 3, 2015
2. Tony Kevin, "How authorities decide to rescue asylum seekers … or not", *Crikey* July 13, 2012
3. Peter Alford "Indonesia calls in envoy over Morrison shift on refugee resettlement" *The Australian,* 22 November 2014
4. UNHCR website, http://unhcr.or.id/en/unhcr-inindonesia

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