

# Perilous Waters: People Smuggling, Fishermen, and Hyper-precarious Livelihoods on Rote Island, Eastern Indonesia

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## ABSTRACT

Recent research has found that since 2001 a disproportionate number of Indonesian offenders sentenced to jail for people smuggling, both in Indonesia and Australia, are fishermen from Eastern Indonesia, the poorest part of the country.<sup>2</sup> Based on three field trips to the Eastern Indonesian island of Rote, a frequent departure point for asylum seekers to Australia, and semi-structured interviews, this article investigates the socio-economic backgrounds of sentenced offenders from this area to explain their high numbers amongst imprisoned people smugglers. Through the narratives of fishermen who have been involved in the transport of asylum seekers, this article seeks to reconstruct their decision-making and risk-taking strategies in light of their generally precarious lives. Their motivations to become involved in people smuggling are correlated with two structural problems they face, overfishing and pollution, which have exacerbated their economic situation over the last years. Understanding the local structural constraints of these impoverished fishermen helps provide a clearer understanding of why and how transnational people-smuggling networks succeed in recruiting them. Rather than viewing the decision to become involved in people smuggling as an individual's poor judgement and its negative outcome as self-inflicted misery, this article stresses the notion of collective hyper-precariousness, which is enhanced by extrinsic factors such as Australian

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<sup>2</sup> Antje Missbach, *Sentencing People-Smuggling Offenders in Indonesia*, Policy Paper (Melbourne: The Centre for Indonesian Law, Islam and Society [CILIS], 2016). For imprisoned Indonesian people smugglers in Australia see Emily Mitchell, *After the Spill: Investigating Australia's Montara Oil Disaster in Indonesia* (Sydney: Australian Lawyers Alliance, 2015), 205.

policies that have further limited the meagre choices for making a living legally on Rote.

**KEYWORDS:** hyper-precarioussness, illegal(ized) and criminalized work, fishermen, people smuggling, Eastern Indonesia, Australia, imprisonment, structural poverty, subsistence livelihoods

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## **Making Money in Jail**

**O**n a balmy late afternoon in September 2014, I visit a hamlet that is part of Oelua village on the island of Rote in the province of Nusa Tenggara Timur, the southernmost edge in Eastern Indonesia.<sup>3</sup> Rote is located at the very geographic margin of the Indonesian archipelago; it takes two full days of travel from the capital city Jakarta by plane, ferry, and motorbike to get there. Rote, with its population of only 128,000 people (out of 250 million Indonesians), is not just peripheral in regard to its geographic location, but it is also economically on the fringe. September is the end of the dry season, when everything is covered by thick layers of dust and the strolling chickens, goats, and cows are very skinny. I sit on the veranda of a half-wooden, half-stone house, surrounded by Amir (not his real name), a man in his early fifties, and a couple of his friends, family members, and neighbours, who come and go over the next hours. According to Amir, about fifty men from Oelua had been recently in jail in Australia, not just for people smuggling but also for illegal fishing.<sup>4</sup>

I was pointed in Amir's direction because he had twice served time in Australian jails (Perth, Darwin, Broome) for transporting asylum seekers to the Australian Ashmore Reef. Ashmore is only eighty miles from Rote and the villagers refer to it as *Pulau Pasir* (literally sandy island), a place where in the past Rotenese people used to bury their dead.<sup>5</sup> If the sea is calm, it takes about a day to reach Ashmore Reef. While the sun is setting over the sea, Amir recounts what it was like to take the "strangers" (*orang*

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<sup>3</sup> Oelua as an administrative unit consists of Holotula, Lasilae, Oedae, Oelaba, and Oelua on the northwest coast of Rote. See Michelle Carnegie, "Development Prospects in Eastern Indonesia: Learning from Oelua's Diverse Economy," *Asia Pacific Viewpoint* 49, no. 3 (2008): 354–369, 358. Its population of over 3,000 consists of an indigenous Rotenese majority, who are Protestants, and a Muslim minority, who mostly migrated from Southern Sulawesi during the twentieth century. See James J. Fox, "Maritime Communities in the Timor and Arafura Region: Some Historical and Anthropological Perspectives," in *East of Wallace's Line: Studies of Past and Present Maritime Cultures of the Indo-Pacific Region*, eds. S. O'Connor and P.M. Veth, Modern Quaternary Research in Southeast Asia, volume 16 (Rotterdam and Brookfield, VT: Balkema, 2000), 337–356.

<sup>4</sup> Because the terms "people smuggler" and "human smuggler" carry many misleading connotations, I use them only when I discuss legal matters. Otherwise, I use "transporter," "boat crew member," or "driver" to describe the roles of people convicted of people-smuggling activities.

<sup>5</sup> Fox, "Maritime Communities."

asing) to Ashmore Reef. During his first trip in 2001, Amir transported 158 asylum seekers, mostly Iraqis; on his second in 2009, only eighty-four, mostly Afghans. For his services, Amir was promised Rp20 million (A\$2,000) for the first trip and Rp35 million (A\$3,500) for the second. Unfortunately, he says he was not paid the entire amount, but only some instalments. The promised sum represented a fortune to him, compared to what he usually earns as hired crew on a long fishing excursion over several weeks.<sup>6</sup> The fish stock in nearby reefs has declined,<sup>7</sup> while the costs of diesel, food, and equipment for time-consuming fishing expeditions in deeper seas have gone up. Amir claims to have been entirely unfamiliar with people-smuggling laws in Australia, at least at the time of his first offence. But, although he was unfamiliar with the law, it clearly crossed his mind that there might be something wrong with the few days' work required to take the asylum seekers to Ashmore Reef, for which he was promised such generous recompense.

Amir talks quite freely about his motivations for transporting asylum seekers, the time spent in jail, and life in the village after his return. What is most striking is the way he speaks about his prison term, which he depicts as "work," as a job just as precarious and risky as any other option available to him. In Amir's view, the actual job was not just taking asylum seekers, but included the jail time, making it a much more time-consuming work commitment. In jail he was able to earn between A\$20 to A\$65 per week, depending on whether he worked as a kitchen, garden, or laundry helper. Although these amounts are small in Australian terms, it was more than what he was paid by the smuggler. When remitted to his family in Rote, the gratuity earnings were an important household income. Amir's jail time served the well-being of the family.<sup>8</sup>

Asked whether this prison money was *uang panas* (literally, hot money, easily earned by illicit means)<sup>9</sup> and therefore equivalent to the payments he had received from the smuggling organizer who had hired him as captain,

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<sup>6</sup> According to Ruth Balint in "Small Fry: The Story of a People Smuggler," *The Monthly* (August 2012): 37–40, the average annual income in Nusa Tenggara Timur was about Rp2.6 million (A\$260) in 2009. Amir and his friends said that, depending on the catch, they usually earned between A\$1 to \$8 a day from coastal fishing (not the long excursions). Although the villagers rely on subsistence for food, they still require cash for the education of their children, electricity, transport, clothing, and other commodities.

<sup>7</sup> James Prescott et al., "Governance and Governability: The Small-Scale Purse Seine Fishery in Pulau Rote, Eastern Indonesia," in *Interactive Governance for Small-Scale Fisheries*, eds. Svein Jentoft and Ratana Chuenpagdee (New York: Springer, 2015), 74.

<sup>8</sup> As Michelle Carnegie had observed in another village, some Rotenese men considered a prison sentence in Australia attractive because "they had access to regular meals, a meat-based diet, a clean 'room' with separate bathroom, TV and ceiling fan." See "Sailing-Trading Livelihoods in Southeastern Indonesia: Adapting to Change," *Asian Journal of Social Science* 41, no. 6 (2014): 543–579, 573.

<sup>9</sup> Peter Znoj, in "Hot Money and War Debts: Transactional Regimes in Southwestern Sumatra," *Comparative Studies in Society and History* 40, no. 2 (1998): 193–222, 199, explains that "hot money" is not only quickly earned (from, for example, illegal gold mines or gambling), but also quickly spent

Amir points out a cement house, surrounded by wooden huts, which he had built with the money earned in jail. He is very sincere when assuring all listeners that he “earned the money by the sweat of my brows” (*hasil keringatan saya sendiri*).<sup>10</sup> Then he goes on to explain that he had discussed the second trip with his wife and what doing the job, including the possibility of jail time, might provide for their long-term future. According to Amir, she had given her blessing, without which he “would never have gone on such a dangerous journey.”<sup>11</sup>

The fact that he had time in jail does not dampen Amir’s enthusiasm for this kind of work in the future. In both instances he was released prematurely on parole. In the course of the evening, Amir elucidates the pros and cons of taking on the job of ferrying asylum seekers to Australia by comparing it with other options available to him. For millions of Indonesians who cannot find work in their home towns and villages, migration to the urban centres or even overseas offers a way out of poverty; in fact, in this regard Indonesia is the “quintessentially labor surplus nation.”<sup>12</sup> For these poor, often semi-skilled migrants, only 3D (dirty, dangerous, and demeaning) work is on offer.<sup>13</sup> Young and able-bodied men from Rote frequently travel to West Papua to work in construction, servicing the region’s booming building industry. Amir considers himself too old for that kind of hard physical labour (*buruh kasar*). In his view, there is little difference between selling one’s manpower in West Papua or working in a jail in Australia; both kinds of work carry high risks for one’s health and life, long periods of separation from family, and the temporary sacrifice of personal freedom. Thus, Amir’s story suggests that the time in prison overseas can be incorporated under the wider rubric of *merantau* (literally, to wander) traditions, a form of temporary

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on luxury pursuits (such as drinking and prostitutes) and brings no lasting benefit. In contrast, “cold money” results from hard work such as growing rice and crops and is slowly and carefully spent. “Hot money” cannot be whitewashed by spending it for good purposes, such as donations, household contributions, or children’s education.

<sup>10</sup> The insistence on “earning” money stands in rather explicit contrast to the way that many Indonesians talk about “making” money. It is more common to hear phrases such as *cari uang* or, more casually, *cari duit* (literally, to “look for money”). Looking for money implies that money is available somewhere and, once detected, one just has to go and get it, but this requires good luck, whereas “earning” money assumes the more puritanical notion of having to prove oneself in order to deserve the money.

<sup>11</sup> On my previous trip I had met two Rotenese lads newly released from jail in Australia. Both had been underage (under 18) when they committed their people-smuggling crimes. Without wives or children to support, they bought a motorbike with their jail savings in order to work casually as drivers in Rote’s main city. Although they spoke with horror about their time in jail, some of their neighbours praised them for improving their marriage prospects through their long stay overseas, which has given them social prestige as they have seen the big wide world beyond their tiny island.

<sup>12</sup> Graeme Hugo, “Indonesia’s Labor Looks Abroad,” Migration Policy Institute, 1 April 2007, <http://www.migrationpolicy.org/article/indonesias-labor-looks-abroad>.

<sup>13</sup> Kevin Hewison and Arne L. Kalleberg, “Precarious Work and Flexibilization in South and Southeast Asia,” *American Behavioral Scientist* 57, no. 4 (2013): 395–402.

migration to accumulate skills and riches that is very common for young men in Indonesia, as for them the temporary separation from friends and family is a necessary rite of passage.<sup>14</sup>

Asked, however, whether or not he would be ready to transport asylum seekers to Ashmore Reef once more, Amir answers very pragmatically: “Right now I couldn’t go, as there no boats are being received in Australia.”<sup>15</sup> Moreover, aware of his parole conditions, he suggests he would wait three years before taking another asylum seeker boat, and thus avoid having to serve his previous prison term in full first. When contemplating breaking the law again, Amir also considers the possibility of being returned to Indonesia and spending time in an Indonesian jail. The prospect of serving time in jail in Indonesia is the ultimate disincentive: “not for Rp100 million would I volunteer for this kind of misery (*sengsara*).”

At first glance, stories of this kind might be understood as the stories of individuals flouting the law for their own material gain. When taking into consideration the fact that hundreds of Indonesian fishermen, many of them from Rote, have ended up in Australian and, later, Indonesian jails for people-smuggling offences,<sup>16</sup> stories like Amir’s present themselves in a very different light, not least because they reveal certain preconditions on which the organizers of asylum seeker transports can rely upon when recruiting the indispensable boat crews. To give some numbers, in 2012 the Australian Human Rights Commission conducted an inquiry into the treatment of people thought to be minors who were charged with people smuggling and found that 180 young Indonesians who said they were children had crewed on boats arriving in Australia between 2008 and 2011.<sup>17</sup> The Australian Lawyers Alliance used Australia’s Freedom of Information Act to confirm that ninety of the 157 young Indonesians whose place of origin had been identified came from Nusa Tenggara Timur and of these, half came from Rote Island.<sup>18</sup>

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<sup>14</sup> Johan A. Lindquist, *The Anxieties of Mobility: Migration and Tourism in the Indonesian Borderlands* (Honolulu: University of Hawai’i Press, 2009).

<sup>15</sup> In September 2013, the Australian government implemented the military-led campaign Operation Sovereign Borders, which prevents any asylum seeker from landing on Australian territory by intercepting boats as they approach Australia and turning them back to the country they departed from. To learn more about this campaign, see the Australian Department of Immigration and Border Protection’s website, at [www.border.gov.au/about/operation-sovereign-borders](http://www.border.gov.au/about/operation-sovereign-borders), last accessed 26 September 2016.

<sup>16</sup> Andreas Schloenhardt and Charles Martin, “Prosecution and Punishment of People Smugglers in Australia 2008–2011,” *Federal Law Review* 40, no. 1 (2012): 111–140; Missbach, *Sentencing People Smuggling*.

<sup>17</sup> Australian Human Rights Commission, *An Age of Uncertainty: Inquiry into the Treatment of Individuals Suspected of People Smuggling Offences Who Say that They Are Children*, July 2012, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/age-uncertainty-inquiry-treatment-individuals>.

<sup>18</sup> Mitchell, *After the Spill*, 205. Also see the update webpage: <https://www.lawyersalliance.com.au/ourwork/2014/indonesian-minors>.

This article suggests that it is no coincidence that so many fishermen from Rote, like Amir, end up in prison for people smuggling, as the organizers of asylum seeker journeys face few difficulties in recruiting willing transporters from Eastern Indonesia. Rotenese fishermen possess superior navigational skills and intimate knowledge of the seas which make them sought after for this sort of work.<sup>19</sup> I contend, however, that a more significant factor in their susceptibility to offers of generous financial reward for work that involves them in criminal—but licit<sup>20</sup>—activity is the decline in their working, income-earning, and living conditions from precarious to hyper-precarious over the last decade. As I will explain further, multi-generational indebtedness and seasonal fishing in either depleted or restricted waters have resulted in high levels of income instability among fishermen, making their livelihoods precarious; more recently, overfishing and pollution have made them even more precarious. The combination of ever-shrinking options to make a living legally from traditional work, such as low-tech fishing, and the criminalizing of new niche employments, such as smuggling asylum seekers, has made their lives hyper-precarious. Hyper-precarity concerns both their declined economic position and their socio-legal status as convicted criminals.

Precarity, as a sociological concept, has so far been used to describe the shift from industrial to post-Fordist economies in the post-industrial global North and the decline of the well-educated middle class who cannot get permanent jobs despite high levels of education. In the global South precarious work conditions, and therefore precarity, have always been more prevalent.<sup>21</sup> In the global South the informal sector traditionally absorbed more workers than the formal sector, resulting in greater uncertainty about the continuity of employment, little control over wages and working conditions, and hardly any assurance or protection against unemployment and economic desperation.<sup>22</sup> But, as Kalleberg and Hewison show, precariousness is on the rise in Indonesia and elsewhere in Southeast Asia,

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<sup>19</sup> Balint, "Small Fry." Ines Kohl, "Flucht und Migration durch die Sahara: Tareg, Akteure eines Transnationalen Netzwerks," [Flight and migration across the Sahara: Tuareg, agents of transnational networks] in *Schleppen, Schleusen, Helfen: Flucht Zwischen Rettung und Ausbeutung*, eds. Gabriele Anderl and Simon Usaty (Wien: Mandelbaum Verlag, 2016), 459. Kohl has pointed out similar unique skills among the Tuareg, who serve their clients as guides through the Sahara.

<sup>20</sup> "Criminal but licit" is used to show that something might be prohibited by state law yet be culturally well accepted among villagers. On the aspect of illegal but licit smuggling work, see Sang Kook Lee, "Behind the Scenes: Smuggling in the Thailand-Myanmar Borderland," *Pacific Affairs* 88, no. 4 (2015): 767–790; and Rebecca Galemba, "Taking contraband seriously: Practicing 'legitimate work' at the Mexico-Guatemala border," *The Anthropology of Work Review* 33, no. 1 (2012): 3–14.

<sup>21</sup> Brett Neilson and Ned Rossiter, "Precarity as a Political Concept, or, Fordism as Exception," *Theory, Culture & Society* 25, no. 7/8 (2008): 51–72; Noelle J. Molé, "Precarious Subjects: Anticipating Neoliberalism in Northern Italy's Workplace," *American Anthropologist* 112, no. 1 (2010): 38–53; Andrea Muehlebach, "On Affective Labor in Post-Fordist Italy," *Cultural Anthropology* 26, no. 1 (2011): 59–82; Guy Standing, *The Precariat: The New Dangerous Class* (London: Bloomsbury Academic, 2011).

<sup>22</sup> Hannah Lewis et al., "Hyper-precarious Lives: Migrants, Work and Forced Labour in the Global North," *Progress in Human Geography* 39, no. 5 (2015): 585.

even among those with “standard work,” which has always been characterized by short-term contracts, unpaid overtime, low union protection and so on, resulting in additional multidimensional precariousness for employees whose welfare and living conditions are already rather insecure.<sup>23</sup>

Generally speaking, precarity is a condition of existence with little predictability or security, in other words a state of anxiety that affects the material and psychological welfare of many people, first and foremost temporary and irregularly employed workers. Writing of forced labour and exploited migrants in the United Kingdom, Lewis and Waite list factors deemed responsible for turning precarity into what they refer to as hyper-precarity.<sup>24</sup> Among these listed factors are economic destitution, the need to provide for family members, indebtedness, and a “legacy of illegality” in employment options, which are comparable to the “precarity track” of Rotenese fishermen. According to Lewis and Waite, the constrained choices migrants have when seeking a livelihood under hyper-precarious conditions lead them to engage in extremely exploitative work that meets international definitions of forced labour. While Lewis et al. demonstrate that migrants become hyper-precarious workers because of “the ongoing interplay of neoliberal labour markets and highly restrictive immigration regimes,”<sup>25</sup> I intend to show that the facilitators of (irregular) migration, such as the transporters and boat crews of asylum seekers who could be seen as accidental migrants, also experience hyper-precarity, in the sense that they have few options other than to engage in illegalized work and criminalized income generation. In short, they exchange freedom for jail gratuity earnings. Although Rotenese fishermen are not taken overseas against their will (which would constitute human trafficking) when they volunteer to go to jail in Australia, they essentially pick up “work” from the very bottom of the available range of voluntary and forced labour. In other words, whereas other poor Indonesians migrate to take up precarious work as housemaids, construction workers, and plantation workers overseas,<sup>26</sup> Rotenese fishermen turn to unconventional modes of income generation, such as earning money while serving jail sentences for people smuggling or illegal(ized) fishing. Their work is driven by a rationality of despair.<sup>27</sup>

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<sup>23</sup> Arne L. Kalleberg and Kevin Hewison, “Precarious Work and the Challenge for Asia,” *American Behavioral Scientist* 57, no. 3 (2013): 273.

<sup>24</sup> Hannah Lewis and Louise Waite, “Asylum, Immigration Restrictions and Exploitation: Hyper-precarity as a Lens for Understanding and Tackling Forced Labour,” *Anti-Trafficking Review* 5 (2015): 53.

<sup>25</sup> Lewis et al., “Hyper-precarious Lives,” 582.

<sup>26</sup> O. Pye, R. Daud, and Y. Harmono, “Precarious Lives: Transnational Biographies of Migrant Oil Palm Workers,” *Asia Pacific Viewpoint* 53, no. 3 (2012): 330–342; Theresa Devasahayam, “Making the Most of Remittances: Obligations, Aspirations, and Precarity among Indonesian Women Migrants in Singapore,” *Diversities* 15, no. 1 (2013): 21–36; Danièle Bélanger and Linh Tran Giang, “Precarity, Gender and Work: Vietnamese Migrant Workers in Asia,” *Diversities* 15, no. 1 (2013): 5–20.

<sup>27</sup> Malte Steinbrink *Leben zwischen Land und Stadt: Migration, Translokaliätät und Verwundbarkeit in Südafrika* [Living between the village and the city: migration, translocality and vulnerability in South Africa], Springer Verlag, 2009.

In contrast to the bulk of the literature on human smuggling, which is produced by legal scholars or criminologists and tends to be either legalistic or technocratic, this article pays attention to the wider socio-economic situation of impoverished fishermen in Eastern Indonesia, the nation's poorest region.<sup>28</sup> The motivation for conducting this research was an earlier quantitative survey on the socio-economic backgrounds of convicted people smugglers which showed that Eastern Indonesians were over-represented among convicted people smugglers in Indonesia.<sup>29</sup> Because Eastern Indonesia is a very large area, the study was scaled down to a more manageable area and focused on the fishermen from Rote, because the island has been a very important departure or transit point for asylum seekers in the last fifteen years. This article builds on existing ethnographic scholarship on Rotenese fishermen,<sup>30</sup> and is informed by twenty-one open interviews conducted during three field trips to Rote Island in May 2012, September 2014, and August 2016.<sup>31</sup>

In asking how the global political economy impacts the global peripheries at the structural level and how people at the peripheries experience and adjust to new challenges imposed from afar, such as pollution and criminalization of migration, one sees the need for more thorough study of hyper-precarity in Southeast Asia. The findings of this qualitative study point to the structural marginalization of the lives of Rotenese fishermen and to their exploitability by transnational people-smuggling networks. It is hoped that this article will be a significant addition to the literature on people smuggling, which is more often than not built upon a narrow understanding of fishermen's motivations in serving as transporters in asylum seeker journeys, and that it will provide a corrective to public debate which tends to ignore extreme forms of labour exploitation.

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<sup>28</sup> Budy Resosudarmo and Frank Jotzo, "Development, Resources and Environment in Eastern Indonesia," in *Working with Nature Against Poverty: Development, Resources and the Environment in Eastern Indonesia*, eds. Budy P. Resosudarmo and Frank Jotzo (Singapore: ISEAS, 2009), 1–20.

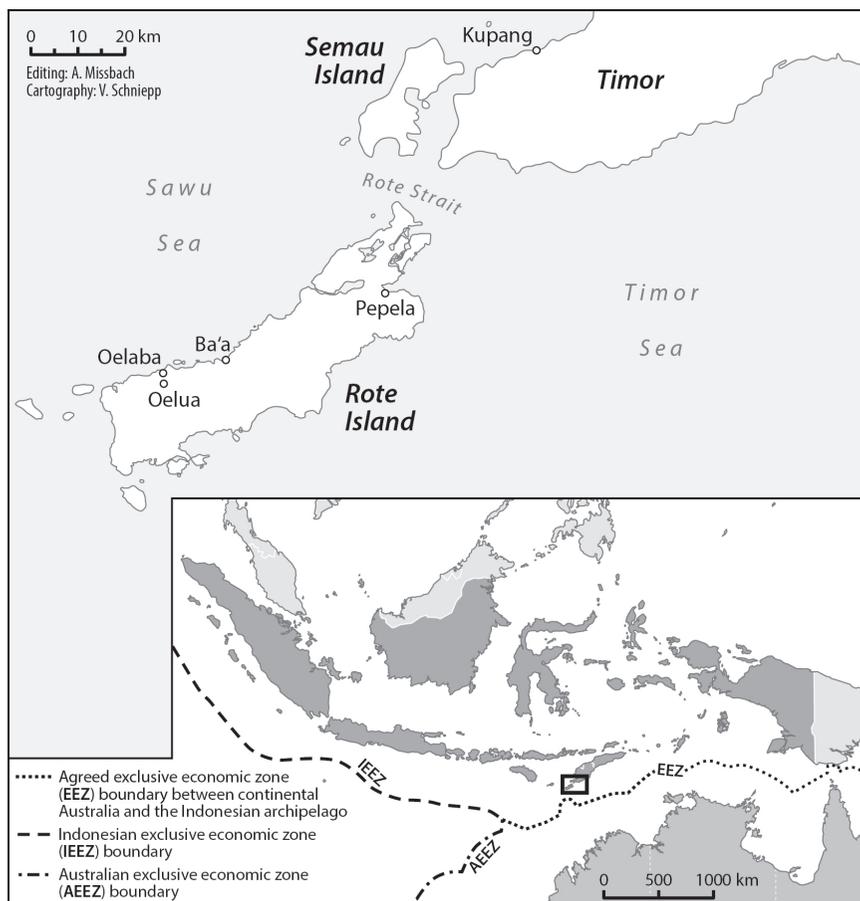
<sup>29</sup> Missbach, *Sentencing People-Smuggling*.

<sup>30</sup> James J. Fox, "Legal and Illegal Indonesian Fishing in Australian Waters," in *Indonesia Beyond the Water's Edge*, eds. Robert Cribb and Michele Ford (Singapore: ISEAS, 2009), 195–220; James Fox et al., "Searching for a Livelihood: The Dilemma of Small-boat Fishermen in Eastern Indonesia," in *Working with Nature Against Poverty: Development, Resources and the Environment in Eastern Indonesia*, eds. Budy P. Resosudarmo and Frank Jotzo (Singapore: ISEAS, 2009), 201–226; Wilson Therik, *Nelayan Dalam Bayang Juragan: Potret Kehidupan Nelayan Tradisional Bajo di Tanjung Pasir, Pulau Rote, Nusa Tenggara Timur* [Portrait of the lives of traditional Bajo fishermen in Tanjung Pasir, Rote Island, East Nusa Tenggara] (Working Paper) (Salatiga: Institute of Indonesia Tenggara Studies, Universitas Kristen Satya Wacana, 2008); Balint, "Small Fry"; Carnegie, "Development Prospects" and "Sailing–Trading Livelihoods."

<sup>31</sup> Thirteen semi-structured interviews with convicted people smugglers were conducted while they served their prison sentence in Rote and five men were interviewed after they had returned from jail in Australia. The interviews lasted between two and four hours and involved biographical accounts, the lead-up and preparation of the smuggling operations, and the actual journeys. Those interviewees still incarcerated could, of course, share only a limited version of their stories with me. Next to interviewing fishermen who had been convicted of people-smuggling offences, my data collection also included informal conversations with three local policemen.

## Fishermen as People Smugglers in Indonesia

Map 1  
Rote and its location in Indonesia



### Operational Structure of People-Smuggling Networks

Before delving deeper into issues of poverty, underdevelopment, and hyper-precarity, a few explanatory remarks are necessary on the transport of asylum seekers and refugees from Indonesia to Australia. The politicized debate on people smuggling has thrived on excessively simplistic depictions of smugglers as “natural born criminals” and “the scum of the earth.”<sup>32</sup> Public media and populist politicians alike tend to ignore the multi-layered

<sup>32</sup> Emma Rodgers, “Rudd Wants People Smugglers to ‘Rot in Hell,’” *ABC News*, 17 April 2009, <http://www.abc.net.au/news/2009-04-17/rudd-wants-people-smugglers-to-rot-in-hell/1653814>.

composition of smuggling networks and their ever-changing configurations. In order to facilitate these journeys, a number of service providers are required, such as organizers, recruiters, facilitators, drivers, boat crews, providers of accommodation, money collectors, security guards, middlemen, and communicators.<sup>33</sup> As recent studies show, including my previous work on rejected asylum seekers who became recruiters and organizers, structures of people-smuggling networks are complex, fluid, and decentralized, as are their *modi operandi*.<sup>34</sup>

Liberal economic approaches to the study of irregular migration claim that “smuggling pays,”<sup>35</sup> but the profits of these complex services are distributed unequally amongst the different service providers. The politicized debate on people smuggling has for too long ignored socio-economic discrepancies in the places where it occurs. To many policy makers, every smuggler is seemingly the same, and they promulgate a view that is based on the assumption that all smugglers are greedy and callous and that all involved benefit equally from transporting asylum seekers. This article attempts to counter such false assumptions by shedding light on the most vulnerable participants in people-smuggling networks, the transporters, in order to differentiate their performance, levels of risk, and motivation from those of other participants in the networks.

State authorities investigating people-smuggling operations seem to direct their attention mainly to the transporters—the more visible element of people-smuggling networks—rather than to those who organize the transports and, more often than not, remain invisible and, therefore, hard to catch. Apportioning responsibility to those at the bottom or middle of a network’s chain tends to overlook the fact that people smuggling almost always involves more than a single agent or a few transporters. Moreover, detecting and criminalizing individual transporters, facilitators, and even organizers will have little effect on ending people smuggling in the region, as the demand for people-smuggling operations is driven by the needs of so many people in search of safe refuge. Of greater significance is the fact that punishing those at the bottom of the loose smuggling networks distracts from the reality of state policies that induce illegality by restricting mobility and employment, and from the reality of global political contexts that engender the need for the “irregular” or “illegal” transport of asylum seekers and refugees as a way of saving lives.<sup>36</sup>

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<sup>33</sup> Gabriella Sanchez, *Human Smuggling and Border Crossings* (London and New York: Routledge, 2015); Ilse van Liempt and Stephanie Sersli, “State Responses and Migrant Experiences with Human Smuggling: a Reality Check,” *Antipode* 45, no. 4 (2013): 1029–1046.

<sup>34</sup> Antje Missbach, “Making a ‘Career’ in People-smuggling in Indonesia: Protracted Transit, Restricted Mobility and Asylum-seekers’ Need for Protection,” *Sojourn* 30, no. 2 (2015): 423–454.

<sup>35</sup> Khalid Koser, “Why Migrant Smuggling Pays,” *International Migration* 46, no. 2 (2008): 3–26.

<sup>36</sup> Ali Nobil Ahmad, *Masculinity, Sexuality and Illegal Migration: Human Smuggling from Pakistan to Europe* (Farnham, Surrey: Ashgate, 2011), 6; Gabriele Anderl and Simon Usaty, “Einleitung,” [Introduction]

## Indonesia's Left-Behind East

Recent research shows that a disproportionately high number of convicted people smugglers hail from Eastern Indonesia, not only from the provinces closer to Australia, such as Nusa Tenggara Timur, but also from Nusa Tenggara Barat and from Sulawesi's southern and central provinces.<sup>37</sup> For a long time, Eastern Indonesia, with its lower incomes, higher poverty, and poor social indicators (such as higher infant mortality and lower life expectancy) compared to other regions in Indonesia, has "epitomized the problems of development in Indonesia."<sup>38</sup> Despite vast natural resources, particularly minerals and forests, the people of the region benefit little from the extraction of those resources. Not only has over-exploitation caused irreparable environmental degradation, but competition for resources, coupled with bad management and embezzlement, has often become a source of social conflict. Eastern Indonesia has suffered more from internal conflict than any other Indonesian region.<sup>39</sup>

Eastern Indonesia is considered not only the poorest region, but also the most corrupt in Indonesia,<sup>40</sup> and seems to suffer more from abuse of power by local authorities and predatory elites.<sup>41</sup> Local leaders prefer to blame low human resources potential for poor socio-economic performance and ongoing underdevelopment, rather than acknowledging the role played by the weak accountability and persistent paternalism of local governments, resulting in a classic Catch 22. Nevertheless, bureaucracy in Eastern Indonesia keeps expanding, not least because of the continuous proliferation of administrative districts and municipalities (*pemekaran*), which compounds the problem of accountability and does little to improve the region's productivity.

Most people in Eastern Indonesia make their living from agriculture, but low agricultural productivity, poor infrastructure, and inadequate marketing facilities result in low household incomes.<sup>42</sup> Fishing is another important source of income. For years, however, researchers have noted the increasing poverty of fishing communities in Eastern Indonesia, which is the result of depleted

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in *Schleppen, Schleusen, Helfen: Flucht Zwischen Rettung und Ausbeutung*, eds. Gabriele Anderl and Simon Usaty (Wien: Mandelbaum Verlag, 2016).

<sup>37</sup> Missbach, *Sentencing People-Smuggling*, 11.

<sup>38</sup> Resosudarmo and Jotzo, "Development, Resources and Environment in Eastern Indonesia," 1.

<sup>39</sup> Birgit Bräuchler and Maribeth Erb, "Eastern Indonesia under Reform: the Global, the National and the Local," *Asian Journal of Social Science* 39, no. 2 (2011): 113–130; Richard Chauvel, "Violence and Governance in West Papua," in *Violent Conflict in Indonesia: Analysis, Representation, Resolution*, ed. Charles A. Coppel (London: Routledge, 2006), 180–191.

<sup>40</sup> Maribeth Erb, "Talk of Corruption in Eastern Indonesia: Reactions to Local Government in the Post-Suharto Reform Era," *Asian Journal of Social Science* 39, no. 2 (2011): 171–195, 171.

<sup>41</sup> Resosudarmo and Jotzo, "Development, Resources and Environment"; Edward Aspinall and Gerry van Klinken, eds., *The State and Illegality in Indonesia* (Leiden: KITLV, 2011).

<sup>42</sup> Anne Booth, "Africa in Asia? The Development Challenges Facing Eastern Indonesia and East Timor," *Oxford Development Studies* 32, no. 1 (2004): 19–35, 27.

fish stocks and the plundering of Indonesian fishing grounds by foreign fishing vessels.<sup>43</sup> Rotenese fishermen have accumulated huge debts, because the distribution of financial risks and benefits is unequal and serves the captains and owners of the boats rather than their crews.<sup>44</sup> There is little manufacturing in Eastern Indonesia to absorb the local work force, and opportunities for people to make the transition from subsistence peasant and hired fisherman to wage worker or entrepreneurial farmer and fisherman are very limited.<sup>45</sup>

Among the many poor areas in Eastern Indonesia, particularly in Nusa Tenggara Timur, where about 22 percent of rural households are deemed below the poverty line, Rote ranks at the bottom.<sup>46</sup> Farmers make a meagre living by planting maize, millet, sorghum, beans, cassava, and sweet potato in their permanently dry-land gardens and rely on swidden cultivation to wrest a living from the poor soils.<sup>47</sup> Traditions of inter-island sailing-trading, particularly in sugar and syrup from the Lontar palm, have supplied the Rotenese with seasonal and sporadic incomes for centuries. As Carnegie observed, inter-island trading activities have lessened over time, mostly because motorboats have largely replaced sailing boats and have increased operational costs, making the journeys of small entrepreneurs less viable in the face of tight competition from ferry-operator and bulk-distributor monopolies. Although people in Rote have the capacity to act and adjust to changing conditions, in general their choices are limited by the poor geographic, climatic, economic, and political conditions on their island. Fishermen, more than anybody else, face economic and social marginalization.<sup>48</sup>

The extreme nature of ever-shrinking livelihood options in Rote and the increasing criminalization of what used to be the traditional work of Rotenese fishermen suggests that hyper-precarity is an appropriate term to describe the position of the Rotenese within the global spectrum of oppressive dependency. This is not to say that precarity does not also shape the livelihoods of other “working poor” employed in so-called “standard work”<sup>49</sup> in factories, plantations, and the service industries in Indonesia and Southeast

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<sup>43</sup> Michael Heazle and John G. Butcher, “Fisheries Depletion and the State in Indonesia: Towards a Regional Regulatory Regime,” *Marine Policy* 31, no. 3 (2007): 276–286; Prescott et al., “Governance and Governability,” 62.

<sup>44</sup> Prescott et al., “Governance and Governability,” 65; Therik, *Nelayan Dalam Bayang Juragan*.

<sup>45</sup> Tania Murray Li, “To Make Live or Let Die? Rural Dispossession and the Protection of Surplus Population,” *Antipode* 41, no. 1 (2009): 66–93.

<sup>46</sup> Data from Indonesia’s national statistics agency indicates that, in 2014, Nusa Tenggara Timur ranked thirtieth out of thirty-three provinces on the Human Development Index in Indonesia, ahead of only West Papua, Sulawesi Barat, and Papua (<http://www.bps.go.id/linkTabelStatis/view/id/1796>); Prescott et al., 68.

<sup>47</sup> Carnegie, “Development Prospects,” 357.

<sup>48</sup> For example, because of their unstable incomes, fishermen cannot get credit with banks and have to borrow from informal lenders; see Prescott et al., “Governance and Governability,” 64, and Therik, *Nelayan Dalam Bayang Juragan*.

<sup>49</sup> Kalleberg and Hewison, “Precarious Work and the Challenge for Asia,” 272.

Asia, who face increasing flexibilization, reduced benefits, and shorter job contracts. Rotenese fishermen, however, usually lacking the qualifications and skills required for employment in “standard work” in Indonesia and overseas, are experiencing more drastic forms of precariousness as they go to jail and convert their freedom into cash, as the two vignettes in the following section will illustrate. Resorting to people smuggling is, of course, not the only option for impoverished fishermen in Rote. Carnegie has pointed to a number of other activities, but many of them are also criminal, although with less harsh penalties.<sup>50</sup> For example, some locals smuggle fuel to neighbouring Timor Leste, benefitting from significant state subsidies for fuel in Indonesia. Nusa Tenggara Timur has also been a fertile ground for recruiting female workers for trafficking to Malaysia.<sup>51</sup>

### **Shrinking Income Options and a Hyper-precarious Existence**

The first sphere of hyper-precarity for fishermen in Rote concerns legal and illegalized fishing. Ever since the signing of the 1974 Memorandum of Understanding regarding the Operations of Indonesian Traditional Fishermen in Areas of the Australian Fishing Zone and Continental Shelf between Australia and Indonesia and subsequent agreements on maritime conservation, Indonesian fishermen have only been allowed to fish in a demarcated sea area known widely as the “MoU Box.”<sup>52</sup> Within the areas in which fishing is permitted, traditional methods and equipment must be used in order to protect their unique, highly diverse, and vulnerable marine ecosystems. This means that Rotenese fishermen cannot use motorboats or high-tech navigation gear that might help them master the invisible but precise sea boundaries of the MoU Box. If caught outside the designated areas, fishermen are reprimanded and, upon repeated detection, sentenced heavily.<sup>53</sup>

For centuries, Rotenese fishermen have concentrated on niche fishing, such as the time- and labour-intensive harvesting of *trepang* (sea cucumber) used in traditional medicine, as a cosmetic ingredient, or simply consumed as a delicacy.<sup>54</sup> With fish stocks in the Arafura Sea generally more depleted

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<sup>50</sup> Carnegie, “Development Prospects,” 361.

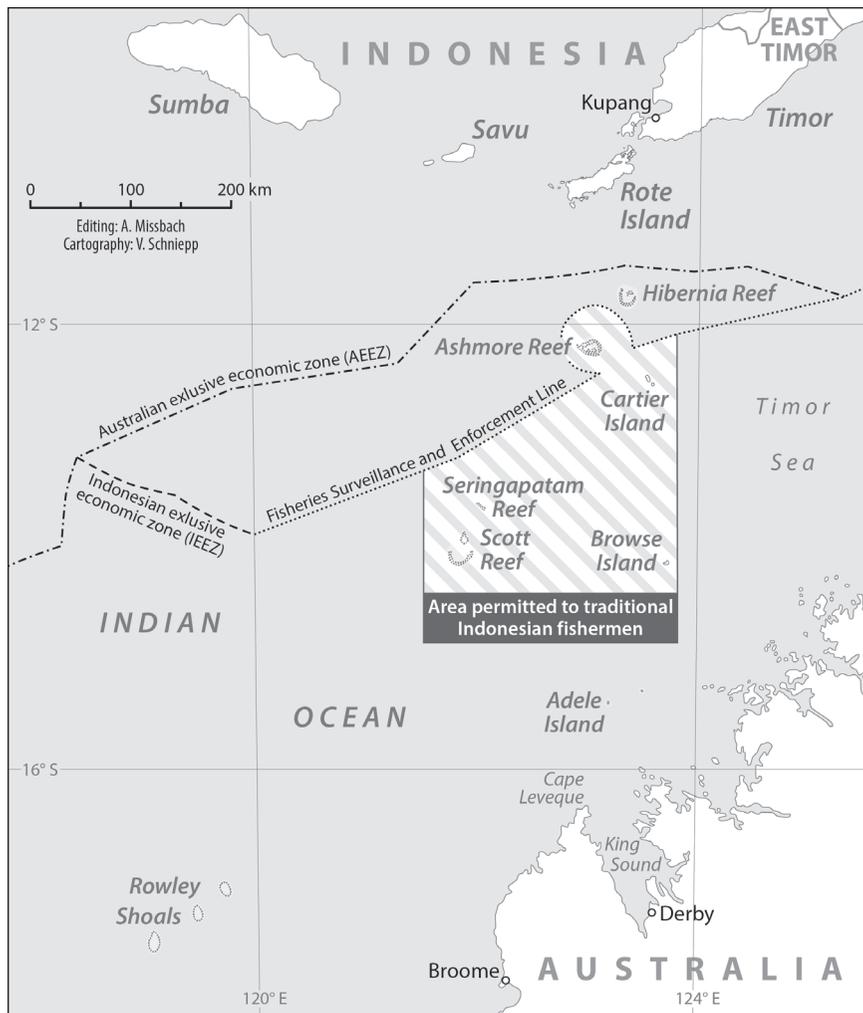
<sup>51</sup> Yohanes Seo, “Jokowi Minta Polda NTT Serius Tangani Kasus Trafficking,” *Tempo*, 2 January 2016, <https://m.tempo.co/read/news/2016/01/02/058732486/jokowi-minta-polda-ntt-serius-tangani-kasus-trafficking>.

<sup>52</sup> Ruth Balint, “The Last Frontier: Australian Maritime Territories and the Policing of Indonesian Fishermen,” *Journal of Australian Studies* 23, no. 63 (1999): 30–39; Fox, “Legal and Illegal Indonesian Fishing”; Natasha Stacey, *Boats to Burn: Bajo Fishing Activity in the Australian Fishing Zone* (Canberra: ANU E-Press, 2007). The original MoU box included the reefs of Ashmore, Cartier, Scott, Seringapatam, and Browe, but Ashmore and Cartier were later excluded and turned into protected marine reserves.

<sup>53</sup> Fox, “Legal and Illegal Indonesian Fishing.”

<sup>54</sup> Dedi Supriadi Adhuri, “Traditional and ‘Modern’ Trepang Fisheries on the Border of the Indonesian and Australian Fishing Zones,” in *Macassan History and Heritage: Journeys, Encounters and Influences*, eds. Marshall Clark and Sally K. May (Canberra: Australian National University Press, 2013), 183–204.

Map 2  
The MoU Box: Traditional fishing zones agreed upon in 1989



than in the Timor Sea,<sup>55</sup> local fishermen were left with no options for intensifying their mostly unregulated small-scale fishery, but the amount of *trepang* available in the permissible areas, including the MoU Box, was not enough for all Rotenese fishermen. While fishermen from Pepela (Northeast

<sup>55</sup> Fox et al., "Searching for a Livelihood," 201.

Rote) turned to high-risk shark-fin fishing in the late 1990s,<sup>56</sup> fishermen from Oelaba (Northwest Rote) continued to rely mainly on *trepang* collection for a few more years. Facing less local competition from Pepela, fishermen from Oelaba extended their *trepang* fishing, but to make their trips viable they had to harvest more than what was deemed sustainable, eventually causing severe depletion of *trepang* stocks. Thus it was not unsurprising that the fishermen from Oelaba were among the first to become involved in people smuggling by accepting offers from people-smuggling organizers and their middlemen.<sup>57</sup> They were soon followed by fishermen from Pepela.

As shark fishing carries many risks for the fishermen who join the several-weeks-long excursions, it is not surprising that villagers refer to the shark-fishing season as *musim janda* (widow season) and that the fishermen refer to themselves as *gabungan berani mati* (alliance of daredevils—literally, those who are brave to die). Even though prices for shark fin went up, fishermen usually stayed poor because of the unfair distribution of profits amongst those involved: the boat owner, the captain, and the crew. Overfishing resulted in expeditions becoming longer in time and distance, which increased the cost of fuel and the food that had to be prepared ahead of the trip. Many fishermen accumulated debts to boat owners that could not be repaid if catches were disappointing. Financial losses were usually added to the cost of the next voyage,<sup>58</sup> which resulted in massive debts that ensured ongoing dependence on, even virtual enslavement to, creditors. Indebtedness, as Therik has shown, is not limited to a single individual, but extends to that individual's extended family, who are obliged to repay accumulated debt and remain within an unequal patron-client relationship.<sup>59</sup>

Fox reports that, in 2005, boats from Pepela were venturing into Australian waters in search of sharks almost daily.<sup>60</sup> Those caught fishing for sharks outside permissible areas were apprehended by Australian authorities. Between 2005 and 2014 about 2,500 Indonesian boats were apprehended for fishing illegally in (and occasionally outside) Australian waters.<sup>61</sup> After apprehending the fishermen, Australian authorities burn their boats and destroy their catch and equipment, regardless of the outcome of their trial.<sup>62</sup>

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<sup>56</sup> James J. Fox and Sevaly Sen, *A Study of Socio-Economic Issues Facing Traditional Indonesian Fishers who Access the MoU Box* (Report for Environment Australia) (Canberra: Australian National University, 2002).

<sup>57</sup> Balint, "Small Fry."

<sup>58</sup> Fox et al., "Searching for a Livelihood," 215.

<sup>59</sup> Therik, *Nelayan Dalam Bayang Juragan*.

<sup>60</sup> Fox, "Legal and Illegal Indonesian Fishing," 214.

<sup>61</sup> Palce Amalo, "Australia Tenggelamkan 2.500 Perahu Nelayan Indonesia," *MetroTV Newscom*, 10 December 2014, <http://news.metrotvnews.com/read/2014/12/10/330088/australia-tenggelamkan-2-500-perahu-nelayan-indonesia>. Australian sources claim that "only" 1052 boats were apprehended and, of the 7893 people arrested, "only" 1166 were eventually convicted (Mitchell, *After the Spill*, 201).

<sup>62</sup> Balint, "Small Fry"; Fox et al., "Searching for a Livelihood," 221.

Burning the boats causes substantial losses to the boats' owners, captains, and crew, as well as to their respective families as their debts spiral out of control.<sup>63</sup> Most apprehended crew members on the confiscated boats were not the owners but worked for a "boss," who was usually their creditor for all other life expenses, such as food, clothes, and spare parts. Creditors usually sell those items at inflated prices to their debtors, who are prevented by their relationship with the creditors from making cheaper purchases elsewhere, which transforms their uneven relationship into systematic and inter-generational indebtedness, resulting in a kind of bonded labour.<sup>64</sup> Not surprisingly, fishermen from Pepela, tempted by the prospect of a one-off large payment, started to join those from Oelaba in taking asylum seekers to Ashmore Reef.<sup>65</sup> During a visit to Pepela, I met a fisherman who had been arrested fourteen times at sea by the Australian authorities, and sentenced seven times for illegal fishing and once—his last arrest—for people smuggling.<sup>66</sup> He said he kept on with illegal fishing, as he hoped that one day he might make a big enough catch without being detected to repay all his debts. When this strategy did not work, he tried taking asylum seekers to Ashmore Reef.

The point here is, however, that the only way Rotenese fishermen could continue to use their maritime expertise was within illegal (ized) labour: that is, in fishing outside sanctioned areas and in people smuggling. Though they may seem lucrative, most alternative income-generating activities are dangerous or not sustainable. It is interesting to note here the striking parallels with impoverished Moroccan and Tunisian fishermen, who were drawn into people smuggling after their jobs in the fishing industry disappeared when their governments sold fishing quotas to Italy and Spain.<sup>67</sup>

The second illustration of the increasingly precarious income-generating activities for Rotenese fishermen concerns seaweed cultivation and the circumstances surrounding a man-made disaster. The cultivation of seaweed was promoted as a source of income from 1989 onwards among Rotenese fishing communities in response to overfishing and fish-stock depletion.<sup>68</sup>

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<sup>63</sup> Balint, "The Last Frontier."

<sup>64</sup> Therik, *Nelayan Dalam Bayang Juragan*. Carnegie ("Development Prospects," 364) has noted the difficulties in getting loans from banks to buy new fishing equipment or make proper business investments. As land is usually owned communally rather than privately, individuals cannot offer banks any proper security, which drives them into the hands of money-lenders who charge interest rates of up to 30 percent.

<sup>65</sup> Balint, "Small Fry"; Kate Evans, "Nelayan Pulau Rote Alih Profesi Jadi Penyelundup Manusia," *ABC Radio Australia*, 14 November 2013, <http://www.radioaustralia.net.au/indonesian/2013-11-14/nelayan-pulau-rote-alih-profesi-jadi-penyelundup-manusia/1219570>.

<sup>66</sup> Interview in Pepela, 1 August 2016. When I asked the man for his name, he asked me which name I wanted to hear: one of his Australian jail names or the name by which he is known in the village.

<sup>67</sup> Mabrouk, quoted in Liempt and Sersli, "State Responses," 1035.

<sup>68</sup> Fox, "Legal and Illegal Indonesian Fishing."

Despite its great potential for local communities, seaweed farming has not yet brought the promised benefits.<sup>69</sup> Not only do prices for dried seaweed fluctuate substantially, but also the distribution chain remains largely underdeveloped.<sup>70</sup> To make matters worse, in August 2009 an oil spill in the Timor Sea caused severe ecological damage and inflicted economic difficulties on the Rotenese seaweed farmers and fishermen. Although the exact amount of spilled oil is unknown, it is estimated that between 400 to 2,000 barrels of oil per day flowed into the sea for seventy-four days.<sup>71</sup> The oil rig is operated by the Australia-based company PTTEP Australasia, a subsidiary of a Thai national petroleum exploration and production company. According to findings from Indonesia's Centre for Energy and Environmental Studies, the economic loss to the fishing and seaweed industries in Nusa Tenggara Timur caused by the spill has been approximately A\$1.5 billion per year since 2009.<sup>72</sup> Initially the Indonesian government sought Rp23 trillion (US\$2.69 billion) in compensation for alleged ecological damage to Indonesian waters. PTTEP rejected the claim and offered only US\$3 million,<sup>73</sup> but legal action is continuing. Meanwhile, fishermen and seaweed farmers in Rote and the nearby islands have to earn a living.

Clean-up measures began in 2009, but the chemical dispersants used to get rid of the oil slick further harmed the environment. As numbers of certain fish species declined dramatically, fishermen were pushed into other areas, often already overfished. Seaweed farmers in Rote claimed that they lost an entire harvest.<sup>74</sup> Of greater significance for the purposes of this article, however, is the correlation between the fishermen's loss of their livelihoods and the rise of people smuggling. Although it is difficult to provide hard evidence of the correlation between the oil spill and the increase in participation in people smuggling from Rote, a number of telling claims have been made.<sup>75</sup> Amongst many others, a report by the Australian Lawyers Alliance arising from community consultations in the village of Tablolong (on Timor, an island opposite Rote that was also affected by the oil spill)

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<sup>69</sup> Leila Sievanen et al., "Weeding Through Assumptions of Livelihood Approaches in ICM: Seaweed Farming in the Philippines and Indonesia," *Ocean & Coastal Management* 48, no. 3–6 (2005): 297–313.

<sup>70</sup> Interview with head of village, 29 April 2012, Oelua.

<sup>71</sup> Mitchell, *After the Spill*.

<sup>72</sup> Mitchell, *After the Spill*.

<sup>73</sup> "Fishermen 'Suffer' as Oil Spill Compensation Delayed," *Jakarta Post*, 28 May 2011, <http://www.thejakartapost.com/news/2011/05/28/fishermen-'suffer'-oil-spill-compensation-delayed.html#sthash.NXCyifKG.dpuf>.

<sup>74</sup> "Indonesian Island Claims Seaweed Crops Ruined by Montara Oil Spill," ABC Radio PM, 4 September 2015, <http://www.abc.net.au/pm/content/2015/s4306563.htm>.

<sup>75</sup> Australian Human Rights Commission, *An Age of Uncertainty*; Rebecca Henschke, "Why Australia Jails Indonesian Kids," *New Matilda*, 14 November 2011, and "Oil Spill Victims Turn to People Smuggling," *ABC Radio Australia*, 18 January 2012, <http://www.radioaustralia.net.au/international/radio/onairhighlights/oil-spill-victims-turn-to-people-smuggling>.

states that “community members described that people smuggling had increased following the spill.”<sup>76</sup>

### **Punishing People Smugglers**

As part of stricter law enforcement against unauthorized maritime travel, people-smuggling offences that are deemed aggravated carry mandatory minimum penalties of five years’ imprisonment with a three-year non-parole period and heavy fines under Australian law.<sup>77</sup> The flaws and shortcomings of people-smuggling trials and mandatory prison terms for people smuggling in Australia have been discussed widely.<sup>78</sup> Although not every transporter is arrested, prosecuted, and imprisoned as a people smuggler, many Indonesians have spent several years in Australian prisons for such offences, away from their families and isolated from community support.<sup>79</sup>

As the example of Amir, the repeat offender at the start of this article, has shown, serving time in an Australian prison is not an absolute deterrent in terms of convincing Rotenese fishermen not to become involved in people smuggling. In fact, fishermen from Rote have deliberately accepted the risk of a period of imprisonment, particularly when it comes to repeat offences. Their decision to become involved in people smuggling is not simply a consequence of not knowing or ignoring the law, but rather a rational choice of accepting or relying on Australian law. Money that they could earn in prison in Australia and remit to their families in Indonesia was an incentive for them, in spite of all the other disadvantages of standing trial in a culturally unfamiliar setting and separation from family during several years of imprisonment.<sup>80</sup> In 2011, however, as part of a wider strategy to combat

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<sup>76</sup> Mitchell, *After the Spill*, 204.

<sup>77</sup> Aggravated people smuggling is committed when a person organizes or assists in bringing five or more non-citizens without valid visas to Australia (section 233C of the Migration Act 1958). Andrew Trotter and Matt Garozzo, “Mandatory Sentencing for People Smuggling: Issues of Law and Policy,” *Melbourne University Law Review* 36, no. 2 (2012): 553–617; Schloenhardt and Martin, “Prosecution and Punishment”; Andreas Schloenhardt and Connor Davies, “Smugglers and Samaritans: Defences to People Smuggling in Australia,” *University of New South Wales Law Journal* 36, no. 3 (2013): 954–984.

<sup>78</sup> Jonathon Hunyor, “Don’t Jail the Ferryman: the Sentencing of Indonesian ‘People Movers,’” *Alternative Law Journal* 26 (2001): 223–228; Andreas Schloenhardt and Linley Ezy, “Hadi Ahmadi – and the Myth of the ‘People Smugglers’ Business Model,” *Monash University Law Review* 38, no. 3 (2012): 120–147; Balint, “Small Fry.”

<sup>79</sup> Schloenhardt and Martin, “Prosecution and Punishment”; Duncan Wallace, “Migrant Smuggling, Criminal Fault and Legal Status of Australia: PJ vs the Queen,” *Monash University Law Review* 39, no. 1 (2013): 246–279.

<sup>80</sup> Mark Dodd, “Boat Crew ‘Getting Rich on Jail Pay,’” *The Australian*, 23 July 2012; Greg Smith, “People Smuggling Cost Burden Hits States,” media release by the New South Wales Attorney General, 7 April 2012, [http://www.justice.nsw.gov.au/Documents/Media%20Releases/2012/070412\\_MR34-12\\_People\\_smuggling.pdf](http://www.justice.nsw.gov.au/Documents/Media%20Releases/2012/070412_MR34-12_People_smuggling.pdf); Australian Senate Legal and Constitutional Affairs References Committee, *Detention of Indonesian Minors in Australia* (Canberra, 2012), [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/indonesianminors/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/indonesianminors/report/index), 31.

people smuggling, the Australian government decided to prevent convicted people smugglers from sending their gratuity earnings back home and to use the prisoners' accumulated savings to pay for the cost of their imprisonment.<sup>81</sup>

It is hard to find reliable data on the number of Indonesians convicted and imprisoned for people smuggling in Australia, mostly because of the non-publication orders placed on trials between August 2010 and September 2012.<sup>82</sup> Figures obtained by the Australian Lawyers Alliance from the Australian Federal Police indicate that, from 2008 to December 2013, 568 Indonesians were charged with people smuggling on crew-related offences.<sup>83</sup> According to the Indonesian Foreign Ministry, between September 2008 and September 2013, 1,440 Indonesian boat crew spent time in Australian prisons (before and after their trial), but were returned to Indonesia eventually.<sup>84</sup>

The cost of legal proceedings against these people and for their imprisonment if they are found guilty are very high. For example, Schloenhardt and Martin report that a trial lasting several days costs between A\$450,000 and 750,000.<sup>85</sup> Funding shortfalls and insufficient capacity in the Western Australian and the Northern Territory courts resulted in long waiting times for arrested Indonesians to the extent that people-smuggling trials were shifted to other states, such as New South Wales and Victoria.<sup>86</sup> A shortage of interpreters meant that many Indonesian suspects had to stay in prison for a long time before their cases could be heard in court. Even those found not guilty may have spent well over a year in prison awaiting trial.

As trials and imprisonment were deemed expensive and seemingly ineffective in deterring Indonesian fishermen from involvement in people smuggling, the Australian government adopted a new approach to relieve

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<sup>81</sup> "Briefing – People Smuggling: OHCHR Special Rapporteur on Trafficking in Persons," redacted version released under FOI (2012), <https://www.ag.gov.au/RightsAndProtections/FOI/Documents/R-People%20Smuggler%20Prisoner%20Gratuities%20-%20PART%203.pdf>.

<sup>82</sup> Cat Barker, *The People Smugglers' Business Model* (Research Paper no. 2, 2012–2013) (Canberra: Parliamentary Library, 2013), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1213/13rp02\\_28](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1213/13rp02_28); Colin Craig and Andreas Schloenhardt, *Prosecutions and Punishment of People Smugglers in Australia 2011–2014* (Research Paper, Migrant Smuggling Working Group) (St Lucia: University of Queensland, 2015), 5 have, however, provided statistics of convictions for 2011 to 2014, which show that they totalled 335 for that period.

<sup>83</sup> Mitchell, *After the Spill*; according to Ruth Balint ("Small Fry"), as of 30 June 2009 thirty people-smuggling prosecutions were before Australian courts; one year later there were 102 cases pending; and in June 2011, there were 304. Between 19 October 2008 and 10 March 2011, 347 crew members were charged, and in February 2012 there were still 208 cases before the courts. The nationality of those charged with people smuggling under Australian law was recorded, but their place of origin (village, district, or province) was not systematically recorded (Mitchell, *After the Spill*, 206).

<sup>84</sup> Indonesian Foreign Ministry, *Diplomasi Indonesia 2013: Fakta dan Angka* [Indonesian Diplomacy 2013: facts and figures] (Jakarta, 2013), 17.

<sup>85</sup> Schloenhardt and Martin, "Prosecution and Punishment," 113.

<sup>86</sup> For example, Smith ("People Smuggling Cost Burden") noted that New South Wales had spent more than A\$8.5 million on 102 inmates held on remand or in custody for people smuggling.

the courts and prisons. In August 2012, Australia ruled that only repeat offenders or boat crew members who had caused injuries or death to their passengers should be prosecuted under section 233C of the Migration Act 1958, which drew mandatory minimum jail sentences. An indirect consequence of this approach was that Indonesian first-time offenders were no longer imprisoned and thus could no longer utilize time in Australian prisons to earn money. Moreover, after reopening the offshore detention centres on Manus Island and Nauru and the launch of Operation Sovereign Borders in September 2013, the number of asylum seeker boats coming to Australia decreased sharply,<sup>87</sup> not least because Australia forcibly returned boats, asylum seekers, and crews to Indonesia.<sup>88</sup>

The changes in Australia, however, were not the only reason why Indonesian fishermen had to rethink their involvement in transporting asylum seekers, as Amir's story has already shown. Another crucial reason was that Indonesia intensified measures to combat people smuggling within its own territory. The criminalization of people smuggling under Law 6/2011 in May 2011 made people-smuggling offences punishable with a minimum of five years jail and a fine of Rp500 million (A\$50,000).<sup>89</sup> Since the enactment of this law, dozens of people have been prosecuted and sentenced for their involvement in people smuggling in Indonesia.

A survey on people-smuggling trials in Indonesia between 2007 and 2011, under Indonesia's previous Law on Migration, showed that seven out of fifteen convicted people smugglers came from Rote Island.<sup>90</sup> A more recent study on people-smuggling convictions in Indonesia revealed an exceptionally high representation of people from Nusa Tenggara Timur and other parts of Eastern Indonesia. Forty-five out of ninety-nine offenders came from Eastern Indonesia, of whom fifteen were from Nusa Tenggara Timur, including five from Rote.<sup>91</sup> During my prison and court visits in other parts of Indonesia, I found that Rotenese people smugglers rarely stood trial in their home province, instead standing in other regional courts, whereas smugglers arrested on Rote and convicted by the local court were predominantly from other provinces.<sup>92</sup> Given that Rotenese fishermen have

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<sup>87</sup> Janet Phillips, *Boat Arrivals and Boat 'Turnbacks' in Australia since 1976: a Quick Guide to the Statistics* (Canberra: Parliamentary Library, 11 September 2015).

<sup>88</sup> "Turning back boats," factsheet, Kaldor Centre for International Refugee Law, 2015, <http://www.kaldorcentre.unsw.edu.au/publication/%E2%80%98turning-back-boats%E2%80%99>.

<sup>89</sup> Melissa Crouch and Antje Missbach, *Trials of People Smugglers in Indonesia: 2007–2012* (Policy Paper no. 1) (Melbourne: Centre for Indonesian Law, Islam and Society, 2013); Antje Missbach and Melissa Crouch, "The Criminalisation of People Smuggling: Legal Insights from Indonesia," *Australian Journal of Asian Law* 14, no. 2 (2013): 1–19.

<sup>90</sup> Crouch and Missbach, *Trials of People Smugglers*.

<sup>91</sup> Missbach, *Sentencing People-Smuggling*.

<sup>92</sup> Most of the twelve convicted people smugglers we visited in jail on Rote Island were from Southern Sulawesi.

superior navigational skills and enjoy a daredevil reputation, some are hired elsewhere in Indonesia to transport asylum seekers to other Australian outposts, such as Christmas Island.<sup>93</sup> For example, a farmer named Aser Kedoh from Rote Island was arrested and sentenced in the province of Banten, at the western end of Java, thousands of kilometres from Rote, for transporting forty-six Iranian asylum seekers.<sup>94</sup> Ronald Messakh, another fisherman from Rote, was arrested and sentenced in Tulungagung in East Java, again very far from his home. He had agreed to serve as cook on a boat for asylum seekers headed for Australia's Christmas Island, which sank in bad weather in late 2011.<sup>95</sup>

In sum, although jail sentences and fines for convicted smugglers are severe in Australia, serving time in an Indonesia prison is deemed harder than imprisonment in Australia. In Indonesian prisons, there are no opportunities for prisoners to earn gratuity money to support their families. In fact, if their families do not supply such things as extra food, clothing, and cash, life in jail is particularly hard for the imprisoned smugglers.<sup>96</sup> The increased possibility of being imprisoned for people smuggling in Indonesia, rather than in Australia, has become a significant deterrent for potential offenders.

## Conclusion

I hope this article contributes to the disturbance of the ethical dichotomy between “good migrants” and “bad smugglers” by showing that the vilified transporters are often themselves victims of global structural changes and policy making that rendered the exercise of their niche labour “skills” illegal. The story of Amir, a repeat offender from Rote Island, laid out his reasons for becoming involved in people smuggling twice. As legal and political circumstances in handling irregular migration rapidly changed both in Indonesia and in Australia, so too did the reasons and motivations for fishermen to take up risky employment in such activities as people smuggling.

By pointing out high levels of structural poverty in Eastern Indonesia and increased levels of precariousness in Rote Island, this article has argued that the decision making of individuals cannot just be seen in terms of individual acceptance of high risk in a crime that promised them high financial rewards.

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<sup>93</sup> Interview with local head of police, 30 April 2012, Ba'a.

<sup>94</sup> Rangkasbitung District Court Decision Number: 209/ Pid.B/2012/PN.Rkb.

<sup>95</sup> Tulungagung District Court Decision Number: 174/ Pid.Sus/2012/PN.Ta.

<sup>96</sup> A convicted Afghan smuggler currently serving jail time in Indonesia, who published an account of his career in people smuggling, reports on the *wani piro* system, common in Indonesian prisons. See Dawood Amiri, *Confessions of a People-Smuggler* (Melbourne: Scribe, 2014). *Wani piro*, a Javanese phrase, roughly translates as “how much do you dare to pay?” and refers to the hierarchical system of paying bribes to improve one's situation in jail.

Instead, by directing attention to the generally poor chances for making a decent living in Rote, this article has proposed that many Rotenese fishermen were drawn into smuggling by their indebtedness and lack of opportunities to make money legally. Their decisions were based on what could be called a rationality of despair. Although it is true that living conditions on Rote have always been hard and insecure because of the island's arid climate, the geographic and political isolation, and corresponding socio-economic marginalization, they have now become even more precarious, not least because of overfishing, pollution, and the illegalization of their traditional work. As Carnegie has shown, the willingness of Rotenese fishermen to take on high levels of risk has made them more competitive and helped them to establish "new livelihood niches both trans-locally and globally," some of which, unfortunately, have turned out to be unsustainable.<sup>97</sup>

Fishermen tend to be poor, but they possess specialized skills. Their intimate knowledge of the local maritime environment and their navigational skills, even without modern equipment, are particularly sought after by the organizers of smuggling voyages. Many fishermen have sold their services to those who coordinate the transport of asylum seekers to Australia, and in doing so have exposed themselves to the highest risk of apprehension and lengthy imprisonment, but they gained relatively little of the profits of people-smuggling operations. When taking into consideration the enormous public expenditure on legal proceedings in Australia, be it for offences related to people smuggling or illegal fishing, one cannot but wonder how many small-scale income-generating initiatives to create more sustainable livelihoods for Rotenese fishermen could have been driven by the investment of the massive amount of Australian taxpayers' money wasted on proceedings against these people.

*Monash University, Clayton, Australia, September 2016*

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<sup>97</sup> Carnegie, "Sailing-Trading Livelihoods," 577.