Navigating Asylum:
Journeys from Indonesia to Australia

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Abstract

From 2009 - 2013 Australia witnessed a rapid increase in the number of asylum seekers traveling irregularly from Indonesia to Australia by boat. The then opposition Liberal-National Party (LNP) presented this phenomenon to the Australian public as a consequence of the Labor government’s dismantling of the hard line border security policies implemented by the previous LNP government. However, this framing obfuscated the fact that most industrialised countries around the world witnessed a similar increase in the number of asylum applications during the same period. This trend suggests that a more complex analysis of the root causes of irregular migration is needed in order to explain why asylum seekers were again resorting to this course of action. With the aim of understanding the factors that influence migration paths, thirty male Hazara asylum seekers who were either in transit in Indonesia at the time of interview, or had previously transited through Indonesia before making irregular boat voyages to Australia were interviewed. Through these personal accounts a greater understanding of the factors that influenced their migration decisions can be gained.

Qualitative analysis of these personal migration experiences reveals a variety of pressures that shaped the migration decisions of these men. The findings suggest that forced migrants have a limited ability to direct their own migration outcomes as they encounter a series of barriers and exclusionary policies designed to foster immobility. The analysis highlights structural constraints, personal motivations and fraught tensions between choice and compulsion that people confront in transit locations. The research found that respondents did not want to travel irregularly, and that they emphasised the dangers associated with this action. Nonetheless, the perceived lack of genuine alternatives, and the inability to gain protection in Indonesia drove people towards irregular migration. Participants viewed the Refugee Status Determination process in Indonesia as ineffective, and incapable of finding durable solutions. Participants also felt unable to endure protracted processing periods due to a lack of material support during this time. Other factors
included the widely held view of Indonesia as an inhospitable location for forced migrants to live indefinitely. The lack of legal status and protection also contributed to a sense of vulnerability in transit. This vulnerability was coupled with a fear of being arbitrarily detained in one of Indonesia’s detention centres or, worse still, refouled.

Drawing on the complimentary political philosophies of Giorgio Agamben and Simone de Beauvoir, this thesis charts the struggle between structure and agency that participants embody throughout their forced displacement and time in transit. It is argued that while powerful states of the Global North have developed complex exclusionary strategies from territories where the rights of asylum are formally enshrined, asylum seekers find ways of resisting these exclusionary practices, by reasserting their rights in the face of shrinking access to protection.

As a result, it is argued that irregular migration is a consequence of structural limitations embedded in state-centric responses to global displacement. Within this broader context, asylum seekers viewed irregular migration as one of the only logical ways to access protection and reassert their agency. This series of qualitative interviews enables a more complex understanding of the migration experiences of forced migrants navigating the international protection system in the Asia-Pacific region.
Declaration

I declare that this thesis does not incorporate without acknowledgement any material previously submitted for a degree in any university or another educational institution and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Sally Clark

4 January 2016
Acknowledgements

The successful completion of this thesis would not have been possible without the love and support of many people. First and foremost, I would like to thank my Principal Supervisor Dr. Julie Kimber for her unwavering support and guidance over the years. You have been the best mentor that I could have ever hoped for. Thank you for your patience, wisdom and tireless effort. I appreciate it more than words could ever express. Thanks also go to my Associate Supervisor Associate Professor Mike Leach for his guidance throughout my candidature.

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I would like to thank my family – Mum, Dad, Erin and Rowan – for all your love and support every step of the way. Without your constant encouragement I wouldn’t have survived the last four years. Thank you for believing in me and for your understanding and patience. I am eternally grateful.

Finally I need to express my deepest gratitude to the people who took part in this study. I feel so privileged that you welcomed me into your lives and that you trusted
me with your stories. I dedicate this thesis to each one of you. I know that at the
time of writing this many of you are still in uncertain situations, my thoughts are
always with you. I hope that you will find a resolution to your plight soon and get
the peace that you deserve. Your courage and your humanity in the face of such
adversity is an inspiration. Thank you.
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Notes on Terminology

*1951 Convention Relating to the Status of Refugees and the 1967 Protocol:

Henceforth referred to as the ‘Refugee Convention’, this agreement is the primary international instrument relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level. The Convention is grounded in Article 14 of the Universal Declaration of Human Rights 1948, which recognises the right of persons to seek asylum from persecution in other countries. ¹

*Refugee:

Article 1A of the Refugee Convention defines a refugee as a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.

*Asylum seeker:

UNHCR defines an asylum seeker as a person who, from fear of persecution for reasons of race, religion, social group, or political opinion, has crossed an international frontier into a country in which he or she hopes to be granted refugee status but whose claim has not yet been definitively evaluated.*

*Article 31.1 Non-Discrimination Clause:

Article 31.1 of the Refugee Convention states that contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened.

¹ *official definitions by UNHCR <http://www.unhcr.org/cgi-bin/texis/vtx/home>

** definitions as interpreted and applied by the author
threatened in the sense of article 1, enter or are present in their territory without authorisation, provide they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

*Article 33 Non-Refoulement:

Article 33 of the Refugee Convention states that no contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This principle has now entered into customary international law, making it binding on signatory and non-signatory states alike.

*Durable solutions:

UNHCR recognizes three durable solutions available to refugees: voluntary repatriation; local integration; or resettlement to a third country in situations where it is impossible for a person to go back home or remain in the host country.

**Forced migrant:

Forced migration has traditionally been treated as a distinct category separate from standard migration. Still what constitutes ‘forced migration’ lacks theoretical synthesis. There is no agreed upon definition of forced migration; major migration organisations still differ in their conception of what constitutes forced migration, leading to considerable variation in results and estimated numbers worldwide.

As a general working definition however, one can theoretically distinguish between forced migrants and other types of migrants in one way: standard migrants, often referred to as ‘economic migrants’, relocate in pursuit of advancing their livelihoods, while forced migrants are considered to have been uprooted from their home against their will with no alternative but to relocate for their own safety.
In the following thesis the term forced migrant will be applied as an umbrella term for speaking of anyone who has been forcibly displaced from their home against their will. Importantly this term does not distinguish between the different legal status’ applied to migrants at different stages of their journey, therefore this term is used only when speaking of broader patterns, when the legal status of the migrant is important to the narrative, a more precise label will be used to distinguish this.

**Irregular migrant:**

This term is used to describe the act of migration that occurs outside of regulated/ state sanctioned migration pathways. In the context of this thesis it largely refers to individuals travelling to Australia from Indonesia by boat with the assistance of people smugglers. Irregular migration has been adopted as a preferable term throughout this thesis to refer to individuals travelling outside of state sanctioned pathways as it avoids emotive or misleading connotations of illegality.

The political act of seeking asylum is enshrined in the Universal Declaration of Human Rights; it is therefore the position of this thesis, in line with the United Nations and UNHCR, that the term illegal migrant/migration, when in reference to asylum seeking is both misleading and inaccurate. Article 31.1 of the refugee convention specifically acknowledges that forced migrants may not always be able to travel in regulated ways due to the nature of their displacement.

**Signatory countries:**

This term refers to states that have signed and/or ratified the Refugee Convention into their domestic law. Signatory states have a legal responsibility to uphold the Refugee Convention and ensure the rights of asylum seekers and refugees are protected within their jurisdiction.
## Glossary/Abbreviations

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<th>Acronym</th>
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<td>AFP</td>
<td>Australian Federal Police</td>
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<td>ALO</td>
<td>Airline Liaison Officer</td>
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<td>ASC</td>
<td>Asylum Seeker Certificate</td>
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<tr>
<td>DIAC</td>
<td>Department of Immigration and Citizenship</td>
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<tr>
<td>DIBP</td>
<td>Department of Immigration and Border Protection</td>
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<tr>
<td>EC</td>
<td>European Council</td>
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<td>ENP</td>
<td>European Neighbourhood Policy</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>HREOC</td>
<td>Human Rights and Equal Opportunity Commission</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic Social and Cultural Rights</td>
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<td>ICO</td>
<td>Immigration Control Officer</td>
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<td>IDC</td>
<td>Immigration Detention Centre</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<tr>
<td>IMA</td>
<td>Irregular Maritime Arrival</td>
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<td>IOM</td>
<td>International Organisation for Migration</td>
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<td>JRS</td>
<td>Jesuit Refugee Services</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
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<td>PNG</td>
<td>Papua New Guinea</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>RC</td>
<td>Refugee Certificate</td>
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<td>RCOA</td>
<td>Refugee Council of Australia</td>
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<td>RSD</td>
<td>Refugee Status Determination</td>
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<tr>
<td>TPV</td>
<td>Temporary Protection Visa</td>
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<td>UAM</td>
<td>Unaccompanied Minor</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UNCTOC</td>
<td>United Nations Convention against Transnational Crime</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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Along with the ethical urge of each individual to affirm his subjective existence, there is also the temptation to forgo liberty and become a thing. This is an inauspicious road, for he who takes it – passive, lost, ruined – becomes henceforth the creature of another's will, frustrated by his transcendence and deprived of every value.

-Simone de Beauvoir, The Second Sex, 1997: 21
Chapter One

Irregular Migration: A Challenge for the State

I see Haider making his way towards me in the pouring rain through the crowded bazaar, he looks thinner than the last time I saw him six months earlier. We exchange greetings and quickly make our way towards shelter to escape the downpour. I take comfort knowing that he is alive and still here, but that is where the comfort ends. Like hundreds of others like him, Haider is living up in the hills that surround the town of Cisarua in West Java. He is here waiting for a phone call, a phone call to tell him that his purgatory is over and that at long last there might be a place for him to call home. For most people in Haider’s position this phone call takes years to arrive, and for some, it may never come at all. Haider is an asylum seeker, registered with UNHCR Indonesia. He has put his life and his trust into the international protection system and now there is nothing for him to do but wait. Wait for the news that his refugee application has been approved and then hope that somewhere in the world there is a country willing to resettle him; to give him a chance at a normal life free from violence, a life denied to him growing up in Afghanistan (Clark, field notes, June 2013).

Introduction

The method of applying for third country resettlement as a refugee through a regional UNHCR office in a transit country like Indonesia may seem like a straightforward process. However, understanding the impact of this transient experience on people like Haider can contribute significantly to our current knowledge regarding the connections that exist between forced migration, experiences in transit, and irregular migration. Today this nexus is becoming all the more important as a growing number of forced migrants are finding themselves funnelled into transit countries in their search for asylum. This trend has largely been attributed to the increase in extraterritorial border control initiatives and non-arrival regimes
implemented by developed nation states to limit the arrival of asylum seekers in territories where the Refugee Convention is recognised. As a result, many forced migrants find themselves unable to gain access to the right of asylum. Instead they are caught in transit locations which lack the legal framework for their protection for increasingly long periods of time with few options available to them. This is a significant pattern that requires further investigation. When examining issues around the increase in irregular migration it is insufficient to ask why asylum seekers get on boats without first asking what structural factors are influential in shaping these actions. In 1989, migration theorist Aristide Zolberg proclaimed:

If we wish to understand the overall role of industrial capitalist countries in the determination of international migrations, it is necessary to account for the walls they have erected as well as for the small doors they have provided. (1989:405)

This thesis examines these ‘walls’ and ‘doors’ by traversing the nexus of the international protection system with first hand experiences of forced migrants who are attempting to navigate it. This is achieved through a focused case study on forced migrants in Indonesia. What is revealed through this study is a variety of pressures that limit forced migrants’ ability to direct their own migration and seek protection as they encounter a world of barriers and exclusion.

In this liminal state asylum seekers inhabit a precarious position. The lack of legal status in Indonesia removes any prospect of permanent resettlement there while the danger that originally displaced them from their home makes returning impossible. For many the only foreseeable way through this impasse is to continue moving in any way possible. It is out of this desperation that many turn to irregular migration in an effort to overcome or circumvent restrictive migration barriers. While this course of action has been framed as an act of individual deviancy (Pickering, 2001), it is through accounts like Haider’s that the more subtle dynamics driving irregular migration come into focus, highlighting structural constraints, personal motivations and the often fraught tension between choice and compulsion. By examining the day-to-day experiences of asylum seekers in transit in Indonesia against the larger international context in which closed borders and securitisation
of migration has become the norm, the depth to which these processes are
inextricably linked is revealed.

To this end this thesis explores the personal migration experiences of thirty male
Hazara asylum seekers who were either in transit in Indonesia, or had previously
transited through Indonesia before making their way to Australia irregularly. It does
so with the aim of discovering the factors that underpinned their migration choices.
Through this series of qualitative interviews emerges a better understanding of the
migration experiences of forced migrants who are navigating the international
protection system in the Asia-Pacific region. As Purdy (2010:37) notes, ‘if Australia
is serious about putting an end to people smuggling, it needs to address the reasons
why asylum seekers risk getting on boats’.

This chapter begins by outlining the problem under examination, the increase in the
number of asylum seekers travelling irregularly from Indonesia to Australia
between 2008-2013. This issue is first located within an international perspective
before being situated within the Australian political sphere, focusing upon the
response of the government to the growing number of asylum seekers arriving
irregularly by boat. Across the spectrum of Australian politics there appears to be a
bipartisan consensus that the irregular arrival of asylum seekers by boat is a
dangerous practice that must be stopped. However the justifications for this
intervention remain a source of contention divided along ideological lines.

The chapter then turns its attention towards the legal framework that dictates
asylum migration. From the perspective of asylum seekers, this framework
represents the legal boundaries in which they must make decisions regarding their
migration choices, choices that bear significant ramifications for their future. This
section details the primary international instruments designed to codify states’
responses to irregular migration; it also discusses the regional and bilateral
agreements Australia is party to that informs its response to irregular migrants. A
central component of this is Australia’s working relationship with one of its closest
neighbours, Indonesia. From the perspective of the Australian state, Indonesia’s
cooperation in addressing the issue of irregular migration is considered essential.
This is due to the fact that Indonesia is the primary transit country and departure point for the majority of asylum seekers moving irregularly to Australia.

Having briefly charted the political and legal framework that sets the parameters of this issue, this section will conclude by outlining the specific research questions that the thesis addresses. Once the problem under investigation has been defined and the research questions posed, the second part of this chapter will then outline the methodological approach that has been adopted in order to address these questions. This includes a detailed account of how the empirical study was conducted and the data analysed. This section also deals with a number of ethical issues regarding research with vulnerable groups such as asylum seekers. The chapter will then conclude by mapping the thesis, providing an overview of the central argument along with supporting sub-arguments that will be developed across the thesis, finishing with a breakdown of each of the coming chapters.

**Background and Political Framework**

The spontaneous arrival of asylum seekers on Australian shores has been a vexed political issue since the first wave of asylum seekers began appearing on the horizon in the 1970s in the last years of the Vietnam War (Phillips & Spinks, 2012). Since then Australia has witnessed five distinct waves of irregular migration (Taylor & Rafferty-Brown, 2010:1) each igniting a new round of acrimonious political debate, prompting a flurry of ad hoc policy responses. It is this most recent wave, from late 2008 until 2013 that the following research focuses upon. Within this epoch Australia witnessed an increase in the number of irregular maritime arrivals with numbers climbing from 161 in 2008 to a record 20,587 in 2013 (Phillips, 2014). The drastic increase in the number of asylum seekers arriving spontaneously posed serious political challenges for the Labor government who were vulnerable to criticisms that their weak border protection policies were the cause of such an increase (Missbach & Sinanu, 2011). Despite numerous attempts by the government to stem this flow with its progressively hardening stance on the issue, asylum seekers continued to arrive unannounced on Australian shores in record numbers,
almost all of whom had departed from Indonesia with the assistance of people smugglers (McKay, Thomas & Kneebone, 2011:3).

Figure One: Boat Arrivals by Calendar Year 1979-2013 and Financial Year 1989-90 to 2012-13


The popular view, promoted by the federal opposition at the time was that Australia was being flooded by illegal boat people (Flitton, 2012). Yet, comparatively speaking, the number of asylum seekers arriving by boat in Australia during this period was negligible when compared to international figures. Globally there was a 28 per cent increase in asylum applications from 2012 to 2013 with an estimated 612,700 new asylum applications being recorded worldwide; of these Australia received less than 4 per cent (UNHCR, Asylum trends 2013:2). While this was up 1 per cent from the previous year, UNHCR statistics suggest that this increase was not unique to Australia, but rather in line with a global trend. For example, in 2013, 30 of the 44 industrialised countries monitored by the UN reported an increase in the number of new asylum applications being lodged, representing the fifth consecutive annual increase since 2009 (UNHCR, Asylum trends 2013:9). According to UNHCR ‘this suggests that not only has the total number of asylum seekers increased, but also that there has been an increased diversity in the countries where people seek
international protection’ (UNHCR, Asylum trends 2013:9). On a global scale Australia continued to rank far below many other comparable countries in relation to asylum seeker claims during this time. In 2012 Australia’s world ranking of asylum applications was 20th by total numbers, 29th compared to population size and 52nd compared to national GDP (PPP) per capita (ASRC, Australia vs. the world 2013). The notion that Australia was being ‘flooded by boat arrivals’ due to its domestic policies appears to ignore this upward global trend in asylum applications. According to Asylum Seekers Resource Centre (ASRC), ‘23,000 persons per day leave their homes and seek protection elsewhere – more than the total number of asylum seekers arriving in Australia in a year’ (ASRC, Australia vs. the world 2013).

It has been argued that a number of significant events have contributed to the increase in the number of asylum seekers globally. A statement in 2013 issued by António Guterres, the United Nation’s High Commissioner for Refugees, acknowledged the effect that increased fighting and instability was having on asylum application numbers (UNHCR, 2013). Resurgence of fighting in Afghanistan and Iraq once more destabilised the region with more than one million people of concern in Afghanistan as of 2014 (UNHCR Afghanistan, 2015) and almost 2.4 million in Iraq (UNHCR Iraq, 2015). The bloody end to the 26 year long Sri Lankan civil war resulted in mass displacement, with the latest UNHCR figures estimating that there are currently more than 181,600 people of concern still living in Sri Lanka (UNHCR Sri Lanka, 2015). Additionally, according to Ernstsen (2014), ‘across Africa, the persistently volatile political and security situations in Eritrea, Nigeria, Somalia, and Mali displaced a combined 43,400 people’. Further, sectarian conflicts following the Arab Spring, as well as the outbreak of civil war in Syria have had a dramatic impact on the number of people seeking asylum. According to the UNHCR over 9 million people have been forcibly displaced from their home in Syria with over 3 million fleeing across international borders since the outbreak of fighting in 2011 (UNHCR, 2014). These human tragedies are compounded by the rapid spread of extremism with terrorist organisations such as Boko Haram, Lashkar-e-jhangvi and ISIS all targeting civilian populations across the globe, destabilising regions and forcing many people from their homes. These events have all contributed to the growing protection challenge UNHCR is facing. Most displaced people will
undertake some form of transit migration on their search for safety and many people will spend time in countries that lack any legal framework for their protection. Attempting to find durable solutions for a growing number of people living in refugee like situations is a substantial task for an under-resourced UNHCR dependent on international cooperation, while countries of first asylum struggle to accommodate the influx of irregular migrants crossing their borders with few resources to support these groups. According to Guterres,

The global humanitarian system is...in great difficulty. With an ill-equipped humanitarian response and in the absence of conflict resolution, the escalating numbers of forcibly displaced people requires a proportionately cooperative international response. The international community needs to prepare their populations for the reality that in the absence of solutions to conflict more and more people are going to need refuge and care in the coming months and years. (Ernstsen, 2014)

Despite this broader context, the notion that the increase in asylum seekers arriving in Australia by boat during this time was the result of poor governance and weak border protection policies appeared to take root. In the electorate, polls showed voters turning away from the Australian Labor Party (ALP) on the issue with widespread support for the Coalition’s call to ‘stop the boats’ (Mann, 2010:12). Asylum seekers, boat arrivals and border security became intricately linked in the minds of Australian voters. Front page news coverage became a daily occurrence, with headlines such as ‘Open the Floodgates – Thousands of Boat People to Invade NSW’ (Benson, 2011:n.p). Similar to the events of 2001 involving the Tampa and the introduction of the Pacific Solution, 2008-2013 saw the return of the ‘asylum seeker debate’ as a significant election issue (McDonald, 2011:281). The Labor Government, perhaps too slow to sense the electorate’s disquiet on the issue, developed a series of legislative responses to discourage further boat arrivals and minimise the destruction of their political fortunes (McKenzie & Hasmath, 2013). Despite these efforts, the boats continued to arrive and Labor found itself increasingly wedged on the issue (McKenzie & Hasmath, 2013:423). Having campaigned heavily in the 2007 election for the humane treatment of asylum seekers, the ALP struggled to materialise their vision of a humane but fair approach,
which at once avoided the extremities of the previous Pacific Solution whilst maintaining the orderly processing of asylum claims (Grewcock, 2013:14). This challenge was exacerbated by the increasing number of asylum seeker deaths at sea, more than 600 since 2009 (Houston, Aristotle & L’Estrange, 2012), and a number of high profile maritime incidences such as the Oceanic Viking and Jaya Lestari standoffs that strained diplomatic relationships between Australia and Indonesia (Grecock, 2013).

To a domestic audience it increasingly appeared that the Labor government was losing control of the border and the ‘issue’. Research at the time demonstrated that there was a hardening of attitudes towards asylum seekers across the Australian population, accompanied by growing support for increasingly harsh measures against those who arrive irregularly by boat (McKay, Thomas & Kneebone, 2011:3). This is despite ongoing evidence to suggest that most citizens did not understand the basic difference between refugees and asylum seekers or the legal obligations signatory states have to assess people’s protection applications (McKay, Thomas & Kneebone, 2011:16). In the hyperbole of oppositional politics the complexity of the world’s growing humanitarian problem was reduced to repetitious slogans such as ‘stop the boats’, and ‘border emergency’. While politically this strategy appeared successful for the opposition, the oversimplification of this highly complex issue appeared to have profound implications, particularly in regards to the narrowing of potential political interventions. Under sustained attack from the opposition the government resorted to hard-line deterrence based approaches that it had once admonished its predecessors for pursuing (Evan, 2008).

The scale and complexity of problems facing governments charged with responding to the challenge of irregular migration should not be understated. According to UNHCR, the irregular movement of people of concern presents:

> Serious challenges in balancing governments' international obligations to provide fair access to protection and asylum to those in need, with the need to combat people-smuggling and human-trafficking networks, and the legitimate interest of States to maintain control of national borders. (UNHCR, 2015)
Moving away briefly from the politics of the issue, the following section will chart the domestic and international legal framework that, in theory, governs Australia’s response to asylum seekers. Understanding this framework is essential as it not only dictates Australia’s response to the issue but it also sets the parameters within which forced migrants can exercise their autonomy regarding their migration. How forced migrants navigate their displacement and make sense of their migration options is the primary pursuit of this research, and the structures that inform this are a central element that must be considered.

**Legal Framework, Bilateral Agreements and Australia’s Response to Asylum Seekers, Refugees and Irregular Arrivals**

Australia’s asylum seeker policies are complex and subject to change, as they have done many times over the last decade. The following section will outline central elements of the UN Refugee Convention, which, in theory should inform Australia’s domestic policies. Different aspects of Australia’s humanitarian program will then be examined, focusing upon the two tiered system that has developed that distinguishes between ‘onshore’ and ‘offshore’ applicants.

The Refugee Convention can be understood as an expression of a shifting security paradigm away from the traditional notion of state based security threats to a people-focused perspective known as human security. According to the UN:

> As a people-centered concept, human security places the individual at the centre of analysis. Consequently, it considers a broad range of conditions which threaten survival, livelihood and dignity, and identifies the threshold below which human life is intolerably threatened. (HSU, 2009)

This shift away from state-centric conceptions of security that focus primarily on the safety of states from military aggression, to one that concentrates on the security of the individual, is an important development in international relations as it recognises that individuals face threats that are beyond their control (HSU, 2009). As a result it is imperative that states implement protective structures that protect
people in a systematic and comprehensive manner. The Refugee Convention is one such instrument that the international community has to protect the rights of vulnerable people.

Australia is a signatory to the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. Together the Convention and the Protocol, collectively known as the Refugee Convention, form the international framework outlining the responsibility of nation-states towards refugees. As a signatory to the Convention, Australia is obligated by international law to comply with the articles set out in the Convention. According to UNHCR, the agency mandated to lead and co-ordinate international action to protect refugees, the Refugee Convention provides, ‘the most comprehensive codification of the rights of refugees at the international level’ (UNHCR, 2010:3).

Article 1A(2) of the Convention defines a refugee as somebody who:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the help of the protection of that country; or who, not having a nationality and being outside the country of his former fear, is unwilling to return to it. (UNHCR, 2010:14)

This article forms the basic criteria from which contracting states assess the status of individuals and determine their eligibility for protection under the Convention (Lusher, Balvin, Nethery & Tropea, 2007:10). As a signatory to the Convention, Australia is obligated to assess the protection application of those who claim asylum within its territory; how it manages this is an important aspect that will be expanded upon below. Before turning to that point, however, it is first important to note that for many years Australia has presided over one of the world’s largest voluntary resettlement programs, exceeding its Convention obligation. This is known as the ‘Offshore Humanitarian Program’. Historically approximately 85 per cent of Humanitarian visas granted each year by the Australian Government are approved through the Offshore Program, where individuals seeking asylum apply to
the Australian Immigration Department via a third country, usually the nearest ‘safe
country’ from where they are fleeing (DIAC, Media Factsheet). The offshore
component is divided into 2 categories:

- **Refugees**: This visa is for people who are subject to persecution in their home
country and are in need of resettlement. The majority of applicants who are
considered under this category are identified by the United Nations High
Commissioner for Refugees (UNHCR) and referred to the Australian
Government by the UNHCR.

- **Special Humanitarian Program**: This visa offers resettlement to people who
have suffered persecution in their country of nationality or usual residence
and who have not been able to leave that country to seek refuge elsewhere. It
is for those living in their home country and subject to persecution in their
home country.

Very few countries offer a complementary resettlement program such as this. In fact
only one per cent of refugees identified by UNHCR are resettled through offshore
programs globally. According to Phillips:

> Millions of refugees around the world continue to live with little hope of
> finding a solution to their plight. Resettlement benefits a small number of
> refugees; in 2008 (and 2009) less than one per cent of the world’s refugee
directly benefited from resettlement. (2011:5)

It is on the basis of this program that Australia has gained an international
reputation as a world leader in refugee protection.

However, while Australia has been praised for its Offshore Humanitarian Program,
its treatment of asylum seekers who arrive onshore seeking protection has been a
source of international condemnation. This program has drawn widespread
criticism with accusations that the government has breached multiple international
agreements, eroding Australia’s outstanding record on human rights (Briskman,
Latham & Goddard, 2008).
Australia’s onshore component deals with individuals who arrive in Australian territory, then claim asylum once here as per the terms of the Refugee Convention. Traditionally the majority of applicants for the onshore program have been people who have travelled to Australia through regulated channels, usually by air either with a tourist or student visa. However a small minority of people have sought asylum through the onshore program having travelled to Australia in an irregular manner, usually by boat, without prior authority. While this sub-group has traditionally accounted for a fraction of Australia’s total resettlement quota each year, it is this group that continues to attract the attention of the media and has been the target and the recipient of the most extreme policies. According to Phillips (2011:6), ‘historically, boat arrivals only made up a small proportion of asylum applicants – estimates vary, but it is likely that between 96 and 99 per cent of asylum applications arrived by air’. It is worth noting that these percentages have shifted in recent years as a result of the increase in irregular maritime arrivals.

One of the key discursive devices used by governments to rationalise the use of punitive policies against this cohort has been to cast aspersions about the authenticity of their claims. In the popular discourse asylum seekers who arrive by boat have been cast as queue jumpers taking the place of good refugees waiting in camps, or economic migrants trying to sneak in the back door and take advantage of Australia's hospitality (Clyne, 2007; Klocker & Dunn, 2003; Saxton, 2003; Pickering, 2001). Yet the notion of ‘queue jumping’ is dependent on the assumption that there is a right way to seek asylum and a wrong way; a distinction that is challenged throughout this thesis. The purposeful discrediting of individuals’ status has been used to justify their treatment; this is despite the fact that traditionally those who arrive by boat have had an exceptionally high refugee recognition rate (Taylor & Rafferty-Brown, 2010a:559). It is this response that led human rights lawyer Julian Burnside to claim that ‘Australia has a mixed record in its treatment of refugees. There have been moments of which we can be proud, and others that are less admirable’ (Burnside, 2007:248).

As stated in the introduction of the Refugee Convention, ‘the Convention is both a status and a rights based instrument that is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and
non-refoulement’ (UNHCR, 2010:3). The most important of these to the current discussion is the concept of non-penalisation, outlined in Article 31(1). According to the Convention:

The contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of the article 1, enter or are present in their territory without authorization, provide they present themselves without delay to the authorities and show good cause for their illegal entry or presence.²

Despite this obligation, consecutive Australian governments have continued to divide onshore asylum seekers into two categories: those that arrive by boat, referred to as ‘irregular maritime arrivals’ (IMAs), and those that arrive by air (non-IMAs). Furthermore, consecutive Australian governments, both left and right leaning, have continued to base reception policies upon this status, conferring rights and privileges upon one group (non-IMAs), while denying them to the other (IMAs) in clear defiance of article 31(1). In defence of this position, the Australian government views the continued arrival of asylum seekers by boat as a challenge to their ability to conduct an orderly resettlement program. As Taylor & Rafferty-Brown detail:

Despite their high rates of recognition as refugees, the position of the Australian government is that these people should have stayed in the first safe country they reached rather than engage in onward migration to Australia. (Taylor & Rafferty-Brown, 2010a: 559)

² A joint statement issued by the Co-Chairs of the Convention Plus Core Group on Addressing Irregular Secondary Movements of Refugees and Asylum Seekers ‘pointed to the fact that people moving from country to country because they had been unable to find protection in any country through which they had passed or had lost protection over time. In the case of the former, it was felt that inability to access protection was a continuation of direct flight and, hence, should be deemed to be “primary” rather than secondary movement.
According to the Australian Human Rights Commission (an independent body tasked with monitoring government policy to ensure compliance with international human rights laws and standards):

Australia has international obligations to protect the human rights of all asylum seekers and refugees who arrive in Australia, regardless of how or where they arrive and whether they arrive with or without a visa. (2015)

Furthermore the Human Rights Commission notes that beyond its Convention obligations, the Australian government is party to other human rights instruments that need to be respected in order to ensure the rights of refugees and asylum seekers are protected within the Australian territory or broader jurisdiction. According to the Commission (2015):

The Australian Government has obligations under various international treaties to ensure that their human rights are respected and protected. These treaties include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). These rights include the right not to be arbitrarily detained.

Despite these obligations there remains a tension between Australia’s preferred policy position and its international responsibilities as codified in these documents. Domestic policies are routinely introduced through the parliamentary processes that are designed to sideline, minimise or redefine terms in order to circumvent these human rights obligations, as a result these treaties have little impact upon Australia’s refugee policies.

Having provided an overview of Australia’s domestic responsibilities as a contracting party to the Refugee Convention, and the degree to which they are adhered to, the following section will now examine regional arrangements in place.
across the Asia Pacific designed to foster cooperation on the joint issues of forced displacement and irregular migration.

Of the 51.2 million people of concern to UNHCR globally, almost one third are located within the Asia and Pacific region (UNHCR – Asia and the Pacific, 2013). Despite this the protection system in the region remains delicate, with a minimal legal framework in place to support the processing and resettlement of refugees. Primarily this is due to the fact that very few countries in the region have acceded to the Refugee Convention, the primary instrument that establishes the rights of refugees at the international level.

Figure Two: State Parties to the 1951 Convention Relating to the Status of Refugees and/or its Protocol as of September 2012.

Despite this there are a number of bilateral and multilateral agreements between states in the region designed to address the co-constitutive issues of forced displacement and irregular migration. Since 2002 Australia and Indonesia have co-
chaired ‘The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes’ (the Bali Process). This is a regional cooperation framework (RCF) comprising of 45 member states as well as UNHCR and IOM that endeavours to ‘combat people smuggling, human trafficking and other related transnational crimes’ in the region and beyond (UNHCR, Bali process). Primarily the Bali process seeks to improve cooperation between members through information sharing and strengthening of domestic legislation in line with relevant international instruments (Joint Ministerial Statement, 2008).

Since early 2000 Australia and Indonesia have also been party to a bilateral regional cooperation agreement (RCA) in partnership with the International Organisation for Migration (IOM) and their local partners, World Church Services (WCS) and the Jesuit Refugee Services (JRS) (UNHCR Indonesian Factsheet September, 2014). Under this agreement the Australian government funds large scale projects in Indonesia in return for Indonesia’s cooperation in preventing the flow of irregular migration to Australia. This is achieved by monitoring and intercepting suspected asylum seekers and referring them to the IOM for case management and care in Indonesia (Howard, 2003). This arrangement was designed to prevent asylum seekers from moving irregularly from Indonesia to Australia by providing a processing system in Indonesia where individuals could have their refugee claims assessed. Since Indonesia is not a signatory to the Refugee Convention and lacks a legal framework to process these claims, UNHCR fills this gap through a Memorandum of Understanding (MoU) with the Indonesian government (UNHCR South-East Asia, 2013:1). In accordance with regulations outlined by the Indonesian Director General of Immigration, those migrants who indicate their desire to lodge a refugee application are referred by IOM to UNHCR who ‘assess these claims pursuant to its own international mandate’ (Taylor & Rafferty-Brown, 2010b:138).

While asylum seekers and refugees have no formal legal status while in Indonesia nor have they any rights to permanently settle in the country through local integration programs, the UNHCR mandate does stipulate that individuals who register with UNHCR can stay temporarily while their claims are assessed and durable solutions are found (UNHCR Indonesian Factsheet, September 2014). Under customary international law individuals are also protected against ‘refoulement’
whilst their protection claim is assessed. During this time individuals remain under the care of IOM as per the terms of their contract with the Australian government (Taylor & Rafferty-Brown, 2010b:138).

Despite these formal agreements, and informal non-binding ones, such as the 2013 Jakarta Declaration (Davis, 2013:3), the irregular migration of asylum seekers from Indonesia to Australia with the assistance of people smugglers has continued to be a source of tension between the two countries. The Australian government has continually called on their Indonesian counterparts to do more to stem the flow of boats leaving their territory bound for Australia. Meanwhile, for the most part, the Indonesian leadership has predominantly viewed this as an ‘Australian issue’ (Missbach & Sinanu, 2011).

**Indonesia: A Reluctant Partner?**

The pressure that Indonesia has come under from the Australian government to address the issue of irregular migration has been immense. As noted by Missbach & Sinanu, ‘Australia has repeatedly insisted that Indonesia should accept greater responsibility for managing migrant flows’ (2011:64). In the past three years Indonesia has introduced a raft of new legislation that criminalises people smuggling, increased surveillance and interceptions operations, as well as rapidly expanded the immigration detention system in response to Australia’s requests (HRW, 2013; Missbach, 2012). Despite these reforms, and the millions of dollars contributed by the Australian government to aid in their implementation, Indonesia has been described as, at best, a reluctant partner. According to Missbach & Sinanu (2011:65):

> Indonesia’s willingness to reciprocate Canberra’s overtures has spanned a quite predictable spectrum, from very willing when it comes to diplomatic statements, to moderately willing when it comes to law enforcement cooperation, to hostile when the issue turns to the repatriation of asylum seekers to Indonesian territory.
In the Australian context this has often been interpreted as a diplomatic rebuke, however this framing can obstruct the true complexities of the challenge Indonesia faces in regards to border control and immigration.

Indonesia is the world's largest archipelagic state comprised of more than 17,500 islands with a coastline of 95,181 kilometres. This alone poses unfathomable challenges in regards to border control and immigration that even the most technologically advanced society would struggle to manage. This task is compounded by the fact that Indonesia is a developing country, and although it is the largest economy in Southeast Asia, many of its 253 million citizens still live in poverty. In 2013 the country's GDP per capita was US$3475, almost 19 times less than that of Australia's US$64,468 (Sulaiman, 2014). According to AusAid, a division with the Australian Department of Foreign Affairs and Trade:

Indonesia is one of Australia’s closest neighbors and faces increasingly complex development challenges. Like other developing countries, Indonesia has had recent success achieving economic growth but is still afflicted by poverty. More than 105 million Indonesians live on less than US$2 per day. Indonesia remains vulnerable to shocks, like a natural disaster or an economic downturn that could have devastating effects. An Indonesian woman is 30 times more likely to die in childbirth than an Australian woman and one in three children under the age of five suffer from stunting, caused by malnutrition. About 120 million Indonesians do not have access to safe drinking water while about 110 million do not have adequate sanitation.

These statistics alone speak volumes as to why Indonesian politicians may have a different set of priorities, regardless of Australian advances. The domestic challenges that Indonesia is facing, particularly regarding development and endemic poverty, helps to temper some of the most erroneous criticisms that Indonesia is not responding to the issue in a suitable manner. Unlike Australia, asylum seekers are not considered a matter of national urgency given the broader context; although it has been suggested that this may be partially due to the fact that Indonesia remains a transit country rather than a destination country. The knowledge that irregular or undocumented migrants are merely ‘passing through' Indonesia has been attributed
to the apparent lack of political will to expend valuable resources on the issue. Some have gone as far as to claim that Indonesia's domestic policy is designed with this intention in mind. According to Missbach and Sinanu (2011:72):

The recent conditions imposed by the government on ‘irregular’ migrants in Indonesia discourages asylum seekers from staying in Indonesia, as, indeed they were intended to. Instead they push migrants into making arrangements with people smugglers for their speedy onward movement.

Thus far, this chapter has provided a modest introduction to the issue of asylum seeking in Asia Pacific. This was done by first locating the issue within the broadest possible setting, the international stage, focusing upon the growing number of forcibly displaced people as a result of war and armed conflict. The resultant increase in the number of asylum applications globally highlights the growing pressure being placed upon the international humanitarian program, and the need for developed nation-states to do more in regards to durable solutions, resettlement and burden sharing arrangements.

This issue was then discussed in relation to Australia’s political response to the increase in asylum seeker applications being lodged onshore during this period, primarily by people arriving by boat from Indonesia. The political culture of hostility towards asylum seekers who arrive irregularly was outlined and juxtaposed against the legal obligations of the Australian state as defined in both international and domestic law. It has been posited that despite obligations to the contrary, the Australian government remains wedded to the notion that asylum seekers should apply for protection in Australia through its complementary offshore program exclusively. To this end, the Australian government sought numerous deterrence-based approaches to prevent the spontaneous arrival of asylum seekers. Yet despite these extreme efforts, in the period 2008-2013 asylum seekers continued to reject UNHCRs processing system in Indonesia, choosing instead to make the dangerous journey to Australia by boat with the assistance of people smugglers in order to seek protection.

The response to this issue by consecutive governments reveals a particular disposition, that deterrence based policies can quell asylum seekers arriving by
boat. The implicit assumption within this mindset is that asylum seekers are choosing this option due to a range of attractive migration pull factors that can be effectively neutralised by the implementation of harsh reception policies; thus, by removing the incentives as they see them, governments can effectively put an end to this trend. Yet this mindset neglects a significant aspect of why asylum seekers are choosing this course of action. By focusing entirely upon the neutralisation of perceived ‘pull factors’, the ‘push factors’ that are central to understanding forced migrants and forced migration are ignored entirely.

Central Problem
Throughout the research period there was a drastic increase in the number of asylum seekers attempting to reach Australia by boat with the assistance of people smugglers in order to seek protection. This is despite the increasingly harsh deterrence policies enacted against them by the Australian government in an effort to counteract the perceived pull factors. The primary justification for these policies was based upon the notion of a queue, and that if people wished to seek asylum and be resettled in Australia then they should apply through Australia’s complementary Offshore Humanitarian Program, considered the ‘appropriate’ channel.

One of the main access points that forced migrants in the region have to this channel is in Indonesia, through the UNHCR office in Jakarta. Yet despite the existence of UNHCR Indonesia, people continued to reject this option choosing instead to engage people smugglers in an effort to reach Australia. It is this phenomenon that this research investigates, focusing directly upon the factors that shape the migration decisions of forced migrants in Indonesia. In order to examine these factors, this thesis focuses primarily on the following research questions:

Research Questions

1. What are the driving forces shaping asylum seekers’ migration decisions in Indonesia?
2. How do experiences in transit affect asylum seekers’ future migration options?

3. To what extent does Australia’s externalisation of border control mechanisms affect individuals’ ability to seek asylum through other pathways? What relationship does this have to irregular migration?

4. To what extent does irregular migration occurring between Indonesia and Australia replicate patterns of irregular migration identified in other parts of the Global North? Can these patterns inform our broader understanding of irregular migration?

The following section outlines the methodological approach that was used throughout this research in order to find the answers to these questions.

**Methods, Sources and Research Ethics**

It has been argued that the fundamental goal of social research is ‘to identify, investigate and seek to understand social patterns and social meanings’ (Walter, 2010, 9). Qualitative research methods provide a fitting vehicle to achieve this as it is, in essence, based upon the core function of meaning-making.

It is the ontological position of this research that the experiences of forced migrants in transit and the subsequent impact these experiences have upon future migration decisions is valuable and should be considered as part of the policy making process. Yet government policy rarely takes into account the views of asylum seekers and the factors that drive their migration decisions. This research attempts to counteract this silencing impulse by acting as a vehicle of representation for asylum seekers to express their own experiences of irregular migration and share their own unique perspective on the forces that drive irregular migration.

This position has guided the methodological framework of the research towards a qualitative analysis inspired by the life narrative approach. This position embodies the best practice research principles developed by Block, Riggs & Haslam, (2013) as well as Temple & Moran (2011) regarding conducting research with refugees and
asylum seekers which focus upon and prioritise their voice, explicitly acknowledging that individuals are the best authority on their own life. As Browning states, ‘detailed firsthand accounts of the lived experiences of detention and survival offer a particular discursive space from which we can explore key critical questions’ (Browning, 2006:24).

This approach helps themes emerge organically as the conversation is led by participants rather than the researcher. As a result the issues that emerge are those identified by the participant rather than pre-determined by the researcher. By privileging the voices of those with firsthand experience of irregular migration it is believed that a more nuanced understanding of forced migration and its inherent challenges can be achieved. A subsequent aim of this research is to contribute to the broader discussion about asylum seeking in Australia, adding a dimension that is often overlooked – the firsthand experience of asylum seekers.

As such, an essential aspect of this research is to provide a vehicle of representation to a usually silenced group within the policy domain, supporting their transition from object to subject. In this regards it is fair to say that this project rejects the notion that social research can and should be apolitical. While advocacy based research is vulnerable to allegations of bias (for example see Jacobsen & Landau, 2003), much has been written to counteract this assumption, particularly in regards to forced migration research (Block, Riggs, & Haslam, 2013; Dona, 2011; Rousseau & Kirmayer, 2010; Voutira & Dona, 2007; Mackenzie, McDowell & Pittaway, 2007; Hale, 2001). According to Hale, ‘there is no necessary contradiction between active political commitment to resolving a problem, and rigorous scholarly research on the problem’ (2001:14). Block, Riggs and Haslam suggest that ‘researchers working in this area are invariably committed to social justice, the corollary of which is a close connection between refugee scholarship and advocacy’ (2013; ix). Dona advances this argument by suggesting that ‘research into the suffering of others can only be justified if alleviation of that suffering is an explicit objective’ (2011:10). This position requires that all research conducted with forced migrants should ultimately seek to help those it studies. Fleay & Briskman (2013) adopt a similar perspective, rejecting the notion of researchers as detached objective observers, arguing instead that ‘bearing witness involves communicating what has been seen and heard in
ways that encourage the receivers of the message to take action in response’ (2013:114). While this may appear to distort the boundaries between rigorous academic research and advocacy, upon consideration it is clear that this stance sits neatly within the accepted research doctrine ‘do no harm’ (Block, Riggs, & Haslam, 2013:4) and the primary responsibility of all researchers to prioritise the welfare of participants beyond any other research aims or objectives. Considering the particular vulnerability of a group such as forced migrants, it is the position of this research that it would be unconscionable to expose participants to the research process unless that process offered clear incentives or advantages for those involved. It is through the production of knowledge that these improvements can be made.

**Design**

In addition to providing a platform for forced migrants to be heard, the twin aim of this research is to gain a more comprehensive understanding of the transitory experience of forced migrants in Indonesia, and how these experiences shaped participants’ future migration choices. The primary data presented in this thesis is sourced from qualitative, semi-structured interviews with refugees and asylum seeker men at different stages of their migration journey, both in Australia and in Indonesia. The methodological approach adopted in these interviews is inspired by the life narrative approach that seeks to interpret the stories of individuals (Walter, 2010). This approach is supplemented by ethnographic observations from the field and interviews with key informants (discussed below).

The life narrative approach is underpinned by the belief that the ‘self can only be studied as a whole when past, present and future are understood as integrated into a whole through narrative’ (Liamputtong & Ezzy, 2006:125). As Willis explains, the life narrative approach is a useful tool for exploring social meaning as the participant experiences it:

> The focus in narrative analysis is less on gaining ‘the truth’ about an event or social situation than in understanding people’s interpretation of the event. Thus, the narratives or stories that people tell of their lives, and the ways
they construct their narratives, are rich sources of data that can be used to explore social life … [I]n sociology, often the aim of a life history or narrative approach is to reveal how individuals’ actions and interpretations coexist with broader social structures and patterns (Willis in Walter, 2010: 424).

The varied intellectual architecture applied to this method has resulted in an array of analytical models being developed to aid in data interpretation, largely divided between linguistic and sociocultural traditions (Walter, 2010). While there has been some debate around the notion of formalising routines for analysis, such as is found in quantitative analysis processes, this idea has been predominantly rejected by the research community. As Liamputtong & Ezzy (2006:125) point out ‘while logico-scientific rationality may be useful for understanding chemistry or biology, its usefulness is very limited in studies of meaning and human action’. As a result, flexibility and ambiguity are seen not as limitations to this model but as one of its greatest strengths in understanding human behaviour. It is the flexibility inherent in this method, as well as its ability to cast light upon individual choices and the social structures that shape and constrain them that makes it such an appropriate instrument for the stated research aims of exploring why individuals make certain decisions at different points in time, with different consequences. According to Bertaux & Kohli, ‘life trajectories reveal the constraining effects of the socio-structural relationships that constitute the very object of sociological inquiry’ (1984, 226). This position is affirmed by Willis, who claims that the narrative approach draws upon the sociocultural tradition, which seeks to locate the narrative within the broader social and political context (Willis cited in Walter, 2010).

A further strength of the narrative approach, sitting comfortably within the aims of this research, can be found in its strong tradition of being a vehicle of representation for individuals or communities considered historically disenfranchised by the mainstream (for example see Bradstock & Trotman, 2003). It is a medium that gives participants the opportunity to be heard and to express their issues and concerns, rather than following the strict agenda often imposed by the researcher (Bertaux & Kohli, 1984). Atkinson outlines how this approach achieves this:
In a life story interview, the interviewee is a storyteller, the narrator of the story being told, whereas the interviewer is a guide, or director, in this process. The two together are collaborators, composing, constructing a story the teller can be pleased with. (Atkinson cited in Walter, 2010:424)

Ensuring the research design facilitates participants’ ability to share the stories they deem important rather than being unduly led by the researcher is important for ensuring the proper representation of a participant’s experiences. This supports the primacy of the participant’s voice throughout the research, which is important as voice is considered to be a central tenant for any research involving forced migrants (Tait, 2011; Block, Riggs & Haslam, 2013; Dona, 2011).

Influenced by this approach interviews were conducted so that participants would lead the conversation, identifying those memories and experiences that they felt were most influential in guiding their migration choices and experience. Most interviews began with the retelling of individuals’ early life before their forced displacement occurred. These initial conversations primarily came to represent the ‘normal life’ most participants were hoping to return to. Ideals and experiences of work, family and leisurely pursuits dominated these early conversations. These recollections were generally followed by accounts of change and uncertainty, deteriorating safety and increased danger; in other words, how and why they were displaced. Participants spoke about how they travelled, where they went and what their experiences were like. For those who travelled irregularly from Indonesia to Australia, they spoke about their motivations for doing so, the difficulty in reaching such a decision and the consequences of that choice. For those participants who were interviewed in Indonesia undergoing the refugee status determination process (RSD) many spoke of their initial expectation of UNHCR and how this shifted over time. For this cohort their migration was still an incomplete story, with an uncertain outcome. This clearly effected the shaping of their narrative.

During the analytical stage of the research a thematic approach was integrated into the life narrative framework. The rationale for blending these approaches was simple: to examine personal stories and experiences of the participants in a thoroughly contextualised manner while identifying common themes across the
data that allows for the emergence of larger patterns. This approach offers researchers considerable value, as Briskman and Goddard illustrate, ‘the stories told, like life narratives, put a human face to the suffering and, as individual stories accumulate, the collective story gains cultural salience and resonance’ (Briskman and Goddard, 2007:94).

Incorporating the thematic approach into the analytical stage of the research allowed the themes repeated across the individual narratives to gain prominence, making common connections across different life stories and experiences. This process takes time as themes emerge through the careful exploration of the source material, searching for the meanings and the sub-meanings within and across each text. Once the interviews were transcribed the data was manually codified by dividing the text into categories that reflected the dominant themes within the narrative. Key themes included the challenges of undertaking the RSD in a foreign country, historic persecution of Hazaras and how this contributed towards their displacement, the lack of opportunities and security in transit, international responsibility for the protection of refugees and people’s personal motivations, desirers and fears. Despite the personal nature of the stories being told, the themes that emerged where highly consistent, facilitating this process. By codifying the data in this manner the research was able to ensure that it was led by participant responses. Broad categories were created then slowly modified in order to most accurately reflect the common aspects of people’s experiences. The repetition of these themes across the data led to the natural emergence of a collective account of the issues facing forced migrants on their journeys through Indonesia. As such, it is not a history of one life but a reflection of the collective stories of suffering, liminality, choice and survival. Using a narrative mode to examine the interconnectedness of human agency, social structures and the temporality of historical events, the aim is to reflect the common themes as identified by participants to gain a better understanding of the root causes of irregular migration and how experiences in transit effect future migration choices. These themes formed the basis of the findings discussed in chapters Four and Five.

Having outlined the primary ontological and methodological approaches adopted in this project, the following sections will discuss how the research was conducted,
providing a detailed account of the various elements, including sampling, recruitment, interview locations, the incorporation of various secondary sources, as well as research barriers and ethical considerations.

**Ethics**

As this project involved human research ethics clearance was required before fieldwork could begin. An application was submitted to the Swinburne University Human Ethics Committee and approved for the duration of 01/12/2011 to 01/12/2014. All activity undertaken during this time was in compliance with Swinburne and external regulatory standards, including the National Statement on Ethical Conduct in Human Research and with respect to secure data use, retention and disposal. See Appendix A for ethics clearance. Participants were provided with information and consent forms prior to formal interviews and were advised of their rights. Furthermore, all participants were de-identified within the thesis including being provided with pseudonyms to ensure confidentiality.

**Participants**

**Sample**

Due to the scope of this issue it was decided to limit participation in this study to a single migratory group. Minimising variations within the sample population provided the opportunity to delve into the experiences and processes more deeply. At the commencement of this research in 2011 the single largest sending country of people seeking asylum was Afghanistan (Ware, 2012). Within this group, ethnic Hazaras account for a large majority (Boyce, 2013). As a result, ethnic Hazaras were considered the obvious choice as the focus of a case study on irregular migration. In a similarly pragmatic approach, ethnic Hazaras were considered an attractive focal point for two reasons: from an international perspective, Hazaras, an ethnic minority originating in Afghanistan, with a sizeable diaspora in Pakistan where similar levels of persecution are witnessed are generally viewed as having strong protection claims (UNHCR, 2013:70), while the size of the Hazara diaspora
increases the possibility that these findings can be considered beyond the Australian context.

Participation in this research was also limited to a single gender. Irregular migration is a highly gendered experience with men over-represented in the statistics. As a result it is important to acknowledge that this sample represents only the male voice and should not be universalised.

The project originally intended to focus only upon those who had travelled from Indonesia to Australia irregularly; however, it became clear that to understand why people choose to leave, it was equally important to understand why people chose to stay. The project was therefore adjusted to include a split sample of two comparable groups, those who had ignored the RSD process in Indonesia and had made their way to Australia irregularly and those who were attempting to navigate the RSD program in Indonesia.

These early decisions developed the parameter for selecting participants: ethnic Hazara men who had either travelled irregularly to Australia by boat or refugees/asylum seekers who had either gone through UNHCR’s resettlement program and were now living in Australia or were currently undertaking the RSD in Indonesia waiting processing and/or third country resettlement. A timeframe for these actions was also added to ensure consistency within the sample. All participants in this study were either in Indonesia, or had transited through there at some stage between 2008-2013.

Recruitment

A combination of methods was employed throughout the recruitment stage of the research. This was partly due to the difficulty of recruiting participants to a study which required consenting individuals to discuss matters of an extremely personal and traumatic nature within a politically and legally precarious situation. The secondary challenge was locating and recruiting participants who were not living in Australia but in a liminal state in Indonesia. Due to these logistics, different strategies were required to recruit the two different cohorts, those who had
travelled irregularly to Australia and those who were still undergoing the RSD in Indonesia. Initial attempts to recruit participants living in Australia were made through community organisations, which work directly with forced migrants. These efforts proved to be ineffectual, with little progress being made. It is likely that a combination of factors including different priorities, lack of rapport, under resourcing and issues of gate keeping were prevalent in hindering this approach. A more direct recruitment strategy was then developed, harnessing the strength of online social networks. Through the Internet I was able to directly advertise my research via online community pages developed for the Hazara diaspora in Australia and Indonesia. This took the form of an open letter written in English and transcribed into Hazaragi. An immediate interest in the project was generated through this and participants began volunteering to take part. Through this initial interest I was able to use a snowballing method to recruit further participants. See Appendix B for a copy of the open letter posted on various community webpages and Appendix C for a copy of the information consent form.

In Indonesia the recruitment method was more fluid. Due to the extremely strong social networks present throughout the asylum seeker and Hazara communities, word of mouth was the most beneficial means to make contact with potential participants. Twice in 2013 I travelled to Indonesia with the purpose of recruiting participants and conducting interviews as part of my fieldwork. Visiting locations where asylum seekers were known to congregate and talking to as many people as possible about the purpose of my travel to Indonesia was the most beneficial way to advertise my research in this setting. This approach of ‘pounding the pavement’ was automatically fruitful. Word of mouth spread quickly and again a snowballing method was employed.

**Demographic**

Overall, thirty participants took part in formal interviews from September 2012 to December 2013. All participants were male, ethnic Hazaras originating from
Afghanistan (63.5 per cent) or Pakistan (36.5 per cent). Ages ranged from 15 to 43, with 27 the average age. Fifty-four per cent of the participants were undergoing the RSD process in Indonesia at the time of interview. Of these 20 per cent were refugees applying for resettlement, 54 per cent were registered asylum seekers and 26 per cent were awaiting registration. The other 46 per cent of the sample were interviewed in Australia, having travelled irregularly from Indonesia with the assistance of people smugglers. Of these 57 per cent were resettled refugees, 21.5 per cent were on Community Bridging Visas and 21.5 per cent were being held in immigration detention at the time of interview.

Figure Three: Participant Refugee Status at Time of Interview

<table>
<thead>
<tr>
<th>Indonesian cohort</th>
<th>Australian cohort</th>
</tr>
</thead>
<tbody>
<tr>
<td>26% awaiting UNHCR registration</td>
<td>57% resettled refugee</td>
</tr>
<tr>
<td>54% registered asylum seeker</td>
<td>21.5% Community Bridging Visa</td>
</tr>
<tr>
<td>20% Convention refugee</td>
<td>21.5% Detained in immigration detention</td>
</tr>
</tbody>
</table>

**Interview Location**

The location and format of interviews was fluid to accommodate as many participants as possible. In Australia interviews were conducted in Melbourne and Brisbane and spanned a range of locations. Where possible, interviews were arranged to be held at community centres including The Romero centre, Southern

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3 Hazaras have been living in Pakistan for many decades now. Largely this is a result of earlier migrations from Afghanistan due to conflict and ethnic persecution. Pakistan hosts the largest number of Afghan refugees in the world. Interestingly despite being born in Pakistan and having never travelled to Afghanistan a number of the younger participants chose to identify as Afghani rather than Pakistani. For the older men this was not the case regardless of their status as either naturalised citizens or refugees living in Pakistan.
Migrant and Refugee Centre, Asylum Seekers Resource Centre and Spectrum Migrant Centre. Other official locations for interviews also included Brisbane Immigration Transit Accommodation (BITA) and Melbourne Immigration Transit Accommodation (MITA). Two interviews were also conducted at Melbourne City Library and one interview was done over the telephone. All interviews, with the exception of those in the detention centres were digitally recorded and later transcribed.

In Indonesia, due to the nature of the fieldwork, interviews were conducted wherever possible, most notably in public venues in close proximity to the UNHCR office in Jakarta. These interviews were not recorded as this was an overt decision to protect participants’ anonymity. All participants in Indonesia were engaged with UNHCR at the time of their interview and were naturally more apprehensive about speaking openly about irregular migration or to be seen criticising any aspect of the system for fear that it might affect the outcome of their case. Instead, comprehensive notes were taken during these conversations and were expanded upon in more detail in field notes once the interview ended. In many cases, those who participated in formal interviews in Indonesia offered contact details and maintained regular communication via telephone and Internet thereafter. This ongoing relationship with participants proved to be extremely beneficial throughout the data collection stage of the research and well into the final write up. On a practical note, ongoing communication meant that even after all formal interviews were complete individuals would be able to bring to my attention new developments as well as expand upon previous statements. I was also able to clarify uncertain issues with my informants, which proved incredibly beneficial to the quality of the data.

**Incorporating a Mixed Methodology**

While the information gained through formal interviews was considered the primary data, alternative resources were used to supplement this information. This research draws upon ethnographic observation during two trips to Indonesia in 2013. The purpose of these visits was to become immersed within the social context
in which forced migrants must traverse. The fieldwork was limited to the island of Java, with the majority of time spent in Jakarta, Indonesia’s capital city and home to UNHCR headquarters. While in Jakarta I spoke with numerous asylum seekers and refugees, and it quickly became apparent that people were very interested in sharing their experiences. These trips allowed me to witness firsthand the struggle people go through in their attempts to register with UNHCR. I was taken through transit living accommodations, talked with journalists and met with NGO representatives. Multiple attempts were made to arrange meetings with UNHCR and IOM officials while in Jakarta but these attempts were futile. Fieldwork was also carried out in the regional towns of Bogor, Cisarua and Sarabaya. As a port town, Sarabaya serves as a major hub for people smuggling activities and is a known departure point for irregular migrants. The town now hosts a large detention facility and has a number of NGOs based there as a direct result of these activities. Bogor and Cisarua are smaller regional towns roughly 60km south west of central Jakarta. These towns play host to a large number of asylum seekers and refugees undergoing the RSD. This is due to a number of factors, most notably their accessibility, cheaper living costs, and more tolerant locals. Comprehensive field notes were collected during these trips detailing observations, conversations, and all the details that can only be known through firsthand experience and immersion in a different cultural reality. The conditions forced migrants face while in transit can be considered ‘hidden knowledge’. The importance of telling the stories of those in transit can therefore be considered analogous to those in immigration detention. According to Fleay & Briskman (2013:115) ‘bearing witness to detention in Australia is still the domain of the relatively few and telling the stories is a way of providing increased transparency and overcoming the prevailing secrecy’. In a similar manner Australians know little about the conditions or the experiences forced migrants face while in transit, witnessing these processes and conditions firsthand and relaying

4 It should be noted that UNHCR Indonesia operates in a politically sensitive environment. Since Indonesia is not currently a signatory to the refugee convention UNHCR’s mandate is not legally sanctioned, instead it is only through the MOU with the Indonesian government that UNHCR are able to maintain a presence in Indonesia. It is therefore likely that UNHCR would be disinclined to publically comment upon operational matters that may embarrass the Indonesian government or damage their relationship.
these accounts can therefore contribute toward greater transparency and awareness of the context in which asylum seekers make life altering decisions.

To ensure that the widest range of views were included in the study, interviews were sought with other key informants and stake holders throughout the fieldwork to supplement the primary data. Despite unsuccessful attempts to engage with UNHCR, a range of views were canvassed from Australian and Indonesian charities, NGOs and government agents working in the relevant fields. In the past research on forced migration has tended to privilege official positions or ‘experts’ rather than the knowledge of forced migrant themselves. To avoid this, and ensure the voices of the forced migrants were at the forefront of this study, these supplementary opinions were drawn upon sparingly throughout the findings, and were used to inform the wider theoretical architecture of the thesis, rather than ‘correct’ the voices of the participants.

These interviews and field observations sit alongside a critical review of policy debates and legislative developments. In the years under study Australia has had three Prime Ministers, five Immigration Ministers, and overhauled its asylum policies many times. Two bitter federal election campaigns elevated this issue to prominence, while High Court challenges and international condemnation from human rights groups ensured the issue remained in the media spotlight. In Australia, the asylum debate centred on the reception and treatment of irregular maritime arrivals has become one of the most contentious issues of our time. Keeping up-to date with the changes occurring both in relation to Australia’s border security and reception policies, as well as the shifts in Indonesia’s policy response to irregular immigration, was a vital aspect of this work. Being attuned to the nuanced differences in policies at work at the time participants were undertaking their migration was key to readily understanding the parameters of each choice and analysing the data within its appropriate context.

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Having detailed the processes that were undertaken in order to carry out the project, the final section of the methodology will now turn its attention towards a discussion of some of the more challenging issues inherent in social research such as this.

**Research Barriers, Challenges and Ethical Considerations**

There are a number of challenges that present themselves when conducting a project such as this, there are also a number of ethical questions that must be addressed in a suitable manner before proceeding with research that deals with such a sensitive issue. Forced migrants represent a particularly traumatised section of the community, the dislocation from their homelands, culture, family and support networks is compounded by the effects of war, loss, uncertainty and often detention. The ethical considerations of conducting research with a group such as this must always be paramount in the mind of the researcher.

While this consideration may seem self-evident, from an ethical perspective it can be rather complex. Asylum seekers and refugees as a group have traditionally been considered ‘vulnerable’ by researchers and ethics committees alike. However this label, although designed to protect, runs the risk of reproducing colonial impulses of paternalism by defining a heterogeneous group through their alterity. As Kirmayer states:

> Viewing whole groups or categories of people as vulnerable may be disparaging and further undermine their autonomy and agency. Yet there are forms of vulnerability that are intrinsic to the human condition ... for refugees this vulnerability has its own extremities that comes from being stateless, deterritorialised without claim to space or place unless it is through the hospitality of others. (Kirmayer, 2013:vii)

One of the main ways that forced migrants are rendered vulnerable is due to a lack of power (Block, Riggs & Haslam, 2013:7). As Kirmayer illustrates, ‘the paradox of vulnerability is that even as it defines the category of refugee and legitimates their claims for asylum, it consigns them to the disempowered position of passive
recipient of gifts bestowed by the wealthy and powerful other’ (Kirmayer, 2013: vii). While it is impossible to resolve this paradox or the implicit power dynamics that exist between the researcher and participants due to the different social location each embody there are ways to mitigate against the extremities. The research design, with its focus on participant led narratives, as well as the commitment to representation is an effort toward this.

Another challenge that required considered negotiation was the problem of language. One of the biggest challenges in conducting cross-cultural research is ensuring findings are presented as accurately as possible. This can be contentious due to language differences between the researcher and participants, as well as differences in cultural backgrounds, which provide context and meaning to the social world each inhabits. There is a growing body of research that deals with the issues of language interpretation in cross-cultural research, the general consensus of which is a move away from a structuralist framework towards that of post-structuralism (Temple, & Edwards, 2011; Temple, 1997; Lutz, 2011).

The issue that one must confront, if accepting the position of the post-structuralist, is how to make sense of language, if language itself is subjective? The answer is to be reflexive throughout the research process. The researcher must commit themselves to the process of interrogating assumptions and predispositions inherent within themselves, including a critical focus on the notion of objective language. Yet issues with language and interpretation go further than the field of social theory. Conducting cross-cultural research poses numerous challenges, but none so confronting as the challenge of accurately representing participants’ voices, in meaning not just word. For participants in this study, English was not their native tongue; often English was participants’ second, third or fourth language. This further obscures the complicated relationship between words and meaning by imbuing language with a cultural bias. According to Kapborg and Bertero, ‘different languages create and express different realities, and language is a way of organising the world’, (2001:52). Thus issues can arise in the translation due to the complex nature of language and the subtle differences in meaning; meanings that are derived from a shared history infused with similar understandings, values and experiences.
An example of how language and cultural barriers can distort meaning can be seen through the term ‘refugee camp’. From a western perspective, the term ‘refugee camp’ signifies a temporary settlement where displaced people can find sanctuary while either waiting to return home or waiting for a durable solution to be found. The term ‘refugee camp’ also brings to mind the coordinated efforts of NGOs and IGOs in providing security and material needs for the residents of the camp who were unfortunate victims of a crisis. However, ‘refugee camp’ can also mean something very different. It was not unusual for participants in Indonesia to use the term ‘refugee camp’ to refer to the forced incarceration of asylum seekers within Indonesia’s prison system. For participants there was no intrinsic difference between the term ‘refugee camp’ and what in the Australian lexicon would be referred to as a ‘detention centre’. For an Australian audience it is clear how these two terms could conjure two very different responses. The term ‘detention centre’ is permeated with negative connotations, and instils a sense of criminality upon the ‘detainee’. The term ‘refugee camp’ invokes a rather different reaction in most. Consider the different reactions to the following sentences:

A. I did not feel safe within the refugee camp so I escaped

B. I did not feel safe within the detention centre so I escaped

To ensure proper representation occurred, it was important that throughout the interview process close attention was paid to understanding participants’ meanings not just their words. It was in the analysis stage of the data that the ongoing nature of the relationship with participants proved particularly beneficial. This sustained relationship facilitated the process of interpretation by allowing the researcher to verify particular issues or statements with the participants to ensure accuracy and intent.

**Research Limitations**

The temptation of any research orientated towards addressing a social issue is to try to find ‘solutions’ to the matter at hand. This is often well beyond the scope of the research project and the researcher. Acknowledging the limitations to the research
and what it may be able to achieve is an important element of any project. These limitations do not reduce the value of the research but rather act as a map for further projects that seek to build upon present knowledge.

The primary limitation of this research is the lack of female voices. While it is true that men account for the large majority of irregular arrivals in Australia, women have travelled this way in the past and will most likely continue to travel this way in the future. Past research has shown that the migratory experience of men and women can be quite different and their motivations for migrating often diverse. It is therefore reasonable to anticipate differences in the motivations and experiences of irregular migration of men and women. From the outset it was hoped that this research would be able to represent the opinions and experiences of female asylum seekers at least to a degree in which they account for irregular arrivals. Unfortunately this was not the case. Numerous attempts were made to recruit female participants through particular groups and associations; however, none were successful. As a result it is important to acknowledge that this sample represents only the male voice and is therefore unable to accurately reflect the entire population. While the lack of female voices is a limitation, the gendered nature of migration means that the focus on the male experience is also a strength of the project as it allows for a more overt analysis of the gendered dynamics of asylum seeking to take place.

On a similar note, there is an unwilling exclusion in the sample based on language proficiency. Participation in this research was limited to those forced migrants with sufficient English language skills to be able to adequately converse during the interview process. The researcher’s lack of Dari or Hazaragi language skills meant that this was an unavoidable outcome. During the fieldwork there were often times when conversations were occurring with groups of men, often with one or two translating for the others. These conversations, as previously noted, informed the research but did limit who was able to participate on a formal level. The decision to not use an official interpreter at this stage was informed by two pressures, first was the financial cost of hiring professional interpreters, and second was the desire to avoid the pitfalls that can accompany the use of such interpreters, which include
adding a secondary layer of interpretation on to the narrative, as well as ethical issues with confidentiality and trust (for example see Kapborg & Bertero, 2001).

Finally it is important to acknowledge my own social position and the effects this had upon the research. Regardless of any political sympathies, there was always going to be a social distance between myself, a young, white, educated woman and my participants. The insider/outsider debate for conducting research with marginalised social groups is an enduring one, arguments for best practice can be found on both sides. Regardless of the ontological position one might take, however, it was likely that my own social position played a role in limiting participation or limiting the information those participants who did take part were willing to share.

**Mapping the Thesis**

This chapter has introduced the central issues under investigation: what drives irregular migration from Indonesia to Australia and to what extent experiences in transit and broader structural factors shape this decision. Chapter One has located this issue within the international context, demonstrating the growing number of asylum seeker applications being lodged across industrial countries in recent years, a trend that was reflected in Australia during the research period 2010-2013. The issue was then positioned within the Australian legal context, exploring Australia’s domestic and international obligations towards asylum seekers and refugees. Australia’s international treaty obligations were explored and the Regional Cooperation Agreement with its closest neighbour and prime transit country, Indonesia, was discussed. Having provided the background information on the issue, the second part of this chapter turned its attention towards the core methodological approach utilised in the research. This section provided crucial information on how this research was analysed, as well as discussed a number of important ethical considerations and challenges that were instrumental in shaping the project design.

Chapter Two explores trends in forced migration through the examination of the contemporary literature at the nexus of asylum seeking, the securitisation of migration and irregular migration across the Global North. Focused primarily upon
Europe and its surrounding regions this chapter explores how powerful developed states of the Global North have sought to externalise their migration control beyond their physical borders in order to limit contact with potential asylum seekers. The creation and maintenance of these ‘non-arrival regimes’ is explored along with a discussion on the impact they have on transit countries, asylum seekers, and the institution of international protection more broadly. Through this process discernible migration patterns are explicated to demonstrate the powerful connection that exists between ‘non-arrival regimes’ and irregular migration. In so doing, Chapter Two develops the intellectual framework that is utilised in later chapters for comparative purposes.

Chapter Three then shifts its focus to the Asia Pacific region, detailing current research at the forefront of irregular migration, people smuggling and border security. Through the existing literature, past and present asylum seeker policies are explored and the effects of these policies on migration patterns in the region are examined. Through this process it is established that Australia is engaged in a process whereby the rights of asylum are externalised in a similar fashion to the trend identified in other parts of the Global North in Chapter Two.

The latter part of the chapter turns its attention to Indonesia to examine the existing body of knowledge concerned with the consequences of Australia’s externalisation policies. What is revealed through this literature is that asylum seekers in Indonesia are being negatively impacted by Australia’s approach, with their migration options constrained and their human rights often violated.

Having established the relevant themes that emerge from the international and regional literature, Chapter Four introduces the empirical findings from the research. It begins by charting how participants in this study were displaced from their homelands and how they came to find themselves in transit in Indonesia. It then focuses exclusively upon those participants who travelled onward from Indonesia to Australia with the assistance of people smugglers and the reasons behind their decisions. Four major themes are identified across participants’ narratives in this chapter, each of which contributed towards the decision to travel irregularly to Australia. These themes are: a rejection of the UNHCR pathway,
broader perceptions of Indonesia as an inhospitable and unsafe location for forced migrants, victim fatigue, and external pressures. The tension between structure and agency is drawn out in this chapter and used as an analytical tool for understanding participants’ choices and actions. It is demonstrated how participants in this cohort came to view irregular migration as the only real option available to them in order to find safety in their circumstance. The existential ethics of Beauvoir (1997) is also utilised in this chapter to analyse how participants’ actions in turning to irregular migration can be conceptualised as an effort to transcend immanence and overcome the state of abjection they are held in while in transit.

Chapter Five then turns its attention towards the second group of participants in this study, those who were undertaking the RSD process in Indonesia at the time of their interview. In contrast to the previous chapter, participants in this group were committed to UNHCRs RSD and were hoping to be resettled through official pathways. This chapter focuses on participants’ experiences of this process coupled with life in transit more broadly. What emerges is that despite participants’ best intentions and efforts, the challenges they experienced – both personal and structural – begin to feel insurmountable, leading many to despair that they will never be resettled. It was at this point that participants began to contemplate alternatives to UNHCR, mainly irregular migration. Once more the work of Beauvoir (1997) is used to conceptualise this process, this time in conjunction with the political philosophy of Giorgio Agamben (1998; 2005) in order to develop a theoretical understanding of the men's experiences in transit.

In the final chapter the empirical findings are explored in more detail within an in-depth conceptual analysis of the issue drawing together the theoretical perspectives of Beauvoir (1997) and Agamben (1998; 2005) to examine the intersection of state power and individual agency and its relationship to irregular migration. This analysis draws on themes established in the literature outlined in Chapters Two and Three and positions the research findings within the broader field of critical refugee studies.
Arguments

This thesis explores the underlying impulses behind irregular migration from Indonesia to Australia by exploring participants’ experiences of forced migration. It is argued that irregular migration occurs as a result of a number of intersecting factors that accumulate in a lack of legitimate alternatives for forced migrants to pursue. Participants in this study were turning to irregular migration as a way of overcoming the immobility they experienced in the liminal state in which they were positioned while in transit. Participants felt that the regulated migration pathways offered by the international community, in the form of resettlement programs, did not represent a realistic outcome and felt compelled to forge their own way.

The experiences that participants shared during the research provide a congruent set of motivations and obstructions that shape their migration decisions. Independently these reflections can be taken as a form of rational choice made by individuals in response to a particular set of circumstances. Collectively, however, these accounts offer much more; the uniformity in participants’ experiences provides strong evidence that the decision to move irregularly is not one based on individual ambition or deviancy, but rather is the result of structural factors that limit forced migrants’ choices and shape their transit experience. The findings pose a serious challenge to the ongoing classification of forced migrants into the dichotomous categories of the ‘good refugee’ and the ‘bad asylum seeker’. The lack of choice and the severe limitation on people’s agency results in a false binary. The type of migration people undertake is not indicative of the strength of their claim or a reflection on their character, but rather an indication of something much larger. When forced migrants are compelled to move for their own safety they will move in any way that is available to them. Thus, when legitimate migration pathways are obstructed, or are non-existent, people will forge irregular pathways to survive. In this same vain it becomes notable that when states fail to provide these pathways people smugglers will step in to fill this void. The demand therefore is a precursor to the supply. This suggests that the issue of irregular migration cannot be adequately addressed or resolved through the mere dismantling of people smuggling operations – as their presence is a symptom, rather than a cause, of a larger malaise.
This study provides an often-overlooked yet central perspective on the issue of irregular migration to Australia – that of asylum seekers themselves. This perspective, based on empirical evidence, provides critical insight on the matter of irregular migration and draws attention to areas of concern often not considered within the political debate. Thus these findings hold clear implications for future policies.

On the macro level the structural factors that are shaping asylum seekers’ migration choices appear to replicate patterns discernible across other parts of the Global North. By positioning the current case study within this broader literature what emerges is a clear trend whereby developed nation states now pursue border security policies that seek to extend the functional element of their border outwards into de-territorialised realms or third countries, creating a buffer zone between themselves and forced migrants seeking protection. This, in turn, has led to the externalisation of asylum, whereby transit countries (traditionally developing states) are being transformed into processing centres, responsible for the processing of asylum claims that were once the responsibility of destination countries. It is this situation that guided the position that asylum seekers in Indonesia are being held in a state of exception in the Agambian sense (1998), as they are reduced to the state of bare life – included in the political order only through their exclusion. Yet despite this, it is a central argument of this thesis that asylum seekers do retain some capacity to resist and to transcend their exclusion. While it is clear that the transit experiences severely reduce people’s capacities to act autonomously, irregular migration provides one vehicle through which asylum seekers can reassert their humanity and act with purpose when all other options are denied to them.

On a broader scale what becomes apparent through this analysis is that Australia’s policy response to the issue of irregular arrivals is not a form of Australian exceptionalism, but rather a local expression of a much broader trend in forced migration whereby wealthy, developed nation states are using neighbouring developing states as a bulwark against unwanted asylum seekers. This is achieved through the exploitation of less powerful states and the creation of exceptional
spaces where ambiguous legal structures operate to deny asylum seekers their basic human rights.

The consequence of this approach is that it unintentionally fosters the conditions in which irregular migration and people smuggling become co-constitutive. The closure of regular migration options and the denial of the basic human right to freedom of movement and the ability to seek asylum is what is driving irregular migration beyond state sanctioned pathways and into the hands of people smugglers. By reducing forced migrants to the state of bare life, states are placing asylum seekers beyond the protection of the law. In response to this asylum seekers are moving in ways that are considered outside of the authorised channels.

The strength of locating this case study in the international context is that it reveals a number of important factors that are often excluded from the policy cycle. First among them is that policies designed to ‘stop the boats’ fail to recognise the broader issue at hand. Irregular migration is the outcome of a much deeper problem of global displacement and insecurity, which this approach does nothing to address. This state-centric approach operates by pushing the problem on to another state, in the Australian case this is Indonesia.

While the political situation (and Australia’s policies), have changed significantly throughout the course of this research there is one critical shift that needs to be acknowledged. In the lead up to the 2013 Federal election Opposition leader Tony Abbott campaigned heavily on a platform to ‘stop the boats’. Following the election of his Coalition government and the implementation of this hard line strategy to forcibly stop asylum seekers from arriving in Australian territories and push them back to Indonesia, the Abbott government has claimed it has been successful in this endeavor. It is true that since the election there has been a significant reduction in the number of people seeking asylum through the onshore system (Phillips, 2014). However this is an important point to ruminate on as this perspective frames the ‘problem’ as being the irregular arrival of asylum seekers in Australia. What is argued throughout this thesis is that the irregular arrival of asylum seekers should not be considered the problem that needs addressing. Rather it is the lack of human security in the international system that limits people’s ability to seek protection in
safe and regulated ways that should concern us and is ultimately leading people to travel in unregulated and dangerous ways. It is the failure of all states to protect individuals and guarantee their human rights that should be the focus of political attention. ‘Stopping the boats’, it is argued, does nothing to address the problem of mass displacement or even irregular migration; rather it is a state-centric approach which shifts the protection burden back down the migration channel. In the final days of this thesis a situation has emerged in Southeast Asia as Malaysia, Thailand and Indonesia each began denying the disembarkment of asylum seekers on their shores, choosing instead to push boats carrying thousands of people back out to sea (UNHCR ‘Time Running Out for Stranded Boat People, 2015). It remains unknown how many people are on these boats or if any country will take responsibility for them. This situation is the natural progression of the policies of Australia that seek to shift the protection burden on to other countries. This scenario is further evidence of the domino effect discussed throughout the thesis.
Chapter Two

From Deterrence to Denial: An International Perspective on Asylum Seeking

Introduction

In Chapter One it was stated that one of the primary goals of this research is to locate the current situation that asylum seekers are facing in Indonesia within a global context of forced migration. As such, this chapter examines key themes that are evident across parts of the Global North with a particular focus on Europe and its surrounding regions where most of this research is focused. Research undertaken in these areas highlights patterns regarding the securitisation of migration, asylum seeking and border control. Of particular interest is the evidence that increased border security and policies directed towards curtailing asylum seeking have actually resulted in the proliferation of irregular migration across the Global North. Through the examination of this literature this chapter establishes the theoretical framework for the later analysis of irregular migration from Indonesia to Australia.

This discussion is foregrounded by an overview of classic migration theory and critiques indicating how it is insufficient for understanding contemporary forced migration movements. Having explored some of the challenges inherent in this endeavour, a new perspective on migration will be introduced, highlighting the central role border security plays in directing migration flows in the 21st century. Following this a number of themes present in the literature will be explored, including the theoretical construction of borders; the securitisation of migration; and the introduction of non-arrival regimes designed to construct an impenetrable barrier around developed Western states, as a means of preventing the arrival of asylum seekers within national territories.

Having identified the key policies used to construct these exclusionary zones, the latter part of this chapter is dedicated to interrogating the impact of this approach
upon traditional migration routes, transit countries and the international protection system in general. It will then conclude with a discussion on the impact this approach has on forced migrants themselves. This will be achieved through the use of the small number of empirical studies conducted in transit countries where asylum seekers are being contained. The empirical evidence demonstrates that rather than reduce unwanted migration, the construction of the Global North’s non-arrival regime has resulted in an increase in irregular migration as asylum seekers are forced to find new ways of seeking protection beyond officially sanctioned pathways. The role social networks play in facilitating individuals throughout their migration journey, the rise of people smuggling operations as a direct result of the dismantling of legal migration channels, and the increased vulnerability and insecurity asylum seekers are exposed to as a result of this approach are all considered in this final section.

By the close of this chapter two principle arguments are raised. Firstly, that the policies of the Global North have directly contributed towards the growth of irregular migration due to the dismantling of alternative migration options. Secondly, that this approach has placed undue pressure on developing nations at the periphery of traditional destination countries, who are left with a disproportionate responsibility for the care of asylum seekers affected by these practices. These trends and practices will then be drawn on in later chapters to help inform our understanding of irregular migration taking place in Asia and the Pacific.

**Theorising Migration – Critiques and Challenges**

For centuries scholars have been interested in human migration, attempting to understand what drives people to migrate and what factors impact these decisions. Ernest-George Ravenstein is considered the father of modern migration studies (Fozdar, Wilding & Hawkins, 2009); his 1880 ‘Laws of Migration’ thesis represents the first attempt to formulate a grand theory of migration (Ravenstein, 1885). Since this time, there have been numerous efforts to produce a universal theory of migration. These attempts have been influenced by disparate ideological frameworks, each privileging a different set of social relations as the basis of their
analysis. Models have focused upon economic disparities on a macro and micro level, rational choice, risk avoidance, and colonial histories and cultural linkages in order to make sense of migratory movements and motivations (Massey, Arango, Hugo et al., 1993). As a result of the disjointed approach to the study of migration, these early efforts at theorising are riddled with inherent contradictions, unable to resolve the tension between the macro and micro, and structure and agency. Due to this failure, migration research has subsequently been said to lack conduciveness, instead taking the form of sporadic, non-cumulative models that are fragmented and isolated from one another, lacking in broader application (Massey, Arango, Hugo et al., 1993). As leading migration scholar Douglas Massey states:

A variety of theoretical models have been proposed to explain why international migration begins, and although each ultimately seeks to explain the same thing, they employ radically different concepts, assumptions, and frames of reference. (Massey, Arango, Hugo et al., 1993:432)

While there have been numerous critiques of these original theories (De Haas, 2008; Arango, 2000; Castles & Miller, 1998; Ghatak, Levine & Wheatley, 1996; Massey, Arango, Hugo et al., 1993; Zolberg, 1989; Richmond, 1988; Wood, 1982), of particular relevance to this study is the important critique regarding the near universal exclusion of forced migrants for their analysis. Historically refugees and other forced migrants have been dismissed from migration studies (Castles, 2003; Richmond, 1993). While it has been taken as a priori that regularity can be detected in the movement of economic migrants, the movement of refugees and other forced migrants has been considered spontaneous and unpredictable within the classic migration theories of the 20th century. It has also been suggested that in many cases forced migration has been purposefully excluded from empirical studies as they represent an inconvenient variable in what is otherwise treated as a simple economic equation (Richmond, 1988:2).

Despite the reasons for this historic omission, there is growing evidence to suggest that distinguishable patterns are apparent in the movement of forced migrants and that through the careful examination of these movements a better understanding of forced migration can be produced (Drbohlav & Janska, 2009; Chatelard, 2008; Danis,
However the challenge remains how to best overcome the persistent divide in the classic literature between sending and receiving countries. The classical theories fail to bridge the gap between conditions in sending countries that promote migration and those in receiving countries that attract migration, treating each as separate entities, detached from the workings of the other (Arango, 2000; Richmond, 1993). The singular focus upon factors that either push or pull migrants downplays the multifaceted and interlocking processes that occur at each end of the migration spectrum, stripping the concept of migration of its inherent complexities (Arango, 2000).

As a remedy to these previous tensions scholars have adopted new frames of reference, developing more nuanced understandings of the interplay of factors that simultaneously promote and constrict migration. The most significant of these developments is the recognition of the role that border security plays in determining migration outcomes in the modern world (Koser, 2005; Gibney, 2005; Bigo, 2001; Richmond, 1993; Zolberg, 1989). As such, this chapter will focus primarily upon the development of border security across the Global North with a particular focus on the European Union and the impact this paradigm has had on forced migration. This discussion will provide the foundation for the analysis of the Australian-Indonesia case study in the second half of the thesis as many of these issues prove analogous to the forthcoming study.

**Borders, Border Security and the Role of States in Directing Migration**

The largest shift to take place in the field of migration studies over the last half century has been the realisation that nation-states play a central role in the determination of migratory flows (Del Sarto, 2009; Hamood, 2008; Kneebone, Mcdowell & Morrell, 2006; Gibney, 2005; Kirisci, 2004; Papadopoulou, 2004; Icduygü, 2000; Crisp & Van Hear, 1998 Koser, 1997; Collinson, 1996; Zolberg, 1989). This is true to the degree in which sovereign states choose to exercise control at their borders, restricting entry to those who would seek to migrate to their territory. Indeed, Zolberg argues that ‘it is precisely the control which states
exercise over borders that defines international migration as a distinctive social process’ (1989:405). Basing this assertion on the increase in border control, particularly by states of the Global North, Zolberg argues that when theorising migratory flows it is ‘the policies of potential receivers which determines where movement can take place, and of what kind’ (1989:406). In other words, it is not the ‘push’ factors that drive migrants, or the ‘pull’ factors that attract them, but destination states’ willingness to accept them that determines migration outcomes in the 21st century, in other words the ‘walls and doors’ (Zolberg, 1989) referred to in Chapter One. The power that restrictive border control policies have upon limiting movement is illustrated by Zolberg’s poignant example of genocide:

Regardless of what violence people may be subjected to in the country of origin, this produces a flow of refugees only if people have a place to go; if not the violence has other consequences, as dramatically demonstrated by the fate of so many Armenians and Jews in the first half of the twentieth century. (1989:406)

Diverging from the migration theories of the past, the recognition of this new reality balances migration pressures at the site of departure against the considerable power of nation-states looking to exclude. As a consequence, migratory pressures do not automatically result in the massive movement of people across international borders, because border control mechanisms usually intervene as a determinative factor.

Given this, it is prudent to examine the border control apparatus of contemporary nation states to detect the extent to which this influence impacts refugee and asylum seekers’ migration choices. However, it is impossible to accurately discuss the role of border control without first discussing the functions borders perform.

In the Westphalian tradition borders perform a triple function, ‘demarcating state territory, state authority, and the “nation”’ (Del Sarto, 2009:2). Borders exist as either a physical or symbolic site which separates one legal space from another and seeks to uphold the integrity of the territory which it delineates (Gropas, 2010). However, borders are more than just lines on a map that demonstrate territorial limitations, they exist as the site for boundary maintenance, the demarcation of
political systems, legitimate authority and even racial and ethnic separation. The border has become the site where notions of citizenship and culture are forged and these categories policed (Johnson, 2006). In the modern world borders have come to represent the barrier between insider and outsider, of citizen and non-citizen.

Following on from the classic notions of borders outlined above, the wider study of borders has undergone a number of thematic shifts over the past 30 years. With the spread of global capitalism and the advent of supranational entities such as the European Union (EU), scholars tended to focus their analysis upon the disappearance of internal borders and its effects upon the nation-state as a result of the implementation of the Schengen acquis (Johnson, 2013). This drive towards openness sits paradoxically alongside the political closure witnessed in the post 9-11 world. In the ‘age of terror’ (Talbolt & Chanda, 2001), fortifying and securing borders became the principal obsession for state leaders. While symbolically this approach may still appear to dominate the current international system, a closer examination of scholarly activity in this field reveals that a more nuanced approach has emerged, one that focuses upon the blurring of functional and territorial borders between sovereign states while still maintaining the centrality of security (Del Sarto, 2009). It is this perspective that will be expanded upon in the following review of research on the intersection of asylum seeking, irregular migration and border control in the Global North. As Del Sarto points out, ‘the context of the European integration process is far more complex than the image of an internally borderless and externally “fortified” area allows for’ (2009:6). It is within this space that the notion of ‘borderlands’ becomes an important concept.

The term ‘borderlands’ has two contemporary usages in academia. While both depart from the traditional understanding of borders as an unproblematic divide between sovereign territories, the way each is conceptualised differs dramatically. The first is conceived of as a place of hybridity and transformation, a relational space where coexistence and situated engagement are key factors defining the culture of the land, in this sense place and identity are mutual constituted (Comelli, Greco & Tocci, 2007; Kaiser & Nikiforova, 2006; Newman & Paasi, 1998; Massey, 1994). The most common example of this typology is along the U.S-Mexico border, yet it has been applied to various situations such as space where indigenous and
non-indigenous settlers live side by side in remote communities (Lloyd, Suchet-Pearson, Wright, & Burarrwanga, 2010). Lloyd, Suchet-Pearson, Wright & Burarrwanga (2010) argue that while these spaces can still operate from a position of exclusion, borderlands can be a place of dynamic inclusion based upon self-determination and empowerment.

The second application of the term borderlands offers a somewhat different reading, diverging from this characterisation of borderlands operating as sites for a renewed sense of community and hybridity. In this usage borderlands are understood to be constructed through a new form of government modality where sovereign states extend their power and influence beyond the physical border of the nation state into peripheral regions through a variety of means (Del Sarto, 2009). The result is the creation of a ‘borderland’, or ‘buffer zone’ between the sovereign territories of the state and the world at large, designed to protect the state from unwanted incursions from outsiders. In this sense, the physical border, once the demarcation of authority in the modern international system, is reduced to the last line of defence. It is this understanding of borderlands that will be applied throughout the study.

There is a significant body of literature that has identified this pattern across the Global North, for the purpose of this chapter the literature discussed will focus solely upon the European Union and its neighbouring regions. In the guise of security, powerful states are able to extend the functional elements of their borders outwards into neighbouring regions, transforming the periphery into borderlands as a way of securing their own sovereign terrain. Across Europe scholars have focused upon the contradiction at the heart of this push towards security by analysing the way that core states of the EU are engaging in practices that, rather than fortifying geographical boundaries around the EU, are actually blurring them, resulting in the creation of what many have dubbed the EU's borderlands (Del Sarto: 2009; Gibney, 2005; Papadopoulou: 2005 & 2004; Kirisci: 2004; Boubakri: 2004; Collinson: 1996). The creation of this borderland functions as an effective buffer zone between core EU states and peripheral states. As Collinson (1996:79) argues:

The term buffer zone is used to denote an identifiable geographical zone "protecting", by non-military means, a group of powerful and essentially
stable states from a perceived non-military security threat deriving from the proximate region of economic and political instability. It thus denotes the age-old idea of seeking to secure borders by extending their depth.

In this instance it is potential asylum seekers that are deemed to be a security threat to the EU, warranting pre-emptive protective measures against their arrival. These manufactured borderlands become the new frontier, capable of performing traditional border functions, denying access to would be asylum seekers to the EU. The outcome is an externalisation of the EU’s humanitarian responsibilities under the Refugee Convention through the denial of access to the sovereign territories where the rights of asylum are enshrined. As Francis (2009:380) notes:

Increasingly, states officially endorse the traditional territorial definition of external borders while operating outside those borders to prevent the arrival of unwanted asylum seekers and irregular migrants ... Yet despite the territorial definition of its external borders, a recent ECRE study on the access of asylum seekers to the EU noted that FRONTEX was active in extending controls from the external borders outwards towards the high seas and into the territory of third countries.

The following section will explore these extraterritorial practices across parts of the Global North and the security purpose they serve before moving to a more detailed examination of the impact they have upon forced migration today. The patterns detailed in this literature help foreground some of the themes that will be applied to the analysis of data in later chapters particularly, how powerful states are able to externalise border controls into third countries, the exceptional spaces these policies create and the liminal conditions asylum seekers experience as a result of these actions. These findings are significant as they foreshadow the experiences of asylum seekers in Indonesia and the relationship that these experiences have to Australia’s externalised migration control policies.
The Securitisation of Migration: Non-Arrival Regimes and the Blurring of Traditional and Functional Borders across the Global North

A number of scholars have explored the shift in migration across Europe through the 1980s and early 1990s as a result of changing geopolitical power and policy initiatives (Betts, 2010; Bigo, Carrera, Guild & Walker, 2009; Papadopoulou, 2004; Castles, 2003; Okolski, 2000; Wallace: 1996; Collinson, 1996). These changes have been characterised as the transition from the Cold War era bipolar system to one of ‘interstate relations structured principally along core-peripheral lines in terms of both East-West and North-South relations’ (Collinson, 1996:77). A result of these seismic shifts, western states came to view migration as a serious threat capable of destabilising entire regions as people rather than states became viewed as the predominant security risk of the time. It is this conception that fostered policy responses predicated almost exclusively along defensive security lines (Collinson, 1996:78). In this environment states adopted a ‘containment strategy’ which would limit forced migrants’ ability to reach their sovereign territory. Influential scholar Matthew Gibney (2005) illuminates this process further with his exploration of more subtle ways in which governments of the Global North set about protecting themselves from unwanted migration, namely through the construction of ‘non-arrival regimes’ or ‘non-entrée regimes’.

Gibney differentiates ‘non-arrival regimes’ from traditional ‘deterrence based’ approaches to migration as the former ‘aims directly to impede access to asylum’ (Gibney, 2005:4) rather than traditional deterrence models that attempt to make a country a less desirable destination due to specific conditions. As the Refugee Convention is territorially limited, it has been widely assumed that states need only to prevent the arrival of potential asylum seekers in their territory to avoid responsibility to process their protection claims. As a result of this interpretation, traditional receiving or destination states now go to extreme lengths to prevent the arrival of asylum seekers within their national boundaries. While observing the evolution of this paradigm across Europe, Crisp (2003:4) notes:

The past three decades have witnessed a declining willingness on the part of states to admit refugees onto their territory, to allow them to remain there, and to provide them with the rights to which they are entitled under
international refugee law. As the High Commissioner for Refugees, Mrs Sadako Ogata, said before she left office in 2000: “Many countries are blatantly closing their borders to refugees while others are more insidiously introducing laws and procedures which effectively deny refugees admission to their territory.” “The threat to asylum,” she observed, “has taken on a global character”.

Powerful actors such as the EU are able to negotiate cooperation arrangements on border control with neighbouring states in return for favourable treatment in areas such as trade, security and development to achieve this (Del Sarto, 2009; Balwin-Edwards, 2007; Gibney, 2005). In so doing, the EU is able to subtly extend its border outward into neighbouring regions, creating an external barrier that forced migrants must overcome if they wish to seek protection in Western Europe. An asymmetric power dynamic is central to the forging of these types of agreements, for example, in the aftermath of the Cold War it has been claimed that Western Europe intentionally set out to transform central and Eastern countries along the periphery into ‘buffer zones’ in an attempt to stem the flow of unwanted migrants into Western Europe fleeing the former Soviet Bloc (Papadopoulou, 2004; Castles, 2003; Collinson, 1996). In this scenario the role of Eastern states was to act in accordance with the wishes of the West in regards to migration as opposed to acting as equal partners in (West) Europe’s migration-control regime (Collinson, 1996), absorbing a large number of migrants before they could cross into Western Europe.

What marks this as a distinct social process is the fact that developed nation states do not guard the borders against unwanted incursions through strength of arms or military force, but rather through the co-option of economically subordinate states, by linking much needed political support to the adoption of preferred migration policies within peripheral states’ sovereign territory, generally to the detriment of that state (Klepp, 2010; Del Sarto, 2009; Harmood, 2008; Balwin-Edwards, 2007; Zhyznomirska, 2006; Gibney, 2005; Papadopoulou, 2004; Collinson, 1996).

According to Del Sarto:

Attempts to co-opt the political and economic elites of North Africa and the Middle East into specific modes of EU governance, while excluding them from
Brussels’ decision-making process, is a crucial aspect of this process. (2009:3)

One of the key policy leavers Western Europe (and later the EU more broadly) has used to export its migration agenda to the region at large has been the development of policies such as the European Neighbourhood Program (ENP). Through this policy core EU governments are able to penetrate sovereign states through diplomatic, economic, trade, travel and security alliances, blurring the traditional borders between powerful EU states and their less developed neighbours. This is based on what Del Sarto labels ‘positive conditionality’, whereby ‘cooperative southern states undoubtedly obtain a better deal from Brussels’ (2009:11) than those states who are less willing to reform their migration policies in line with the wishes of the EU.

Beyond the exercise of ‘positive conditionality’, the literature has identified that the EU has developed a raft of policies designed to construct a non-arrival regime that specifically excludes would-be asylum seekers from the common Schengen area to avoid the activation of their Convention obligations. This has been achieved through a variety of complex and interlocking processes that shift the burden for refugee processing and protection onto peripheral states and transit countries. The major strategies identified across the literature that form the crux of this approach are pre-departure screenings, the ‘Safe Third Country’ policy (codified in the Dublin II Regulation) and readmission agreements with EU and non-EU states (Schuster, 2011; Gammeltoft-Hansen, 2011; Pirjola, 2009; Lutterbeck, 2009; Garlick, 2006; Koser, 2005 & 2001; Gibney, 2005; Kiriscri, 2004; Legomsky, 2003; Morrison & Crosland, 2001; Abell, 1999; Lavenex, 1998). Used in conjunction with one another these practices create an external barrier around core EU states, externalising migration control beyond state boundaries – limiting legitimate migration options for economic and forced migrants alike – and forcing the adjudication of asylum applications to be performed in transit countries along the periphery. The following section will briefly outline how this occurs and the impact it has had upon migration opportunities for forced migrants seeking protection in the region.
**Pre-Departure Initiatives**

Pre-departure initiatives work by transforming the nature of immigration control away from the physical border to a range of new places such as the high seas, consular officers, and foreign airports. As a result these practices allow for the ‘screening out’ of undesirable migrants before they are able to arrive at the border (Francis, 2009; Weber, 2006; Koser, 2005; Papadopoulou, 2004; Brouweer & Kumin, 2003; Collinson, 1996). An example of a pre-departure initiative is the requirement that foreign nationals hold a valid entry visa prior to arrival in the common territory. This prior authorisation allows the EU to restrict legitimate travel opportunities to people based on nationality, economic or character grounds, allowing for the screening out of potential asylum seekers before they arrive.

Western Europe’s decision to implement new visa requirements upon Sri Lankans in the 1980s and the Balkan states in the 1990s as a direct result of the political unrest in those regions at the time is a clear example of how these practices have been implemented in the past (Collinson, 1996:80) to limit the arrival of people who may hold legitimate protection claims to the EU.

Pre-departure initiatives function by performing border control before the border, as a result they are commonly coupled with carrier sanctions, in which commercial airlines and other authorised migration carriers face heavy penalties if detected bringing in persons without proper authorisation or documentation (Francis, 2009; Brouwer & Kumin, 2003). By imposing harsh carrier sanctions, states effectively shift the onus of border control away from government regulated borders to private enterprises in third countries. This coupling of pre-departure initiatives with carrier sanctions to deny potential asylum seekers access to the nation state has been widely critiqued in the literature (Del Sarto, 2009; Gammeltoft-Hansen, 2008; Hamood, 2008; Weber, 2006; Gibney, 2005; Brouwer & Kumin, 2003). As Francis (2009: 381) notes:

> Visa requirements and carrier sanctions ostensibly pursue the legitimate objective of general immigration control and civil aviation security. Looking more closely, the true purpose of such measures in many instances is simply to prevent asylum seekers from arriving in the territory of destination states.
The outcome of this situation appears to be an increase in irregular migration as a strategy for forced migrants to seek protection given that they are excluded from territories where their human rights are enshrined (Francis, 2009; Betts, 2006; Castles, 2003; Brouwer & Kumin, 2003; Collinson, 1996). The upshot of this practice according to Brouwer & Kumin (2003:6) is that states are:

devoting increasing energy and resources to intercepting and turning back migrants before they arrive at their borders. Interception measures, however, rarely include adequate procedures to distinguish those who need protection from those who do not. As a result, desperate people are left with no option but to resort to ever more dangerous and disruptive methods of migration.

A further advantage of extraterritorial processes for states is that they ensure that these practices are conveniently out of sight of domestic audiences (Mountz, 2011A; Gibney, 2005). This notion will be revisited in future chapters as it appears to be central to the mindset of policy makers in Australia in regards to offshore processing.

**‘Safe Third Country’ Policy and Readmission Agreements**

The ‘safe third country’ concept emerged as a result of the Schengen implementation Agreement and the Dublin Convention of 1990 (Abell, 1999; Lavenex, 1998). In its most recent iteration – the Dublin II Regulation – the ‘safe third country’ policy requires that:

asylum seekers who have travelled through other countries before reaching the country in which she or he is now claiming asylum will not have their asylum claim examined, but will be returned to the transit country instead, if it is a country to which the asylum seekers can nonetheless be safely sent. (Abell, 1999:63)

Essentially the Dublin II Regulation allows for the shifting of responsibility for claim processing from one EU state to another if it can be proven that the claimant transited through that state prior to arriving in the destination state. According to
Lavenex (1998) the ‘safe third country’ concept was designed to prevent ‘migration shopping’ or the simultaneous lodgement of asylum applications across multiple states. Additionally it was conceived of by the EU as a ‘redistributive mechanism’ to ensure appropriate burden sharing for refugee protection across the common Schengen area (Lavenex, 1998).

The ‘safe third country’ concept has since been expanded to include non-EU member countries considered ‘safe’ by the EU. To facilitate this EU states have sought readmission agreements with selected states from Eastern Europe and North Africa to ensure asylum seekers who pass through these regions can be forcibly returned and that the responsibility to process protection claims is that of the first ‘safe country’ which the forced migrant enters (Collinson, 1996). The role of readmission agreements is therefore to facilitate the expulsion of undocumented third-country nationals from states in which they are unauthorised to reside. According to the EU ‘contracting parties will readmit to their territory without any formality persons with the nationality of that country who are residing without authorisation in the other country or who have crossed its frontier illegally’ (Europa, 2013). According to Lavenex, ‘the expanding use of the ‘safe third country’ principle implies the unquestioned incorporation of a “wider” Europe into this new system of asylum cooperation’ (1998:126).

The ‘safe third country’ concept, along with enabling readmission agreements, have been widely critiqued in the literature (Gerand & Pickering, 2012; Fekete, 2011; Gammeltoft-Hansen, 2011; Schuster, 2011; Lutterbeck, 2009; Garlick, 2006; Abell, 1999; Lavenex, 1998; Collinson, 1996). Largely this criticism has focused upon the inequitable protection responsibility thrust onto transit countries as well as the diminished protection experienced by asylum seekers due to the disparities in processing systems across the region. According to Garlick:

The arrangements in Europe cannot be said to be a satisfactory solution for Europe, neither in terms of the impact on Member States collectively, nor in human terms for the people who are often caught in limbo or denied their rights through the flaws and inappropriate applications of the system. (2006:628)
In this perspective the increasingly securitised nature of international migration, restricting linear travel from country of origin to country of destination, is resulting in forced migrants having little choice but to travel irregularly by land, crossing multiple frontiers in their search for refuge. This has led to accusations that developed nation states are playing a central role in the construction of transit migration while simultaneously demanding that transit countries do more to stop onward movements to their regions (Lutterbeck, 2009; Kirisci, 2004; Koser, 1997; Lavenex, 1998; Collinson, 1996).

As a result, it has been argued that this policy shifts the burden of refugee protection onto transit countries or countries on the frontier, signifying an intensification of their protection responsibilities while minimising the burden on core EU states who are buffered from spontaneous arrivals through non-arrival regimes and the principle of the ‘safe third country’ (Gammeltoft-Hansen, 2012; Klepps, 2010; Soykan, 2010; Gerlick, 2006; Gibney, 2005). According to Hamood:

> The EU has placed considerable emphasis on externalizing matters of asylum and migration. By virtue of their proximity to Europe, North African countries, in particular Libya and Morocco are now at the forefront of this policy in which the EU seems to be trying to partially export the management of its borders and transfer its responsibilities for asylum onto third countries. (2008:20)

In the implementation stages, the European Council recognised the considerable effect this policy would have upon affected nations, stating that ‘the implementation of asylum policies poses severe budgetary and operational problems for these countries’ (Collinson, 1996:84). This is compounded by the fact that a number of countries labelled ‘safe third countries’ by the EU are developing nations, characterised by limited resources, porous borders, underdeveloped reception policies, political instability, and often poor human rights records (Hamood, 2008, Chatelard, 2008; Gil-Bazo, 2006; Garlick, 2006; Legomsky, 2003). For example Libya, Tunisia, Morocco, Turkey and Jordan are all classified ‘safe third countries’, and are thus responsible for the processing of a disproportionate number of asylum applications each year under this policy (Baldwin-Edwards, 2006). Meanwhile core
EU states, such as France, Germany and Belgium, safeguarded from the majority of arrivals by these peripheral states, retain the ability to forcibly return those who do make it through these exclusionary barriers. Given the effectiveness of these apparatuses to exclude asylum seekers it is easy to see why the concept of a buffer zone or borderland is so readily conjured. Writing of the drop in asylum claims lodged in developed countries after 1995 as a result of these policies, Castles (2003:14) claims that the situation is a result of these practices:

mainly due to the “non-arrival regimes” set up by developed countries to prevent refugees entering and making asylum claims. This has led to containment of refugees in their area of origin, as well as to growth of people smuggling as the only way for many desperate people to make asylum claims.

The consequences of the European approach based on externalisation are many and varied. The following section will explore some of the most prominent of these through the literature that will then be considered in the context of Asia and the Pacific region in the following chapters. A number of scholars have explored the impact of Europe’s non-arrival regime on the institution of asylum more broadly, the increase in transit migration as a reactive strategy to overcome exclusionary policies, the impact this has upon peripheral states transformed as a result of external policies, and on asylum seekers themselves who are directly affected by the shifting protection environment. What these studies have found is not edifying. In fact while these instruments were adopted to minimise unwanted migration into Europe, the literature tends to argue that these policies have had a number of unintended outcomes including a drastic increase in irregular migration.

Assault on Asylum: The End of Refugee Protection in Europe?
A number of scholars have been critical of Europe’s adoption of extraterritorial border control mechanisms claiming that they reduce safeguards in the Refugee Convention that are essential to the protection of forced migrants’ human rights. At the forefront of this conversation is the issue of refoulement (Gammeltoft-Hansen, 2012; Fekete, 2011; Klepp, 2010; Hamood, 2008; Balwin-Edwards, 2007; Garlick, 2006; Schuster, 2005). In his case study of irregular migration in North Africa, Baldwin-Edwards (2007: 320) details how Italy established readmission
agreements with Morocco, Tunisia and Libya in 2003 through linking development aid with migration policy. Through these agreements Italy has returned thousands of irregular migrants after denying them the right to apply for asylum in Italy. Subsequently it was found that a large number of individuals expelled from Italy back to Libya (deemed a safe third country by EC) were later refouled to Egypt and Nigeria in breach of international law. These findings have been replicated by a number of studies that have examined Italy’s application of the ‘safe third country’ principle to forcibly expel asylum seekers – a practice some consider to be an act of refoulement (Klepp, 2010; Hamood, 2008; Gerlick, 2006). In response to criticism of this practice, Klepp claims Italy sought to strengthen its extraterritorial controls to reduce the number of asylum seekers who may arrive at its border in future.

After the heavy criticism that followed the return of migrants from Lampedusa to Libya in 2004 and 2005, Italy tried to influence Libya to cooperate more closely in the maritime border regions. The agreement on maritime co-operation is a break-through: for the first time the treaty allows Italian patrol boats in Libyan territorial waters. There will be joint maritime patrols by the Italian Police and Libyan army. These patrols will allow the return of migrants to Libyan territory who have left its shores. After critics stopped the refoulement practices of 2004 and 2005, the Italian government has now found a loophole to return migrants who have already left the Libyan coast (Klepp, 2010:5).

Through the strengthening of non-arrival regimes – operationalised in neighbouring regions – Italy was able to secure its own border and shift the burden for refugee protection back on to Libya and was thus able to avoid future accusations of refoulement by immobilising migrants in Libya. Practices such as this support the argument that human rights standards remain subordinate to state sovereignty and raise serious questions regarding Convention states’ culpability in practices of refoulement (Fekete, 2011; Klepp, 2010; Hamood, 2008; Balwin-Edwards, 2007; Schuster, 2005). The widespread nature of this practice has led some scholars to forge new language in order to identify these practices more specifically. According to Hyndman and Mountz (2008), the collection of practices that result in the exclusion of asylum seekers from protection spaces resulting in their forced return to places where there is insufficient safeguards for their rights could be understood
as a form of ‘neo-refoulement’. In this the authors draw upon Arendt’s conception of the ‘banality of evil’, claiming it stems not from the loss of rights themselves but rather from the loss of a community willing and able to guarantee them (2008:249). The Refugee Convention remain intact as a human rights instrument, it is the ability for people to activate these rights that is reduced. This perspective finds resonance across the Global North as scholars examine the EU’s interaction with its neighbours, reshaping protection in the region at large. While some concessions towards the EU’s capacity building efforts in neighbouring regions and support in implementing human rights and protection policies have been noted (Garlick, 2006), largely the literature has focused upon the denigration of the international protection system through policies of externalisation (Klepp, 2010; Del Sarto, 2009; Hyndman & Mountz, 2008; Zhyznomirska, 2006; Gibney, 2005; Schuster, 2005; Papadopoulou, 2004; Crisp, 2003; Morrison & Crosland, 2000; Levenex, 1998; Collinson, 1996). Again this perspective will be returned to in later chapters when examining the experiences of forced migrants attempting to seek protection in Australia.

One of the other potentially problematic issues to emerge from the literature is the run-on effects these policies can have on neighbouring regions. It has been suggested that as a result of the EUs ‘containment agenda’, many Eastern and Southern states have been forced to make policy changes that mimic Europe’s initiatives. This is due to rising fears that they would be left to deal with disproportionate levels of asylum seekers as was the case for many Central European states immediately following the breakup of the former Yugoslavia (Papadopoulou, 2005). Amnesty International has argued that this process will continue to replicate itself, proposing that under increased pressure more states will be inclined to follow the agenda set by Western Europe, privileging border security over human rights, thereby putting the entire refugee protection system in jeopardy (cited in Collinson, 1996:84).

This conclusion has been supported by other prominent scholars concerned with the broader effects of the EU’s attempts to externalise its responsibilities to refugees through the creation of borderlands (Del Sarto, 2009; Zhyznomirska, 2006; Gibney, 2005; Papadopoulou, 2004; Crisp, 2003; Levenex, 1998). This defensive positioning
by the EU in turn provides the motivation for affected states, feeling disproportionately burdened by their new responsibilities at the frontier, to place more focus on regulating their borders (Levenex, 1998). As this cycle continues to replicate itself protection spaces and opportunities are reduced – replaced instead by an increasing shift towards migration control across the globe – in a domino effect. The result of this shift is that forced migrants, compelled to move, find they have less capacity to do so. This shift towards exclusion beginning in Western Europe and emanating outwards has led some to pronounce this century, ‘the age of involuntary immobility’ (Carling, 2004, cited in Weber, 2006). Gibney (2005) argues that non-arrival regimes across the EU have effectively disabled all legal pathways through which asylum in Europe can be sought, leading him to conclude:

We have reached the *reductio ad absurdum* of the contemporary paradoxical attitude towards refugees. Western states now acknowledge the rights of refugees but simultaneously criminalize the search for asylum. (2005:4)

The effect of this increased border control appears to be the application of increased pressure further down the migration chain, for example Koser (2001:86) documents the spread of non-arrival regimes across parts of Asia Minor with the increasingly restrictive migration policies of Pakistan, Iran and Tajikistan directed towards Afghanistan in response to the number of Afghans on the move as a direct result of the 2001 conflict. Koser found that the justifications for the restrictions provided by these states included economic, environmental, social and security costs but also made reference to the pressure induced by the industrialised world as a result of their non-arrival regimes (2001:86). The outcome for Afghans was a serious reduction in the ability to flee persecution or seek protection beyond the region.

The assault on access to the traditional system of protection enshrined in international law has been charted to have a number of other consequences; significantly these non-arrival regimes have been seen to reshape forced migration patterns on a large scale. Of significance to this current study is the identification of the emergence of transit migration as a key strategy for navigating the Global North’s exclusionary policies.
**Effects on Migration Flows, Increase in Transit Migration**

As a consequence of non-arrival regimes the evidence suggests that forced migrants experience a reduction in their migration opportunities (Francis, 2009). In response to this, forced migrants are turning to transit or ‘step migration’, as a strategy to overcome their forced immobility and penetrate exclusion zones in order to access asylum (Gerard & Pickering, 2012; Betts, 2006; Papadopoulou, 2004; Koser, 2001; Icduygu, 2000).

Transit migration has become an established pattern of movement in the 21st century (Koser, 2001). While individuals may enter a country with the intention of remaining temporarily, it has been documented that in reality this temporary stay can go on indefinitely depending on a number of factors (Papadopolou, 2005). Somewhat paradoxically, in many cases forced migrants move to a neighbouring region in the hope of remaining long term, only to be forced into further migration due to specific conditions in the transit country.

Writing about the increase of transit migration in the 21st century Danis argues that:

> Transit migration has become a significant migration pattern in the Middle East and the Mediterranean basin due to strengthening entry regulations in the west. Thousands of migrants from politically and economically unstable countries opt for step-migration with long periods in the transit country. (2006:i)

While most research thus far has focused upon transit migration as a strategy for economic migrants trying to reach the West (Drbohlav and Janska, 2009; Boubakri, 2004; Icduygu, 2000), there is evidence that forced migrants are following this trend, using step migration as a tactic to find sanctuary (Baldwin-Edwards, 2007; Collyer, 2007; Papadopolou, 2005). However it is also becoming apparent through the research that transit migration is not always intended, but rather becomes a critical survival strategy for forced migrants once their original migration has begun. There are a number of reasons why forced migrants may embark upon transit migration, according to Papadopolou (2005:4):
In the case of refugees, the first asylum country does not provide effective refugee protection and durable solutions. Second, transit migration takes place because of the countries’ key geographical position next to an area of significant political and economic gravity (such as the EU). Moreover transit migration is a consequence of restrictive migration policies and the ‘containment’ trend in the neighbouring states: the more restrictive the classic destination countries, the more likely are migrants to ‘get stuck’ in the buffer zone. Third transit migration takes place because of gaps in the legislation and administrative procedures, porous borders and insufficient control capabilities, incomplete migration policy developments and established informality in the first host country’s labour market. Finally, transit migration occurs because of the need for family reunification.

The literature demonstrates that transit migration has cemented itself as a social reality for forced migrants trying to penetrate exclusionary zones of the Global North in the 21st century. Collyer points out that ‘increasingly fragmented journeys undermine our understanding of migration as an unproblematic transition from a place of origin to a place of destination’ (2007: 668). In response to this new paradigm, scholars are shifting their attention toward the exploration of transit migration and its consequences. The following section examines this emerging body of work in more detail.

Through these studies a greater understanding of the experiences of transit migration across Europe and its surrounding regions can be achieved highlighting a number of influential themes and patterns. Once more these trends will be applied to the study of asylum seekers in Indonesia to illuminate some of the broader consistencies as well as explicate some of the regional differences.

**Effects on Transit Countries**

It is clear that the EU’s non-arrival regime is having a major impact upon peripheral regions, transforming a number of states along the frontier into migrant holding centres, as the EU’s containment policy takes effect (Johnson, 2013; Mountz, 2011A;
Lutterbeck, 2011; Soykan, 2010; Collyer, 2007; Baldwin-Edwards, 2007, 2005; Zhyznomirska, 2006; Papadopoulou, 2005; 2004; Kirisci, 2004). As a result, countries on the borderlands are encountering new political and social issues as a result of the increasing number of irregular migrants in their jurisdiction (Gerard & Pickering, 2012; Lutterbeck, 2009; Baldwin-Edwards, 2007; Zhyznomirska, 2006; Papadopoulou, 2005; 2004; Kirisci, 2004). According to the Assistant High Commissioner for the Protection of Refugees, Erika Feller, ‘large scale arrivals are seen as a threat to political, economic or social stability and tend increasingly to provoke hostility and violence’ (Feller, 2006: 514).

Turkey is a paradigmatic example of this process. In many accounts (Papadopoulou, 2004, 2005; Kirisci, 2004) the imagery of a buffer zone is invoked as a way of explaining the EU’s approach to stemming irregular migration into its core by transforming Turkey, centred directly between the EU and the refugee generating region of the Middle East, into borderlands under the guise of ‘burden sharing’. This conclusion has been echoed in a number of other research projects that have examined the impact of the EU’s common immigration policy on Turkey (Soykan, 2010; Sorenson, 2006; Danis, 2006; Icduygu, 2000).

Kirisci (2004) outlines the issues that Turkey is facing as a transit country situated between a refugee generating region and the periphery of the EU. Kirisci explores the challenges faced by Turkey as it attempts to balance its international responsibilities to protect refugees whilst reforming its immigration and asylum policies as a condition of membership into the EU. In this negotiation, unequal power relations are revealed. The example of the readmission agreement between EU member states and Turkey is a key example of this. While member states now have the power to return irregular migrants to Turkey, the lack of bargaining power has left Turkey unable to secure such agreements with its neighbouring countries such as Iraq, Iran, and Egypt whose citizens are transiting through Turkey en route to Europe. This situation has the power to transform Turkey into a migrant holding ground where individuals are unable to move forward yet are unlikely to be expelled. As Kirisci finds:
Officials have expressed resentment with respect to the level of pressure they have come under to start these negotiations. They fear Turkey will become a dumping ground for unwanted immigrants by the EU. Turkish officials are especially concerned because Turkey is encountering great difficulties in initiating negotiations let alone actually concluding agreements with many of the sending countries of illegal migrants. They fear this will lead to a situation where the EU would be able to send back illegal migrants to Turkey while Turkey will not have the means of ensuring their return to their respective countries of origin. (2004:8)

Kirisci’s research concludes that under the Acquis, Turkey's accession into the EU would require it to become a major processing centre for asylum seekers as a result of the EU’s ‘safe third country’ principle. He claims this situation would severely test the limits and capabilities of the country already shouldering a large responsibility for stemming the irregular flow of people into the EU from the Middle East. Kirisci concludes that without adequate burden sharing mechanisms in place, Turkey could become a buffer zone, rather than a member state that shares benefits and responsibilities equitably (2004:12).

Papadopoulou (2005, 2004) found similar themes in his analysis on transit migration in Greece claiming Central and Eastern countries have come under extreme pressure in the past to reform their immigration policies in line with the desires of core EU states. As a result of his study Papadopoulou suggested that ‘to a large extent, the institutional framework of migration and asylum in the EU member states is one of control and restriction’ (2004:167).

Similar findings are reflected in Johnson’s (2013) study on Spain. Speaking to the situation unfolding in the borderland between Morocco and Spain, Johnson claims that the European agenda is to restrain unwanted migrants before they can reach the common territory thus creating a transit zone. According to Johnson, ‘Melilla is before the common territory. It is also, however, within the auspices of the European policy and as such migrants who cross the fence find themselves caught in stasis, unable to move either forward or back’ (2013:80).
Yet perhaps the most pertinent example of how migration policies of the Global North can impact upon peripheral regions is in the case of Malta. Prior to 2001 it was claimed that the main entry point into Europe was through the Adriatic route between Albania and Italy (Lutterbeck, 2009:122). Yet effective border control in this area has re-diverted forced migrants through Malta which has witnessed a rapid increase in irregular migration. As a result of this shift Malta has become a focal point for scholars working at the nexus of border control and irregular migration (Gerard & Pickering, 2012; Lutterbeck, 2009; Luhmann, Bouhenia & Giraux, 2007; Sorensen, 2006). According to Lutterbeck (2009:123):

This diversion effect shows how migration into Malta is also profoundly affected by the immigration control measures of other Southern European countries, and how plugging one hole in the EU’s outer perimeter quickly leads to enhanced pressure on other parts of its external borders.

As a result Malta – once a country of emigration – has quickly been transformed into a transit country, leading Lutterbeck to claim that Malta is the victim of Italy’s successful border closure (2009:123). Due to Malta’s new position as a prime transit route into Europe, it has come under increased pressure regarding immigration and particularly border patrol. As Gerard & Pickering note:

Upon arrival, asylum seekers are detained in large facilities on Malta. During processing of their application for humanitarian protection and subsequent to their receiving humanitarian protection, the entire island acts as a warehouse for their ongoing containment and exclusion from Europe. The process of immobilizing irregular migrants results in highly gendered and racialized practices that criminalize extra-legal border crossing and enact the punishment/containment of irregular migrants to Europe.

Unsurprisingly Malta has been one of the most outspoken opponents to the Dublin II regulation and the principle of the ‘safe third country’ given the massive increase in their own protection role as a result of these agreements and its transformation into an asylum seeker buffer zone (Gerard & Pickering, 2012).
Beyond the political pressure that peripheral countries face in fortifying external frontiers and shouldering the lion’s share of the processing of asylum applications for greater Europe, countries caught in the buffer zone experience a multitude of social and political issues resulting from the existence of a large, irregular population within its borders (Feller, 2006; Zhyznomirska, 2006; Papadopoulou, 2004; Kirisci, 2004). This scenario can result in heightened social tensions, negatively impacting upon the host society, according to Papadopoulou:

The presence of [an] irregular or semi-legal population can reinforce intolerance and xenophobic trends towards migrants in the country in general, and impede the process of integration of the resident migrant populations. (2005: 15)

Furthermore the presence of this population can erode the notion of state sovereignty and at the extreme end, pose a risk to national security. According to Zhyznomirska (2006:28), ‘the European Union, seeking to create an “area of freedom, security, and justice” in the region, exports the burden of migration management to its neighbouring countries and thus creates security threats’. Zhyznomirska, drawing on the experience of the Ukraine, argues that transit countries become destabilised by EU policies because they:

Lack experience and the institutional capacity to effectively deal with international migration. Transit countries frequently do not have the infrastructure, resources, or the juridical norms and institutions necessary to guarantee the protection and security of immigrants and asylum-seekers. (2006:30-31)

This situation can also turn volatile if the host country is a developing nation with a local population that believes asylum seekers are receiving better treatment or enjoying a standard of living higher than citizens. While the literature that charts the impact on newly formed transit countries provides important contextual knowledge, it is the small number of empirical studies that have been conducted with forced migrants caught within these transit zones that is of central interest to the current investigation.
Effects on Forced Migrants

As a result of these restrictive migration policies advanced by the EU, many scholars began exploring the relationship between these state driven non-arrival regimes and the increase in irregular migration supported by people smuggling operations as forced migrants search for ways to overcome their immobility in the borderlands.

A ground breaking study by Koser (1997) conducted on Iranian asylum seekers in the Netherlands between 1994-1996 produced three major findings. First, that an increasing number of asylum seekers are being forced to turn to people smugglers in order to negotiate restrictive asylum policies across Europe. Second, that as a result of their interaction with people smugglers, asylum seekers were being exposed to new forms of vulnerability. And that finally, the blame for this new vulnerability lies more with current asylum policies than with the smugglers and asylum seekers themselves (Koser, 2000:91).

Since this time many other scholars have explored the connection between restrictive asylum policies and the growth of people smuggling operations. Mounting research argues that at least in regards to Europe, non-arrival regimes coupled with the dismantling of traditional migration routes has resulted in the growth of people smuggling regimes, accessed by both economic migrants and asylum seekers alike (Bigo, Carrera, Guild & Walker, 2009; Chatelard, 2008; Hamood, 2008; Betts, 2006; Kirisci, 2005; Papadopoulou, 2005 & 2004; Koser, 2005, 2000, 1997; Castles, 2003; Green & Grewcock, 2002; Morrison & Crosland, 2000; Ghosh, 1998; Crisp & Van Hear, 1998). As Morrison & Crosland state, ‘the fear is that the social construction in policy agendas of all asylum seekers as illegal migrants is becoming a social reality as asylum seekers are forced to turn to traffickers in order to enter Europe and apply for asylum’ (cited in Koser, 2000:92). According to Green & Grewcock, the criminalisation of asylum through the policing of state borders:

forces many seeking asylum into the hands of exploitative organised crime networks, which increasingly offer the only hope of escape for those fleeing repression, terror, discrimination or civil conflict, it ensures such organised crime networks expand and flourish. (2002:88)
Chatelard’s (2008) research on Iraqi asylum seekers in Jordan provides first hand qualitative data attesting to this connection:

Most of the Iraqi migrants I have talked to who had resorted to smuggling rings stated that they would rather have moved onward legally than to break immigration laws and take risks. They said that they only resorted to irregular migration in the absence of legal avenues (Chatelard, 2008: 358).

This is a common theme among these studies, with many asylum seekers and refugees expressing reservations about undertaking irregular journeys (Hamood, 2008; Collyer, 2007; Papadopoulou, 2005 & 2004; Kirisci, 2005). Koser’s (2000) study found that many respondents worried about being thought of as illegal. Many believed that their final refugee status determination would depend upon whether they were classified as legal or illegal. Whether this is the case or not, the level of anxiety expressed by the respondents regarding their perceived criminality is telling. It suggests that across Europe and the Middle East, engaging the services of people smugglers, rather than being a preferential method, is actually the last resort for individuals in this position due to the perception that this action has profoundly negative affects upon the individual’s refugee status (Koser, 2000: 101).

A further disadvantage in engaging people smugglers that the European studies identified was the loss of control over the migration process. For many asylum seekers this eventuated in finding themselves in a final destination country where they did not have any friends, family or social network, contributing to feelings of isolation and lack of autonomy (Gerard & Pickering, 2012; Koser, 2000).

Despite the mounting evidence linking border security and non-arrival regimes with an increase in irregular migration facilitated by people smuggling operations, policy makers across Europe continue to pursue a border security agenda over human security (Johnson, 2013). As a result of this it appears that forced migrants are being exposed to new levels of vulnerability and insecurity throughout their migration.
The State of Exception and Increased Vulnerability and Insecurity of Asylum Seekers in Transit

One of the major consequences of this link between non-arrival regimes and irregular migration revealed in the European literature is that asylum seekers are being exposed to increased levels of vulnerability and insecurity as a result (Johnson, 2013; Gerard & Pickering, 2012; Betts, 2010, 2006; Hamood, 2008; Collyer, 2007; De Genova, 2002; Koser, 2000). Research has found a direct link between increased vulnerability experienced by forced migrants and the dismantling of legitimate migration channels through the creation of non-arrival regimes across the EU. As asylum seekers are rapidly turning to people smugglers to overcome their forced immobility, individuals are being exposed to new and more extreme forms of vulnerability such as economic exploitation though exorbitant fees, theft of money and personal property, loss of identity through the confiscation of identity documents, debt bondage, as well exposure to physical danger through inhuman conditions in transit (Salt & Stein, 1997:472).

Furthermore these same studies found that states play a central role in exposing asylum seekers to vulnerability while in transit through the process of rendering individuals ‘illegal’ as a result of their irregular migration. This classification strips asylum seekers of their rights, relegating them to ‘non-citizen’. By categorising asylum seekers in this way states are able to position them outside of the standard rule of law. This process has led a number of scholars to apply Agamben’s (1998) notion of the state of exception to the study of forced migration (Johnson, 2013; Mountz, 2011a, 2011b; Miggiano, 2009; Bigo, 2007; Hyndman & Mountz, 2006; Browning, 2006; Mezzadra & Neilson, 2003; Perera, 2002).

The State of Exception and Asylum Seeking

The state of exception was a term originally used by Carl Schmitt when developing his understanding of sovereignty. Historically Schmitt submits that the use of sovereign power was the result of periods of political crisis, where governments suspended the rule of law to defend the state. According to Schmitt, sovereign is ‘he who decides on the exception’ (Agamben, 2005:1). By this definition the state of
exception is always limited and it is always extraordinary – a temporary state of affairs that exists until the emergency can be resolved and normality resumed. However for Agamben this state of exception is not unusual but rather represents the original relationship between sovereign power and life.

Agamben (2005) defines the state of exception as the expansion of sovereign power through the purposeful suspension of the rule of law. These exceptional places created by this executive power become the ‘no-man’s-land between public law and political fact and between juridical order and life’ (Agamben, 2005:1). The state of exception is not a special kind of law, rather, it is a suspension of the juridical order itself (2005:4). This relationship at the heart of modern democratic governments allows for illiberal practices to occur in these exceptional spaces that would otherwise be forbidden. In the state of exception people are at once under the power of the sovereign yet removed from the law, or as Perera (2002: n.p) states, those who inhabit this space ‘are those deemed to have no claim on the nation but, paradoxically, are brought even more firmly under its control by virtue of their exclusion from its laws’. They are included in the political order only through their exclusion. The result is the creation of a ‘zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective rights and juridical protection no longer make any sense’ (Agamben, 1998: 170).

Agamben’s work lends itself readily to the study of contemporary forced migration, the detention of irregular migrants and the use of extraterritorial powers beyond the physical limits of the state. Central to Agamben’s notion of the state of exception is his concept of The Camp. In his germinal text Homo Sacer, Agamben (1998) defines The Camp as:

> The space that is opened when the state of exception begins to become the rule. In the Camp, the state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order. (Agamben, 1998:168-169)

The normalising of these non-spaces holds many parallels with ‘the spatial tactics of exclusion’ (Hyndman & Mountz 2006:78) pursued by states of the Global North
discussed above. Refugee camps, detention centres, border checkpoints, migration reception centres and international airport zones have all been previously conceptualised as camps in the Agambian sense (Johnson, 2013:76).

In these exceptional spaces people are reduced to a bare life (homo sacer) in the sense that they are removed from the political order and reduced to mere biological existence. According to Larsen (2012: n.p) ‘individuals captured in the juridical-political space of the camp, within the state of exception, are stripped of legal and political rights, becoming legally unclassified beings’. Asylum seekers caught in newly created buffer zones can be considered the contemporary embodiment of this process – they are at once held in a state beyond legal recognition of their rights while simultaneously coming under the control of sovereign powers. In these sites asylum seekers fall into precarious legal arrangements with uncertain political status and limited rights. As will be demonstrated over the coming chapters, it is often in these non-spaces (located in the borderlands) where executive power is exercised without responsibility. It is the existence of these exceptional places that allows for the exclusion of individuals independent of any criminal activity in the name of state security (1998:167). Due to the securitisation of migration, asylum seekers who move irregularly across borders have been scripted as a threat to the nation. As a result they are now legitimately deterred through exceptional powers gained in response to the ‘willed’ emergency. As Johnson notes, ‘the camp, then, is a site of control in which elements that are disruptive to the nation state, such as irregular migrants, can be managed’ (2013:83).

A number of studies have traced the process that consigns asylum seekers to bare life in the state of exception, focusing particularly upon how detention fragments their rights, at once bringing them under the direct control of the state while simultaneously placing them beyond the law (Johnson, 2014; Mountz, 2011; Owens, 2010; Browning, 2006;). According to Owens (2010:140) ‘the refugee camp is an exemplary zone of indistinction where individuals can be subject to various forms of violence without legal consequences on territory that is outside the normal juridical order’. 
According to Mountz (2011b:384) the usefulness of the application of this theory to the study of asylum seekers in the modern era is primarily because Agamben ‘dwells in zones of exception and offers conceptual tools to begin to make sense of exclusionary geographies and exceptional spaces’. This framework will be utilised in Chapter Five in order to analyse the experience of participants in transit in Indonesia where it will be argued that people are reduced to bare life, inhabiting the state of exception.

In the European setting a number of studies have found that it is within these exceptional places along the borderlands, outside the legal frameworks and human rights standards that the intersection of vulnerability, forced immobility and lack of legal status combine with drastic consequences for asylum seekers (Gerard & Pickering, 2012; Fekete, 2011; Betts, 2010; De Genova, 2002). Once more drawing on the Moroccan-Spanish cooperation, Johnson (2013) highlights how this situation exposes asylum seekers to extreme forms of abuse:

The enclaves of Ceuta and Melilla have a unique role. They are simultaneously part of Europe, and outside of the “fortress”. In the space of the autonomous city, migration to Europe has an exceptional character. Far from being included in the migration zone of Europe, within the enclaves the violence and repressive elements of the securitized migration regime lose what thin veil of humanitarian motives remains present on the continent. (Johnson, 2013:80)

Poor or non-existent reception policies in the country of first asylum have been identified as contributing to asylum seekers’ precarious condition and heightened sense of vulnerability leading to irregular migration (Hamood, 2008; Chatelard, 2008; Papadopoulou, 2004). This ranged from immediate dangers such as harassment or refoulement to the lack of long-term settlement opportunities such as the ability to work or become a citizen (Gerard & Pickering, 2012; Fekete, 2011; Betts, 2010; Papadopoulou, 2005). According to Papadopoulou (2004:175):

being in transit is a period of vulnerability, insecurity and socio-economic marginalisation ... undocumented migrants live with the constant threat of deportation, and registered asylum seekers with the constant anxiety about
the outcome of the asylum application. This transitional period can be quite prolonged, stressful, and frustrating ... in this reality, this is an invisible population living on the margins, with no obligations and no rights.

It must be noted that due to the EU’s ‘safe third country’ policy it is understandable why so many peripheral nations along established migration routes would baulk at the idea of providing in-country resettlement due to the lack of burden sharing embedded in the Dublin II Regulation. Despite this, conditions in transit countries – notably the lack of legal protections for asylum seekers – clearly play a role in fostering the conditions for onward irregular migration across Europe and its peripheral regions.

**Conditions in Transit and Irregular Migration**

Hamood’s (2008) case study on Libya is a key example of how conditions in transit can influence further migration. Libya has yet to establish any specific policies in regards to refugees or asylum seekers, rather all migrants are treated as economic, with no distinction or special rights attributed to different categories (Hamood, 2008:25). Due to the lack of legislation it is very difficult for individuals to apply for refugee status in Libya and most remain undocumented and at constant risk of refoulement.

Chatelard’s (2008) study has a similar tone in that while she implicates Europe’s non-arrival regime in the rise of people smuggling operations, she also highlights the role that conditions in transit countries play. Chatelard argues that the lack of sufficient reception policies in the country of first asylum, in this case Jordan, was a determining factor for secondary (or irregular) migration (2008:346).

Jordan shares a land border with Iraq, making it a key transit destination for many forced Iraqi asylum seekers. Like many developing states Jordan has adopted a semi-protectionist policy towards forced migrants, maintaining an open border with Iraq, allowing individuals to enter temporarily while denying them any legal status as asylum seekers (Chatelard, 2008). The lack of reception policies and official recognition of individuals’ asylum status contributes to the increased vulnerability
of the Iraqi migrants (Chatelard, 2008). The inability to participate in the formal labour market, gain access to education, legitimate housing or health services are all examples of ways in which individuals are exposed to increased vulnerability and exploitation. While Jordan is not a signatory to the Refugee Convention, it does allow for in-country processing of asylum claims through the Refugee Status Determination (RSD) process by UNHCR staff, however long term settlement is not an option; recognised refugees must be resettled through humanitarian programs in third countries. This arrangement is analogous to Indonesia in this regard. Jordan also has a very low acceptance rate for Iraqi asylum seekers through its RSD compared to many countries of the Global North, a fact that has apparently become well known in the Iraqi diaspora (Chatelard, 2008:345). This, Chatelard claims, has led many Iraqi asylum seekers to avoid lodging protection claims in Jordan, hoping instead to apply in a country with a stronger success rate thus contributing to onward irregular migration.

Chatelard’s (2008) investigation into Iraqi asylum seekers in Jordan also revealed another important phenomenon. Chatelard found that for the majority of respondents the most influential factor directing their migration choice was the perception of open borders and the ability to move through official pathways into Jordan as opposed to other potential destinations such as Turkey, Syria or Iran (2008:347). While co-religionists and family members were present in Iran for Shiites and Syria for the Assyro-Chaldeans, Jordan was the chosen destination due to individuals’ reluctance to move irregularly as both the Iranian and Syrian border remained closed to Iraqis at the time. These findings once more suggest that forced migrants were reluctant to move irregularly across borders and sought legal border crossings where they were available (Chatelard, 2008:347).

Only one third of Chatelard’s respondents reported that they had moved to Jordan to facilitate further onward migration. In these cases family reunion was the primary justification. Most participants stated that they migrated to Jordan with the hope of remaining there until the situation in Iraq became stable enough for their safe return.
This is an important study as it raises a number of crucial factors often overlooked in the literature. First, not all migrants set out with the goal of reaching the West, many would prefer to stay close to their country of origin in the hope of one day returning. Second, often the reason for further migration is not economic as is commonly characterised, but rather due to the conditions individuals encounter in the transit country, often as a result of insufficient reception policies and procedures to ensure individuals’ human rights are protected. The lack of protection in these spaces may compel an asylum seeker to continue their migration in search of safety; however, it is usually in this scenario that individuals become aware of their forced immobility as a result of non-arrival regimes. It is this precarious position that leads many individuals to engage people smugglers to overcome their new-found immobility. This position has been reiterated by Baldwin-Edwards’ (2005) exploration of the North African countries, Morocco, Tunisia and Algeria; Papadopoulou’s (2005, 2004) work on irregular migration in Greece; and Kirisci’s (2004) focus on Turkey.

Yet perhaps the most extreme form of vulnerability that asylum seekers are exposed to as a result of irregular migration are the physical dangers posed by the migration act itself. As border security technology advances, people smugglers adapt by forging more dangerous migration routes. These clandestine crossings place irregular migrants in more precarious situations as the pressure to avoid detection by authorities increases. As a result deaths at the frontier have increased drastically alongside Europe’s exclusionary stance, leading UNHCR to decry 2011 as the deadliest year on the Mediterranean since records began (Heller, Pezzani & Studio, n.d). A number of scholars have investigated the correlation between Europe’s exclusionary position and the migratory pressure to cross international borders embodied by forced migrants (Weber & Pickering, 2011; Weber & Grewcock, 2011; De Haas, 2011; Heller, Pezzani & Studio, n.d; Gammeltoft-Hansen, 2008). The overwhelming conclusion is that state policies, rather than people smugglers, or migrants themselves, are responsible for this risky trend. As Weber and Pickering point out:

*Just as illegalized border crossing has been reconstructed in terms of the organized crime of people smuggling, illegalized migrants may be readily*
depicted as their hapless victims. We therefore find governments arguing that more effective border controls are needed, not merely to protect the integrity of the nation-state, but also to protect excluded groups from taking risky voyages in the first place. This argument becomes self-reinforcing – justifying even stronger measures designed to deter, pre-empt or contain. (2011:163)

As is demonstrated by Weber and Pickering (2011) this self-reinforcing scenario contributes to the push towards border security while uncritically ignoring the role that exclusionary policies play in fostering the demand for such movements. This theme will be revisited in Chapter Three when discussing government rhetoric surrounding the need for increased border security while the first hand consequences of such an approach will be explored through participants’ personal narratives in Chapters Four and Five.

**The Role of Social Networks in Transit Locations**

The experience of transit migration for many refugees and asylum seekers is encapsulated by disruption and disconnection. As such, how these individuals construct themselves within this purgatory is crucial to their survival. Studies exploring survival strategies are becoming an important source in understanding how asylum seekers and refugees negotiate this often challenging and protracted situation between departure and resettlement (Gerard & Pickering, 2012; Chatelard, 2008; Collyer, 2007; Danis, 2006; Papadopoulou, 2005; Koser, 2000).

Social networks have always played a major role in facilitating international migration along multiple stages, from the decision-making process, the choice of destination, through to the resettlement experience in the host country (Castles, 2003; Massey, Arango, Hugo et al., 1993). In the same vein, social networks have been identified as a vital component in an individual’s ability to overcome the purgatory engendered by the transit experience (Chatelard, 2008; Danis, 2006; Koser, 2000). As Chatelard notes, ‘several of these studies emphasise the role of networks based on common affiliations such as ethnicity, kinship, residential
proximity or religion’ (2008:342). In their 2006 study on transit migrants in Istanbul, Danis found that ‘religious networks in addition to familial ones played a significant role in the organisation of Iraqi Christian migrants’ (2006:10). Social networks can foster a sense of integration, assisting in areas such as employment and housing as well as in many cases gaining the services of people smugglers (Koser, 2001). Danis (2006) contends that these networks gain ‘increasing importance in the absence of state sanctioned reception policies and refugee and migrant associations’. Danis found that for Iraqi Christians, their religious identities – the same identities that in Iraq restricted their political participation, undermined their economic resources and ultimately led to their exile – became a crucial instrument for easing the difficulties engendered in the migration process (2006:1).

In a similar vein, it has been found that isolation from social networks has severe negative effects upon the forced migrant during their transit. For instance it has been found that individuals who lack social networks that supply general support suffer from greater insecurity and depression (Van Willigen, 1991). The availability of social networks appears to facilitate the search for asylum in a similar manner to the way that it supports regular migration. In the forthcoming analysis on forced migrants in Indonesia a similar pattern is visible and will be discussed in more depth in Chapters Four and Five.

**Chapter Summary**

A review of the literature from the Global North, with a particular focus on Europe and its surrounding regions has revealed a number of important findings; primarily that a clear pattern has emerged in which European governments have attempted to shield themselves from unwanted migration through the creation of non-arrival regimes that directly target asylum seekers. This is achieved through the blurring of traditional and functional borders with peripheral nation-states at the EU’s frontier. It is the direct targeting of these spaces that has led many scholars to the conclusion that the EU is engaged in a process of creating a buffer zone around its core, otherwise referred to as borderlands. This pattern was first evidenced in the 1990s and directed towards states at the frontier of Central and Eastern Europe during the
disintegration of the Soviet Bloc and former Yugoslavia. It has since been employed against states at the southern periphery, primarily transforming Turkey into the buffer between the EU and the Middle East and the Maghreb region of North Africa into a buffer against sub-Saharan migration.

While this is itself an important finding, it is the few studies that have been conducted with forced migrants within these various buffer zones that are really illuminating for this research. These studies found that conditions in transit countries – deemed ‘safe’ by European policy makers – contributed significantly to further onward migration. Yet it is generally in this phase, when people are caught in the borderland, that individuals become aware of their legal immobility. In this analysis the EU’s ‘containment policy’, focused on the securitisation of borders, coupled with non-arrival initiatives effectively denies asylum seekers any opportunity to move through official pathways. Finding no legal way of migrating yet unable to remain where they are and unable to return home, individuals are turning to people smugglers en masse as a way to overcome their situation.

From this analysis emerges the causal relationship between the securitisation of migration and the increase in irregular migration as states increasingly target legitimate migration options as a means to minimise their responsibility towards asylum seekers.

Building upon these themes Chapter Three will now examine Australia’s response to asylum seekers. While Australia draws upon a range of unique policies to exclude asylum seekers from the national space, it will be shown that these attempts prove analogous to those developed across Europe, both in terms of ideological motivations, justifications and outcomes, intended and unintended. Having detailed Australia’s attempts to externalise its migration control the second part of Chapter Three will then shift its focus to Indonesia to explore existing literature that examines the impact of Australia’s policies upon regional cooperation, migration flows and asylum seekers caught in transit.
Introduction

In Chapter Two the asylum policies of the EU were examined. The literature suggests that these policies, fashioned to minimise the arrival of asylum seekers within the common territory and transfer the responsibility for their processing back to transit countries, are having widespread effects upon the region at large. In the European context scholars have examined the ways that the Global North's non-arrival regime is reconfiguring the search for asylum, with a number of key themes emerging from the literature. First was the degradation of the international protection system through the loss of access to territories where the rights of asylum are enshrined. Second was the creation of transit countries as a result of the Global North's border security regime and finally, the negative impact this is having on forced migrants caught within these newly forged buffer zones was explicated. The research found that asylum seekers were being exposed to greater levels of vulnerability and insecurity as a result of the EU’s efforts to externalise the rights of asylum and that the increase in irregular migration was a direct consequence of this situation. In the literature it is proposed that asylum seekers across the Global North are turning to irregular migration as a way of overcoming restrictive migration policies that minimise the ability to seek international protection through legal channels.

This chapter will demonstrate that there is limited literature which explores this same pattern in South East Asia that could help illuminate the issue of irregular migration from Indonesia to Australia. According to Missbach & Sinanu (2011:59):
Whereas the risky journeys of asylum seekers and refugees (as well as economic migrants) into Europe (and North America) have received widespread academic attention, so far the presence of asylum seekers in Southeast Asia on their way to Australia remains understudied.

While the literature about migration from Indonesia to Australia in the current period has expanded somewhat since the beginning of this project in 2010, forced migrants’ experiences in transit still remain under-represented in the Asia Pacific, particularly in regards to how these experiences shape future migration decisions. It is this gap in the literature that this project seeks to address. Throughout this chapter, it will be demonstrated how similar patterns to those outlined in Chapter Two across the European neighbourhood can also be detected in Southeast Asia, particularly in regards to processes of externalisation, exceptionality and the creation of buffer zones through policies targeting nearby transit countries.

This chapter will establish the background of the contemporary issue through discussion of the literature responding to different historical periods and trends in migration and migration policy in the Asia-Pacific and specifically Australia. This will lead to identification of the contemporary state of the field and discuss this current gap in the literature.

Briefly, the historical literature argues that the narrative of asylum seekers as a security issue has become so pervasive that their control and exclusion from the nation state has become a naturalised response by governments. The framing and subsequent response to the issue appears to be having a direct impact on the way people are able to seek asylum in Australia. Having established this, the chapter will then examine the limited literature on Australia’s interactions with its regional neighbours and the impact this is having upon asylum seekers in the region.

The interdisciplinary nature of the research in this field resists neat categorisation, however various themes are present across this literature that sit at the nexus of sociological, political, legal, anthropological and criminological inquiry. Studies have explored Australia’s domestic policies towards asylum seekers and their impact upon those who fall under their control (Billings, 2013; Briskman, Latham & Goddard, 2008; Burnside, 2008; Mares, 2007, 2002; Gordon, 2007; Crock, Saul &
Destyari, 2006; Howard, 2003; Wilkinson & Marr, 2003; Brennan, 2003; McMaster, 2002). Psychologists, social workers and health care professionals have also paid keen attention to the impact of Australia’s policies upon the health and wellbeing of asylum seekers affected by them (Austin, Silove & Steel, 2007; Canty & Benjamin, 2007; Theologou & Roberts, 2007; Steel, Silove, Brooks, Momartin, Alzuhairi, & Susljik, 2006; HREOC, 2004; Silove, Steel & Watters, 2000). Meanwhile criminologists and legal experts have charted the trajectory of the ‘asylum seeker issue’ away from a human rights perspective towards a security perspective (Grewcock, 2014; Neilson, 2010; Talyor, 2008, 2005; Weber, 2007; Pickering 2004a; Devetak, 2004). This has been accompanied by a number of cultural and media studies that have examined the broader framing of the issue in the public sphere (Richardson, 2010; Pedersen, Kenny, Briskman & Hoffman, 2008; Romano, 2007; Clyde, 2007; Lawrence, 2007; Pedersen, Attwell & Heveli, 2005; Lygo, 2004; Klocker & Dunn, 2003; Saxon, 2003). Yet despite the breadth of the available literature on the issue, the research has predominantly focused upon the experience and treatment of those who are already within the bounds of the nation state, including those who are processed in excised ‘offshore’ areas still largely governed by Australia. There has been less research that examines the effects of Australia’s asylum policies upon those who are yet to enter the sovereign area but who are nonetheless impacted by these policies. This chapter will demonstrate that the literature is beginning to recognise that Australia is pursuing a border security approach that actively extends its asylum policies beyond the traditional border of the nation state into de-territorialised realms and sovereign regions. A consequence of this is argued to be that people no longer need to be physically located in Australia to be impacted by Australia’s asylum policies. Finally this chapter will demonstrate how this shift necessitates further research on the effect of Australia’s policies upon asylum seekers in transit in Indonesia and how this may influence their future migration decisions.

**Australia’s Approach to Asylum Seekers: A Shift to Externalisation**

The first half of this chapter will chart key policy developments in Australia’s response to asylum seekers who arrive irregularly by boat. The dominant perspective in the field suggests that Australia has moved from a policy of
deterrence to one of denial – externalising its border controls – with the intention of reducing the number of asylum seeker with whom it must deal as a means to minimise its obligations under the Refugee Convention. This dominant perspective advanced in the literature suggests that, since 2001, Australia has coveted its own unique collection of policies designed to foster a buffer zone around the mainland through the externalisation of border controls and interactions with neighbouring states.

According to McMaster ‘the first wave of Asian asylum seekers, almost all of them Vietnamese, arrived on Northern Australian shores in 1976’ (2002:285). While at the time they were mostly well received by the Fraser Government, by the time the second wave of mostly Cambodian asylum seekers began arriving in the late 1980s their positive reception was less certain. By this time government attitudes had shifted against asylum seekers who were now being detained in a number of detention centres across the country (McMaster, 2002). Since this time Australia has pursued a number of policies to deter these arrivals. In more recent years these policies have shifted from deterrence to denial, with consecutive Australian governments developing strategies to exclude asylum seekers from the national space through a combination of practices centred on interdiction, detention, and deportation (Billings, 2013; Grewcock, 2013; Hyndman & Mountz, 2008; Weber, 2007; Burnside, 2007; Gordon, 2007; Taylor, 2005; Howard, 2003; McMaster, 2002; Mares, 2002). According to the literature these policies seek to effectively separate individuals from their human rights through the creation and maintenance of de-territorialised spaces in which asylum seekers are held as ‘non-citizens’, detached from national laws and international standards.

In the 1990s, this political strategy focused upon the detainment of irregular maritime arrivals (IMAs) through the policy of mandatory detention, introduced by the Hawke government in 1992 (Lusher, Balvin, Nethery & Tropea, 2007:13). Legislation was also introduced to limit the amount of access asylum seekers had to Australia’s legal system through the creation of such apparatus as the Refugee Review Tribunal, which was designed to curtail legal rights and juridical oversight
However, having failed to act as a suitable deterrent to the increasing number of boat arrivals, in 1999, the Howard government (1996-2007) introduced a new class of visas known as Temporary Protection Visas (TPV), redefining the notion of ‘protection’ in the process. According to Leach & Mansouri (2004) this new visa was specifically designed to limit the rights of the holders and to deny permanent resettlement in Australia to those who had arrived irregularly by boat. The physical and emotional damage inflicted upon TPV holders has been well documented across the literature (Gordon, 2007; Steel, Silove, Brooks, Momartin, Alzuhairi & Susljik, 2006; Leach and Mansouri, 2004; Refugee Council of Australia, 2003; Leach, 2003; Mares, 2001). Despite the existence of these policies and the prominence of the ‘boat people’ debate in the public sphere at the time, the Tampa incident of 2001 is largely considered the watershed moment in Australia’s treatment of refugees and asylum seekers (Mares, 2007).

The Tampa and the Creation of the Pacific Solution

The Pacific Solution, later known as the Pacific Plan, and the events leading up to the creation of this policy have been widely discussed in the literature (Briskman, Latham & Goddard, 2008; Burnside, 2008; Hyndman & Mountz, 2008; Gordon, 2007; Mares, 2007, 2002; Crock, Saul & Destyari, 2006; Howard, 2003; Wilkinson & Marr, 2003; Brennan, 2003).

On 26 August 2001, the Norwegian freighter MV Tampa sailed into Australian waters carrying 438 asylum seekers rescued from a sinking Indonesian fishing vessel in the Indian Ocean (Mares, 2007:52). In the days following this event, the response by the Howard government fundamentally transformed Australia’s political landscape and set the tone for the reception of asylum seekers for years to come. Whereas past governments had flirted with deterrence based policies targeting IMAs, the introduction of the ‘Pacific Solution’, a rushed collection of legislative measures, signalled a shift in approach to the externalization of asylum, with asylum seekers now being denied physical access to the Australian territory. This change was widely interpreted as a strategy to deter potential future arrivals and minimise Australia’s legal obligations. According to Mares (2002:7):
The express purpose of this policy is to prevent such asylum seekers from setting foot on the Australian mainland. An asylum seeker who arrives in an excised territory cannot apply for asylum under Australian laws and will be processed under a different set of rules, with fewer procedural safeguards and fewer appeal rights.

Under Howard’s Pacific Solution a raft of policies were introduced designed to prevent the arrival of onshore asylum seekers. These included the excision of external territories from Australia’s migration zone, primarily Ashmore reef and Christmas island, located on the popular smuggling route between Australia’s North Western border and the Indonesia archipelago; the use of Navy personell to intercept boats carrying asylum seekers on the high seas known as Operation Relex; and the introduction of offshore processing, where asylum seekers were intercepted and transferred to remote detention centres located on the ‘declared countries’ of Nauru, and Manus island, PNG, for refugee status determination (RSD). By denying access to Australia’s mainland and instead conducting the processing of asylum applications in these locations the government was effectively able to classify individuals as ‘offshore entry persons’, removing any legal responsibility for their future resettlement in Australia (Karlsen, 2010:14-15).

The creation of the Pacific Solution allowed the government to effectively establish a barrier between asylum seekers and their territorially bound right to seek protection. In so doing, the government was able to shield itself against any obligation under the Refugee Convention to process asylum seekers in Australia (Burnside, 2007). This had the dual effect of removing resettlement in Australia as a likely outcome for intercepted individuals while simultaneously working as a form of ‘deterrence by example’ for other ‘potential’ asylum seekers considering a similar course of action (Gordon, 2007). While the government claimed its policy was in line with international law (Mares, 2002:5), opponents saw this as an abdication of their Convention obligations (Burnside, 2007)
The Discursive Construction of Asylum Seekers

A Threat to the Nation

Through the literature emerges the notion that the discourses that were drawn upon at the time of the Tampa were instrumental in justifying the political strategy of the government at the time. According to Mares, today the Tampa affair and the actions that followed are seen through two competing lenses, one which perceives it as ‘the master stroke of Australia’s wiliest Prime Minister to secure victory in the 2001 federal election’; while the other views it as ‘a moment when Australia defied international opinion and betrayed its history as a liberal, tolerant nation.’ (2007:52)

Opinion polls at the time showed that despite a small yet vocal opposition to these measures, the majority of Australians supported the Pacific Solution and its goals (McGrath, 2001; Lawrence, 2007). The tough stance pursued by the government had a significant impact upon the 2001 federal election, propelling Howard into a winning position riding a wave of popular support for his strong stance on border security (McDonald, 2011; Mares, 2007; Rodd, 2007; Wilkinson & Marr, 2003). From then onward the management of the ‘asylum seeker issue’ has been strongly linked with electoral success in Australia.

Since that time academics have been fascinated by the popularity of the Pacific Solution and its roots in Australia’s history. How was the government so successful at harnessing support for such extreme policies? The consensus among scholars is that the government embarked upon a specific campaign to heighten the public’s fear of asylum seekers, or as they would become popularly known, ‘boat people’. Tapping into the 9/11 paranoia of the Muslim ‘other’, the government was able to cast asylum seekers arriving by sea as a threat to Australian culture, illegal queue jumpers and potential terrorists who posed a serious threat to national security (Lawrence, 2007; Romano, 2007; Clyne, 2007; Burnside, 2007; Lygo, 2004; Klocker & Dunn, 2003; Saxon, 2003; Pickering, 2001).

Yet it has been suggested that the framing of this issue tapped into currents established well before the turmoil of 2001. It has been widely claimed that the government's narrative played directly into the immigration debate spearheaded by
Pauline Hanson in the years prior which itself is said to have followed the narrative of Australia’s age old ‘fear of invasion’ (Hyndman & Mountz, 2008; Lawrence, 2007; Jupp, 2002; Burke, 2001; Hage, 1998). According to Devetak (2004:103) the moral panic over boat arrivals sits comfortably within the broader narrative of Australia as a country traditionally plagued by racial anxieties, and embedded in the very founding of the modern nation state through the 1901 Immigration Restriction Act, better known as the ‘White Australia Policy’.

According to Lawrence (2007:176) ‘Australia’s political figures have often portrayed Australia as vulnerable to loss of sovereignty and have incited levels of fear and anxiety that are disproportionate to the actual threats’. Indeed, in 2001 the Refugee Council of Australia (RCOA) publicly expressed concerns that the climate of fear being reproduced by the media in regards to the arrival of asylum seekers on Australian shores was ‘being used to legitimise the introduction of draconian policies’ on behalf of the Howard Government (Klocker & Dunn, 2003:71).

Critical theorist Noam Chomsky has famously argued that, ‘intentionally inducing fear of a terrifying enemy is a standard device used to whip the domestic population of any country into line behind contentious policies’ (Klocker & Dunn, 2003:72). Contemporary Australian race theorist Ghassan Hage has expanded upon Chomsky’s assertion, by linking this ‘fear’ to what he labels ‘paranoid nationalism’ (Hage, 1998:10) whereby the national imaginary is one characterised by fear, in which ‘the main threat to the security and wellbeing of the nation is conceived along the lines of a racial and/or religious “other”’ (Harindranath, 2007:2). In this instance, the literature suggests that asylum seekers, arriving irregularly by boat, became the focus of this ‘paranoid nationalism’ and a source of political opportunism for a waning government.

McNevin contends that despite all the rhetoric, Australia’s asylum policies have little relevance to matters of border security, but rather have been designed for domestic consumption. McNevin (2007:611) explores ‘how the policing of asylum seekers constitutes performances of political closure designed to assuage those made vulnerable by Australia’s neoliberal economic trajectory’. Using the ‘liberal paradox’ which McNevin defines as a ‘trend amongst contemporary states towards greater
transnational openness in the economic arena alongside growing pressure for domestic political closure’ (2007:611), she argues that Australia’s asylum policies have largely been developed as a strategic political tool rather than a genuine defence of territorial sovereignty (2007:612). Linking the realist perspective that the protection of the sovereign border is the primary responsibility of the state to the existential anxiety of invasion that has long shaped both Australian security discourse and immigration policy, McNevin found that by manufacturing an exaggerated threat posed by the arrival of a small number of asylum seekers, the government was able to provide a counter-weight to the anxiety the general population was experiencing due to the economic transformation taking place. In this vein, Australia’s asylum policies are seen as being driven by a desire for political expedience over principled reason or border control. In this reading the hidden impulse behind Australia’s policies are viewed as having little to do with the issue of asylum seeking.

The link to neoliberalism is highly relevant as the free movement of people is generally seen as the exception to globalization. A number of scholars have explored the process whereby national insecurity becomes more prominent as borders symbolically retreat in the face of free trade (Brown, 2010; Pickering, 2004; Weber, 2007; McNevin, 2007). A redoubling of nationalism by displays of migration control is viewed as a remedy to these anxieties through the performative nature of securing the border. According to Sassen (1996), ‘Neoliberal governments have adopted a defensive political nationalism and sought to reassert their sovereignty through strict, yet highly selective, border controls’ (cited in Weber, 2007:77). The literature suggests that such policies were evident in Australia. According to Lawrence (2007:178) ‘after careful research and analysis of the public’s mood’, the Howard government mounted ‘a deliberate campaign of intensifying our fear of being overwhelmed by strangers envious of our good fortune’. In doing so, the Howard Government was able to tap into public unease and leverage a political advantage from the arrival of asylum seekers Australia.

Securitisation of Asylum

A complementary way this issue is conceptualised in the Australian literature is through the prism of security. A number of scholars have examined the way in
which the issue of seeking asylum has become ‘securitised’, shifting the discourse away from that of human rights obligations to an issue requiring policing and control (Grewcock, 2014; Hyndman & Mountz, 2008; Weber, 2007; Pickering, 2004a; Devetak, 2004). In this literature it has been argued that the positioning of asylum seekers as a threat to national security has had a major impact upon the governmental response to the issue (Pickering, 2004a). The discursive construction of asylum seekers as a threat to national security has contributed to the militarised response by consecutive Australian governments (Hyndman & Mountz, 2008; Weber, 2007; Devetak, 2004; Pickering, 2004a, 2004b). As Hyndman and Mountz suggest, ‘Fear does deeply political work; it generates feelings of insecurity based on what are seen to be credible threats and then ... creates a crisis in search of a response’ (2008:255). Providing empirical support for this proposition is Pickering’s (2004a) study of the Australia Federal Police (AFP) and border control.

Exploring the shifts in language used by the AFP in their annual reporting on their border policing activities, Pickering contends that it was the discursive construction of the inherent dangers associated with irregular migration within these reports that cemented the official response within the domain of the AFP (2004a). This study revealed that the language employed by the AFP was completely void of any reference to international laws or humanitarian responsibility, but rather focused primarily upon the ‘criminality’ of such irregular migration. She argues that this type of construction predicates a response focused primarily upon policing, control and regulation. As a consequence of this construction, Pickering argues that the AFP’s powers were greatly increased and their domain expanded into extraterritorial activities intended to fortify Australia’s Northern borders against the irregular arrival of asylum seekers.

According to Pickering, ‘the sustenance of discourses of asylum seeker illegality ensures its authority over alternative representations (and ideologies)’ (2004a:329). This paradigm capture of deviancy over rights echoes other research findings on the discursive construction of asylum seekers previously outlined and once more highlights the power it has to shape government responses both in the Asia Pacific and across other parts of the Global North, as witnessed in Chapter Two. It has been argued that the deviancy of asylum seekers has become so naturalised
within the current debate that all other perspectives have been subordinated to that of border security. According to Hyndman and Mountz (2008:250):

Asylum is increasingly characterised as a security issue, rather than one of protection for refugees ensconced in international law. This continuous act of defining asylum in security terms has a performative element, in the Foucauldian sense: it produces the effect that it names.

As Devetak (2004:101) reminds us, ‘the exceptional measures taken by the Australian government against the Tampa asylum seekers are an indication of how far the concept of security is being stretched’.

In this subsection of the literature the connection between the securitisation of asylum and the maintenance and expansion of political power is laid bare. While this tactic may yield short term political success, as witnessed by Howard in 2001, prominent scholars have argued that the long term consequences of this trajectory could be disastrous (Grewcock, 2013; Devetak, 2004; Pickering, 2004b). Devetak (2004) proposes several reasons why framing asylum seekers as a national security threat may be counter-productive. Firstly, as a reactive measure this framework cannot address push factors that drive people to seek asylum. It is therefore a useless strategy to address the root causes of irregular migration. Secondly, he argues that the unwarranted focus on asylum seekers may result in ‘real’ security threats being neglected, and finally, Devetak argues that by privileging state-centric security concerns, Australia is subjugating its international obligation to protect refugees (2004:102). This final point will be expanded upon shortly and returned to throughout the remainder of this thesis as it has a major impact upon participants in this study.

**Media Representations of Asylum Seekers**

The fact that the government was so successful in this tactic is in part due to the role of the media. Klocker & Dunn (2003:72) argue that because ‘news journalism is part of the “machinery of representation”’ it plays a large part in ‘determining our knowledge of society and the policies that we are prepared to accept’. In this way,
the media becomes a significant driver of public opinion. There is a large body of research that has explored how the mainstream media has played a substantial role in reproducing the government’s narrative on the ‘illegality’ and ‘threat’ posed by the arrival of asylum seekers during the Howard years (Pedersen, Kenny, Briskman & Hoffman, 2008; Clyne, 2007; Romano, 2007; Pedersen, Attwell & Heveli, 2005; Lygo, 2004; Klocker and Dunn, 2003; Saxon, 2003; Pickering, 2001).

It has been claimed that the language deployed by journalists during this time was specifically crafted to ‘undermine the possibility of any public sympathy for boat people or for calm’ (Romano, 2007:185). Words like ‘national emergency’, ‘invasion’, ‘attack’, ‘assaults on our shores’, ‘contagious disease’, ‘floods’ or ‘tidal waves’ were common terms for describing the arrival of asylum seekers during this period (Romano, 2007:185). The narrow discursive construction of asylum seekers highlights the way mainstream media was able to galvanise the moral panic propagated by politicians, casting asylum seekers arriving by sea as a danger to national security. Pedersen, Kenny, Briskman & Hoffman (2008:64) conclude that the media played a significant role in promulgating government rhetoric by its constant characterisation of asylum seekers as deviant, problematic, and a potential disruption to social harmony.

However these narratives did more than just cast asylum seekers as a threat to the nation, they purposefully obfuscated the reality of seeking asylum in the region and misrepresented the options that people seeking asylum had. By insinuating that people arriving by boat were queue jumpers, politicians at the time were able to conjure an image that there was a feasible alternative for people that they were rejecting. By suggesting that asylum seekers had already found safety in another country, their journey to Australia was framed as opportunistic and a form of ‘migration shopping’ rather than a desperate attempt to find safety. In this manner not only was the government and the media successful at undermining sympathy for the newly arrived asylum seekers but they were able to mislead citizens on how the international convention of seeking asylum worked in reality.

Although consecutive governments have submitted that their asylum seeker policies are driven by the will of the constituents, Klocker & Dunn (2003) claim that
evidence suggests that policy makers in Australia have led, rather than followed, public opinion, by closely managing and manipulating information and imagery to seek public support. Lawrence offers insight into ways this tactic has been successful thus far:

Mounting evidence [suggests] that when people anywhere are frightened by constantly being reminded of their own mortality, they react with increased prejudice and aggression towards those who differ in some ways from themselves ... in these circumstances, people become more intolerant. (2007:174)

In light of the evidence, it seems reasonable to suggest that in Australia the response to asylum seekers has been influenced by a disparate number of domestic political concerns. Yet as Devetak (2004) points out, this preoccupation, bordering on obsession, with the irregular arrival of asylum seekers on national frontiers is not a unique affliction visited on Australian politicians alone, but a characteristic shared by many modern nation states.

This is especially so in the wealthy Western countries where fears abound that a trickle will become a flood, and before you know it, unemployment will rise, ethnic tension will tear the social fabric, and the economy will go bust. This is the disturbing prognosis offered by immigration ministers the world over, unless states retain the capacity “to manage the movement of people across our borders in an orderly and efficient manner” (Devetak, 2004:103).

With this statement Devetak reflects a central theme highlighted in Chapter Two, where developed states of the Global North have accepted the securitised narrative of asylum seekers so completely that their control and exclusion has become a naturalised response within the state. It is clear from the literature that government rhetoric and narrow media portrayals played a crucial role in reifying this position in Australia post Tampa. This has a considerable impact upon the current study as the discursive construction of asylum seekers as deviant and dangerous not only influenced public sentiment, but plays a role in directing the government’s response to asylum seekers away from the liberal tradition of human rights and into the domain of border security, directly impacting upon future asylum seekers ability to
seek protection in Australia (Grewcock, 2013; Neilson, 2010; Hyndman & Mountz, 2008; McNevin, 2007; Pickering, 2004; Devetak, 2004).

**A New Era? The Liberalisation of Australia’s Asylum Policy**

While the previous section provided an overview of Australia’s shifting response to asylum seekers and the processes that are perceived to have underpinned these changes, the following section will briefly explore Australia’s short lived flirtation with a more liberal approach to asylum seekers from 2006 onward. While initially attracting wide-ranging support, by 2005/6, the Pacific Plan (as it was now known) was beginning to be viewed less favourably by the general public. A combination of factors has been attributed to this shift in public sentiment. Primarily, the conditions of immigration detention had become widely known through the combined efforts of academics and activists (Briskman & Goodard, 2007; Amor & Austin 2003; Bashford & Strange, 2002). The cost of offshore processing was also seen as a source of resentment, given most offshore detainees were eventually resettled in Australia regardless (Gordon, 2007). Other more egregious elements of the Pacific Solution became problematic for the government, including the use of TPVs, the mandatory detention of children and the mental health impact upon asylum seekers affected by these regimes (Silove, Austin & Steel, 2007; HREOC, 2004).

By 2006 it was clear that the vast majority of the public had lost their appetite for the overtly punitive migration policies of the Howard government. Labor, quick to sense this shift, campaigned heavily in the lead up to the 2007 election on a platform to repeal the Pacific Plan and re-introduce a level of humanitarianism back into the migration portfolio (Evans, 2008).

Labor’s decisive victory at the federal election provided one of the strongest mandates for reform in recent Australian history. Under the new Rudd Government, the renamed Department of Immigration and Citizenship (DIAC) was given to the stewardship of Chris Evans MP, who set about implementing these reforms. The Government was vocal that from then onwards, refugee policy would be aligned with the values set out in the Labor platform: ‘humanity, fairness, integrity and
public confidence’ (Bitar, 2009). Upon taking up the Immigration portfolio Minister Evans was quoted saying:

Immigration is central to the nation’s sense of identity: how Australia develops, manages and implements its immigration policies and citizenship program directly reflects what we value as a people, and how we think of ourselves as a nation (Evans cited in Simon, 2008).

Evans was resolute that strong border protection and territorial integrity could be maintained whilst also treating people fairly and humanely, ‘sweeping away past excesses’ of Australia’s refugee policy (Evans, 2008). Fulfilling the election promise to repeal the Pacific Plan, the new government set about abolishing TPVs, closing the offshore detention centres on Nauru and Manus Island as well as introducing the New Directions in Immigration Detention policy (Evans, 2008). This policy paper outlined new guidelines for the detention of IMAs, including access to publically funded legal services, independent review of negative decisions and external overview by the Commonwealth Ombudsman (Karlsen, 2010:2). While these moves were widely applauded, the decision to maintain the system of mandatory detention as well as the architecture of excision were viewed by some as a missed opportunity to seriously reshape Australia’s response to asylum seekers (Grewcock, 2013; Crock, 2010). As Karlsen (2010:17) notes, the decision to maintain the policy of excision meant:

Asylum seekers intercepted en route to Australia and taken to Christmas Island would continue to be legally barred from making a valid visa application by virtue of section 46A of the Migration Act, unless the Minister personally considered it to be in the public interest to permit it.

The Government defended its adoption of the excision strategy and delineated its policy from the Coalition in the following terms:

The architecture of excision of offshore islands and non-statutory processing of persons who arrive unauthorised at an excised place will remain, and will be processed at Christmas island ... however in contrast to the previous policy, asylum seekers will have access to publically funded legal advice and
will be able to apply for an independent review of an adverse decision.
(Simon, 2008:28)

Despite these remnants, the popular view at the time was that the Rudd government epitomised a period of liberalisation of Australia’s asylum policies. For the first 18 months of Government, Labor managed to maintain the balance between humanitarian principles and border control in the public eye. The ghost of Australia’s colonial past with its resistance to immigration and its residual effects on Australia’s psyche appeared to be momentarily pacified. For the time being, the political current seemed to be turning once more towards a period of openness and inclusiveness.

While boat arrivals remained low, this balance remained manageable for the Government. However, by 2009 a rapid increase in the number of asylum seekers arriving by sea began to damage the government’s standing. Panicked by its falling support in the polls, and flanked by a quarrelsome opposition positioned to capitalise on each new boat arrival and its connection to Labor’s ‘soft’ border security policy, the government retreated to a deterrence-based model (Perera & Stratton, 2009). Missbach & Sinanu (2011:61) summarise this retreat as follows,

The dissolution of Australia’s hard line defensive migration barrier had unexpected (though, in hindsight, hardly surprising) consequences. With the Pacific Solution gone, new boat arrivals to Australia jumped exponentially between 2009 and 2011. Thus the ironic result of embracing a more principled approach to migration policy was that Labor proved no good deed goes unpunished.

After attempting to nullify the more extreme positions fostered under Howard, the Government appeared to abandon its attempts at recasting the asylum debate, reversing much of the progress it had made in the previous 18 months. Unfortunately for those advocating reform, the result of this was that the long awaited victories were short lived. The government repositioned its stance on IMAs in a move designed to send a strong message to asylum seekers and people smugglers that Australia was not a ‘soft touch’ (MacCallum, 2010). This was seen as a desperate effort to counter the growing narrative that Labor had ‘lost control of
the borders’ (Maiden & Guess, 2010; Shanahan, 2010; Kelly, 2009; Kerr, 2009; Maley, 2009; Rothwell, 2009).

Labor soon found itself wedged on the issue of boat arrivals and border security (Missbach & Sinanu, 2011; MacCallum, 2010). On one hand its re-election chances were fundamentally linked to its ability to reassure the public that it was capable of defending the border, while on the other, its previous success was premised largely upon rejecting the more extreme policies of its predecessor. As a result Rudd and his successor, Gillard, lurched from one ill-fated attempt to another in a desperate bid to find a compromise ‘that would deter asylum seekers on the one hand, while avoiding the most draconian aspects of the Howard era policies on the other’ (Missbach & Sinanu, 2011:62).

A Return to the Politics of Exclusion

Externalising the Border and Regional Cooperation

By 2009 Rudd’s preferred ‘solution’ was based on strengthening the bilateral cooperation with Indonesia. Through this ‘Indonesian solution’ Australia would provide financial and technical support for Indonesia to develop its processing capabilities and combat people smuggling operations (MacCallum, 2010; Taylor, 2010; Millbank, 2009; Taylor, 2009). Critics derided this approach at the time as nothing more than an attempt by the Australian government to ‘warehouse’ vulnerable people in Indonesia in order to limit Australia’s responsibility towards them (Taylor, 2009). With already limited success, this approach appeared irreversibly damaged when it became clear that Indonesia was not willing to readmit asylum seekers who had departed its territory as demonstrated through the high profile cases of the Oceanic Viking and Jaya Lestari incidents. Despite the efforts of the Commonwealth, boats continued to arrive from Indonesia, carrying asylum seekers in record numbers (Phillips, 2014; McKay, Thomas & Kneebone, 2011).

In July 2010, after deposing Rudd as Prime Minister, Julia Gillard immediately began seeking out East Timor’s cooperation in an effort to establish a regional processing
centre on the small island nation. The vision was that this would act as a truly regional processing centre, bringing harmony to the disjointed processes across the region. This vision included the involvement of UNHCR and, it was argued, would bring an end to the people smuggling trade (Grewcock, 2013:16). However these hopes were dashed with the Timorese president proclaiming no agreement would be reached bilaterally declaring that the appropriate forum to establish such a centre was through the Bali process (Grewcock, 2013:16). UNHCR had also voiced their disapproval to such a centre being created with the Assistant High Commissioner for Protection, Erika Feller emphasising that ‘arrangements that deflect burdens and responsibilities could in turn heighten tensions and increase people smuggling activities’ (Karlsen, 2010:22).

Following this setback, the Gillard government announced in July 2011 that the Australian and Malaysian governments had reached a bilateral agreement that would become popularly known as the ‘Malaysian people swap’ (Fyfe, 2011). The deal stated that Australia would transfer up to 800 of its newest IMAs to Malaysia for processing by UNHCR in exchange for resettling 4,000 refugees from Malaysia over four years (Grewcock, 2013). The announcement of the Malaysian deal received widespread criticism (Mckenzie & Hasmath, 2013; Taylor, 2012; Amnesty International, 2011). According to Missbach & Sinanu, (2011:62) ‘the main argument put forward by the opponents was that Australia would be in dereliction of its obligations to the human rights of asylum seekers by sending them to a country known for criminalising and abusing refugees’.

This agreement was eventually scuttled after the Australian High Court ruled that it would be in breach of the Migration Act (Grewcock, 2013; Missbach & Sinanu, 2011). The High Court ruling was based on two fronts, that Malaysia is an unsuitable destination to transfer asylum seekers to given they have not signed the Refugee Convention and other relevant human right instruments (Grewcock, 2013:21), and that as legal guardian for unaccompanied minors (UAMs), the Minister for Immigration would be acting in conflict with his obligation to protect them if he authorised their removal to a state such as Malaysia (Grewcock, 2013:22).
Undeterred by this ruling Labor continued to pursue efforts to enforce offshore processing through the architecture of exclusion developed by its predecessors (Grewcock, 2013). The government, ‘desperate for a deterrent’ (Missbach & Sinanu, 2011:63) had few options available to them. Previous criticism of the Pacific Solution made Nauru an undesirable option, while the High Court ruling regarding processing in third countries hamstrung the government’s ability to pursue bilateral agreements with neighbouring countries, most of whom lack the legal instruments to uphold the rights of forced migrants. With no clear course of action available, Prime Minister Gillard announced on 28 June 2012 that the government was launching an expert panel on asylum seekers who would ‘consider options for the best way forward for our nation in dealing with asylum seeker issues’ (Spinks, 2012).

The report, released on 13 August 2012 made 22 recommendations to reduce irregular migration under the guise of ‘saving lives at sea’. The verdict handed down by the panel was that the only way to do this was to ‘shift the balance of risk and incentive in favour of regular migration pathways and established international protections and against high-risk maritime migration’ (Houston, Aristotle & L’Estrange, 2012:8). These recommendations received a mixed response. While some initiatives were praised, others were met with open hostility, most notably the panel’s recommendations that paved the way for the (re)introduction of policies based almost exclusively upon the principle of exclusion, calling for the reopening of Immigration Detention Centres (IDCs) on Nauru and PNG. In ‘shifting the risk’, it appeared to many that the architects of the report had been heavily influenced by the discourse that irregular migration is a result of pull factors that can be counteracted through appropriate deterrence leavers, underscoring the introduction of the ‘no advantage test’ for all IMAs. In the following chapters the validity and relevance of such assumptions will be interrogated.

Three days after the government’s announcement, on 17 August 2012, legislation was passed allowing the offshore processing of asylum seekers on Nauru and Papua New Guinea. This was followed nine months later by the excision of the entire Australian mainland from the migration zone, effectively classifying all IMAs as ‘offshore entry persons’ excluded from lodging protection applications without the
direct permission of the Minister for Migration. While each of these moves drastically reduced the ability of forced migrants to seek refuge in Australia, it was the announcement by the newly reinstated PM Kevin Rudd on 19 July 2013 that was viewed as the turning point in Labor’s approach to the issue of protection. Rudd announced that Australia had reached a ‘Regional Resettlement Arrangement’ with Papua New Guinea, whereby any new IMAs arriving after 19 July 2013 would be subject to transfer to PNG for processing and, if found to be a refugee, permanent resettlement there. From this point onwards, no asylum seekers who arrive in Australia by boat would be eligible for resettlement in Australia.

In the lead up to the 2013 federal election, under the guise of combatting people smuggling and ‘stopping the boats’, both major parties embraced policies that exceeded past efforts to address the issue of irregular migration. The new raft of policies aimed instead ‘to block entirely any right to resettlement or residence for refugees in Australia itself’ (Grewcock, 2014:71). In this new paradigm, neighbouring states would not just be contracted as regional processing centres, but permanent resettlement countries as well. Since the election of the Abbott led Coalition government in September 2013 there has been no sign that this trend towards restriction is abating, to the contrary, the policies of externalisation through the maintenance of the offshore border has been redoubled. Primarily this has been achieved by a military led ‘Operation Sovereign Borders’ with the newly created Australian Border Force (ABF), the head of which has been accorded equal status to the security agency chiefs of ASIO, the AFP and the ADF. The Coalition has also extended the practice of third country resettlement through the recent deal with Cambodia (Stoddart, 2014; Neumann, 2014) and suggested it will continue to pursue similar arrangements with other agreeable nations. Through these policies Australia has witnessed a significant reduction in the number of irregular maritime arrivals in the years since their introduction.

Similar to the strategies discussed in Chapter Two, Australia’s efforts to minimise the number of onshore asylum seekers with whom it must deal has been understood to impact the region more broadly as a result of its externalised border control activities (Grewcock, 2014; Spruce, 2013; Netherly, Rafferty-Brown & Taylor, 2012; Neumann & Taylor, 2010; Taylor 2010a, 2010b, 2008). Through the
construction and maintenance of its own non-arrival regime that reaches beyond the physical and maritime domain of the Australian state, the government has effectively externalised the responsibility for asylum seekers who would otherwise likely seek asylum in Australia. As a result of this, scholars have shifted their focus, asking pertinent questions regarding the consequences of Australia’s approach to asylum seekers in the region more broadly.

**The Regional Effects of Australia’s Policies**

*Sovereignty*

Commonalities with the European literature can be seen in the exploration of a number of these questions. An area of particular interest to scholars examining the effects of Australia’s approach to asylum is the curious relationship between these policies and state sovereignty. In an effort to guard Australia’s borders from unwanted incursions, it has been argued that the Australian government has unwisely transgressed the sovereignty of their neighbours, undermining the very principle these policies seek to uphold (Loiselle, 2014; Grewcock, 2014 & 2013; Neilson, 2010; Weber 2005; Taylor, 2005; Pickering, 2004). Neilson’s definition of externalisation helps shed light on why these actions can be problematic from a sovereignty perspective:

[Externalisation] involves the displacement of border control and its technologies beyond the territorial edges of formally unified political spaces. Whether this involves the establishment of offshore detention facilities, the interception and diversion of vessels, co-operation in deportation procedures, or the surveillance of routes and so-called carriers of migration, the defining aspect of externalisation is the involvement of third countries in the creation and management of the border regime. (Neilson, 2010:126)

In other words these practices contribute to the blurring of functional and traditional borders with ramifications for the expression of legitimate power and authority within ambiguous border zones.
While the approach of the Australian government may be informed by the particularities of the geopolitical context in which it is performed, there are a number of similarities that can be seen across the literature that looks at Australia’s attempts to minimise its responsibilities under the Refugee Convention and other parts of the Global North who have pursued similar goals.

In the Australian context a number of scholars have explored other ways the border has been subtly externalised. For example Pickering found that in the Australian context the unshackling of policing activities from the territory to a de-territorial realm to combat the perceived threat of irregular migrants, is having serious consequences for regional governance (2004:211). In an effort to guard the physical integrity of the nation state, policing activities are propelled beyond the frontier, highlighting the paradoxical practice of preserving sovereignty through the act of transgressing it.

[This] recrafting has unshackled the federal policing effort from its traditional domestic base and physically taken it into other countries to enforce Australian laws- laws that do not necessarily overlap with the laws of those countries. In order to do this, the law enforcement function has needed to become a matter of national security and the federal policing function to be elevated to a military status capable of making potent political contributions. Paradoxically, the national boundaries such policing has sought to preserve have needed to be transgressed for their own protection. It is only through the decline in the border that its protection becomes symbolically possible. (Pickering, 2004:226)

A number of scholars have questioned the legality of such incursions, for example Weber, who interrogates state border control practices that authorise agents to act outside of the law in anomalous zones where they retain the power of the law, but are not constrained by it (Weber, 2005:88). This position finds resonance with Grewcock who argues that the application of these policies has resulted in the systematic abuse of irregular migrants that amounts to state crime (2013:11).
Borders

Pickering contends that this new form of de-territorialised policing will have far reaching consequences with the ability to reshape relations between states in the Southeast Asian region:

The new forms of sovereignty that border policing depends upon fractures the ontology of the nation state and moves beyond the nation state model of power at the very moment the harshest forms of border policing keep the territorial state alive. (Pickering, 2004:226)

This type of analysis raises questions regarding the nature of borders in the 21st century and their relationship to state power. Delineating the shift in the criminological approach to borders and forced migration, Pickering provides a nuanced description of contemporary borders, dismissing the previously held notion of borders as a clear physical demarcation bound with sovereign power and limits which resonates with the literature discussed in Chapter Two. She describes ‘the border as spatially and temporally produced and circulated’ and ‘maintained through violent boundary inscription practices’ by the state (Pickering, 2004:212).

In a similar vein, Neilson (2010) explores this new border configuration as a set of complicated relations, focusing upon the contradictions they represent as ‘spaces of control and spaces of excess’, and ‘sites for the restriction of mobility and sites of struggle’ (Neilson, 2010:124). Once more commonalities with the international literature discussed in Chapter Two can be seen, where traditional notions of ‘the border’ are replaced with more contemporary understandings. According to Neilson, ‘there have emerged new forms of spatial organisation with varying degrees of internality and externality’ (2010:126). To this extent Neilson invokes the concept of ‘borderscape’, a term popularised by Suvendrini in 2007. Neilson (2010:126) describes borderscapes as a ‘simultaneous expansion and contraction of political spaces produced by such measures as well as the multiple resistances, challenges and counterclaims to which they give rise’. According to Neilson, the borderscape ‘facilitates the filtering of migration flows by creating waiting zones, funnels and bottlenecks through which the timing, tempo and temporality of migration can be more precisely regulated’ (Neilson, 2010:126). While the
terminology is idiosyncratic, the association with ‘borderlands’ or ‘buffer zones’ is clear and may help provide insight into the correlation that exists between Australia’s approach to border control and that of other powerful states of the Global North, an analogy that will be drawn out in Chapter Six in the discussion of the political context that shapes the participants’ accounts in this thesis.

**Shifting Responsibility and the Reduction of Protection in the Region**

These aggressive strategies to export the border, based upon the incursion or subjugation of less developed, regional neighbours has also resulted in claims that Australia is involved in a form of neo-colonialism. According to Grewcock, (2014:72) the continuity between Labor and Coalition policies towards IMAs has an undeniable neo-colonial dimension particularly in relation to its arrangements with PNG and Nauru. This analysis finds resonance within the work of Spruce (2013), who conceptualises Australia’s asylum policies as the construction of a ‘hard’ neo-colonial space, in which old colonial power relationships are renewed and applied to 21st century concerns. On this issue Grewcock contends that, for PNG and Nauru, ‘the willingness of their current governments to implement offshore processing and entertain resettlement cannot be separated from their dependency on Australian aid and development funding’ (Grewcock, 2014:75).

These claims demonstrate a strong correlation with the research findings from the Global North outlined in Chapter Two, particularly Western Europe and its co-option of North African nations into its broader border control regime through the use of development funds and economic cooperation through trade deals (for example, see Baldwin-Edwards, 2006).

Other scholars have tended to highlight the legal ramifications of these policies. According to Weber:

> Extraterritorial controls on cross-border movement divide the world into globally mobile elites and immobilized underclass. This raises urgent questions about the legal and moral legitimacy of de-territorialised
nationalism in the absence of any meaningful form of global citizenship.

(2005:89)

Investigating the ‘border control measures that extend Australia’s border outwards to pre-empt the arrival of asylum seekers and other illegalised travellers’ (2007:77), Weber focuses upon a new form of governmental modality, whereby the power of the state is conveyed through a network of government and non-government actors, referred to as ‘government-at-a-distance’. Citing Garland (1997), Weber argues that in this circumstance (2007:81) ‘power is not a matter of imposing a sovereign will, but instead a process of enlisting the cooperation of chains of actors who “translate” power from one locale to another’. Rather than view this as a reduction or threat to state sovereignty, Weber argues that this new mode is an expression of a ‘shifting terrain of power relations’ (Weber, 2007:81). In support of this position Weber holds the practice of imposing visa regimes and carrier sanctions redolent of those discussed in Chapter Two as prime examples of this modality within the domain of border control. The pre-emptive mentality that is pursued through these processes has moved beyond containment at the border towards immobilization at points of origin (Weber, 2007:83). Drawing on immigration department records to further the point, Weber demonstrates the strength of this apparatus:

Australia manages the movement of non-citizens across its borders by, in effect, pushing the border offshore. This means checking and screening starts well before a person reaches our physical border. (DIMIA, 2004, cited in Weber, 2007:84)

The notion of government-at-a-distance holds parallels with Pickering’s (2004) analysis on the de-territorialised actions and authority of the AFP, which is also suggestive of a process that pushes the bounds of state sovereignty to its limits (and beyond).

In one sense these non-arrival measures can be understood as a pragmatic approach to border management that is entirely acceptable under the doctrine of state sovereignty, particularly when conducted in cooperation with friendly states to ensure orderly migration through regular channels. However, this practice becomes problematic when these pre-emptive measures are employed against potential
asylum seekers. Firstly, as Weber (2005:85) states, these measures have been ‘more openly coercive and militaristic’ than the regulatory practices employed across a range of offshore places such as foreign airports and consular offices. Moreover, the danger exists that these pre-emptive measures will be successful, resulting in ‘would be’ asylum seekers being denied the ability to seek protection, despite the existence of human rights instruments to guard against this, and as Burnside notes, asylum seekers have a different claim on our hospitality than the average migrant (2007:253). Finally when deployed against forced migrants unable to repatriate, the displaced person becomes stranded in transit locations, thus the burden of protection of forced migrants becomes an ad hoc process constructed largely on receiving states’ ability to exclude. Beyond the individual asylum seekers affected by this pattern, widespread implications for transit countries are also visible. As a result of the policies of their developed neighbours, transit countries become the prime actor responsible for the care of asylum seekers. In the Indonesian case, this has resulted in the responsibility to house and process tens of thousands of asylum seekers over the last decade who otherwise would likely have sought protection in Australia under the Refugee Convention. Again this analysis finds resonance with the perspectives developed across other parts of the Global North and discussed in Chapter Two.

The implementation of non-arrival regimes against asylum seekers has led Hyndman and Mountz to argue that the actions of the Australian government represent a form of ‘neo-refoulement’, that is, ‘the return of asylum seekers and other migrants to transit countries or regions of origin before they reach the sovereign territory in which they could make a claim’ (emphasis in original 2008:250). Drawing parallels with previous efforts of UNHCR to establish ‘preventative protection’, Hyndman and Mountz argue that this ‘neo-refoulement’ is a continuation of the ethos of containment of human displacement that generated horrendous outcomes throughout the 1990s.

This analysis holds a number of parallels with work undertaken by Taylor (2008) who has also explored the legal grey area of refoulement against the backdrop of states’ non-arrival regimes. Finding that ‘non-refoulement obligations are all extraterritorially binding on states party to those treaties, and are triggered by
interception activities by agents of a state party wherever occurring' (2008:126), Taylor concludes that ‘states are mistaken if they believe that by engaging in offshore interception of asylum seekers they avoid their non-refoulement obligations in respects of those refugees’ (Taylor, 2008:127).

In a later study, casting a wider gaze on questions of responsibility, Taylor (2010b) explores Australia’s legal (and moral) responsibility for protecting and/or fulfilling the human rights of intercepted asylum seekers who are caught up in bilateral arrangements between Australia and regional neighbours, primarily PNG and Indonesia. Taylor concedes that given that the provisions set out in the Refugee Convention are territorially limited, it is non-binding on Australia within other sovereign nations. Despite this, Taylor argues that other human rights treaties that Australia is party to, such as the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) may be binding regardless of territorial restraints.

It is now generally accepted that there are three obligations correlative to every substantive human right: the obligation to respect, the obligation to protect, and the obligation to fulfil. If this position is accepted, it follows logically that a given right of a given person can be violated simultaneously by more than one state without necessarily being the case that they acted in concert. (Taylor, 2010b:343)

From this deduction Taylor concludes that it is possible that the deprivation of human rights suffered by individuals subject to the RCA in Indonesia could be the responsibility of one, both, or neither state involved. However, Taylor further explicates her position by claiming that under Article 5 of the International Law Commission governments cannot avoid responsibility for human rights violations committed by non-government bodies that have been employed specifically to fulfil a function of the state. She claims that in these instances organisations become reclassified under international law as government actors, thus, an extension of the contracting government (2010b:345). From this legal position, human rights abuses occurring within Australian funded detention centres in Indonesia are the responsibility of the Australian government. While they may not be perpetrating
these violations directly, the obligation to protect the human rights of those impacted remains. This principle is repeated in article 8 of the ILC, which states:

The conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact acting on the instructions of, or under direction or control of, that state in carrying out the conduct. (Taylor, 2010b:346)

Taylor concludes that since the RCA is an Australian initiative and serves the purpose of performing a key role in Australia’s border control objective, the Australian government has not only the moral but the legal responsibility to ensure the human rights of those affected by this policy are upheld regardless of territorial jurisdiction (Taylor, 2010b:353). Using the example of conditions inside Australian funded detention centres based on evidence provided by Jessie Taylor’s 2009 study, Savitri Taylor argues,

Since the provision of such substandard housing to asylum seekers in Australia would not be tolerated, it can be characterised as a failure on Australia’s part to fulfil the ICESCR right to an adequate standard of living without discrimination. (Taylor, 2010b:358)

This statement is contrary to repeated postulations from the Australian government that the Indonesian government is responsible for the detention facilities in Indonesia (McClelland, 2010:149-150). This scenario has led Taylor (2010b) to proclaim that the Australian government is actively seeking arrangements for its border control initiatives whereby they can claim all care but no responsibility.

The same impulse that is visible across parts of the Global North can be seen in Australia’s efforts to forge an exclusionary barrier around its sovereign territory by pursuing agreements with regional countries to disrupt, intercept and indict suspected irregular migrants or potential asylum seekers before they can reach Australia’s border. Yet despite the depth of research regarding the construction and maintenance of Australia’s externalisation policies, the effects of these policies beyond Australian borders remains largely understudied. While the small body of literature discussed above explores some of the consequences of Australia’s policies
upon neighbouring states like Indonesia and PNG, the effects these policies are having upon individuals caught within these regions remains marginalised within the literature. This is significant as the likely outcome of Australia’s non-arrival regime is that more asylum seekers will find themselves caught in neighbouring transit states for longer periods of time as they search for protection.

The second part of this chapter will now examine the small yet important body of literature that has attempted to address this gap in our current understanding of forced migration by exploring the experience of forced migrants in Indonesia, the conditions they experience there and the connection this has to irregular migration. It will begin by considering the role that choice plays in directing migration decisions out of Indonesia, before examining a number of social and legal issues that underpin this choice such as the lack of legal status, fear of refoulement, lack of alternative migration options, delays in the RSD process, conditions in IDCs and the fear of being detained within them. Once this literature has been discussed the chapter will conclude by reflecting on the role that people smuggling has played in sustaining irregular migration out of Indonesia and some of the social and legal consequences of this. Through the exploration of this literature a better understanding can be gained of how life in transit can shape the migration decisions of forced migrants.

**Life in Indonesia: Empirical Research on the Experiences of Asylum Seekers and Refugees in Transit**

**Role of Choice in Migration Decisions**

As a number of empirical studies from Chapter Two highlighted, forced migrants generally have limited options available to them following their initial displacement. Facing a world bristling with exclusionary barriers, migration choices are made within a narrow field of possibilities. How migrants make sense of these possibilities is an important aspect in understanding how migration choices are formed and why some people are choosing irregular migration over other alternatives.
When examining influential factors that shape migration choices of asylum seekers, a number of scholars have claimed that the policies of receiving states have minimal impact upon asylum seekers decisions (Spinks, 2013, Richardson, 2010; Koser, 2010). Koser (2010) asserts that this is largely due to a lack of knowledge regarding the asylum policies of potential destination countries on the part of the migrant. Empirical evidence from a 2010 study on Hazaras in Afghanistan commissioned by the Australian Customs and Border Protection Service appeared to echo this perspective. The study revealed that while many participants knew about the risks associated with the dangerous sea crossing to Australia, few had any knowledge regarding Australia’s asylum policies and its potential impact upon them.

Findings such as these appear to contradict the common assumption that ‘soft’ border control policies result in an increase in irregular migration. As Missbach & Sinanu (2011:61-62) note:

> The dissolution of Australia’s hardline defensive migration barrier had unexpected (though, in hindsight, hardly surprising) consequences. With the Pacific Solution gone, new boat arrivals to Australia jumped exponentially between 2009 and 2011.

This led the authors to conclude that ‘the cumulative lesson from the Australian experience appears to be that a tough refugee policy seems to work’ (2011:62). Yet this perspective remains debated in the field. According to Spinks, beyond a simple correlation, there is little empirical evidence to support the view that policy changes in receiving states and the number of boat arrivals at different points in time are related. To support this position she primarily points to the broad lack of awareness regarding these policies in the populations supposedly being effected by them (Spinks, 2013:1). While this is an important consideration, then, other factors need to be considered. While asylum seekers may have limited information regarding potential destination countries, the people smugglers who are organising these migrations may be far more informed. Considering that much of the past research has argued that asylum seekers lose control over their migration once they employ people smugglers, this factor seems highly significant as the knowledge of the individual asylum seeker may be subordinated in any case. This point will be
revisited in the coming chapters against participants’ own experiences of this to determine to what extent, if any, Australia’s reception policies were influencing participants’ decisions around irregular migration.

If we assume – momentarily – that the policies in receiving countries are irrelevant to, or at least, largely marginalised in the migration process, the question remains, what is driving irregular migration out of Indonesia? In recent years more interest has been directed towards this area of inquiry, predominantly through human rights briefs (HRW, 2014), investigative journalism (Dodd & Horn, 2013) and a small number of academic inquiries (Missbach & Sinanu, 2013; Taylor & Rafferty-Brown, 2010a, 2010b; Taylor, 2009). A number of influential factors have been identified across this diverse body of work. These include the lack of legitimate migration options available to forced migrants; the delays in the processing of cases under the RSD system; the lack of durable solutions; the fear of being detained in an IDC; and the fear of refoulement. These were all considered preeminent in shaping future migration decisions and driving irregular migration out of Indonesia. According to Spinks asylum seekers may opt for irregular migration, because while they ‘may find sanctuary from the immediate threat which forced them to flee their homeland, many continue to feel unsafe ... particularly in countries where their presence is tolerated, but they have no legal status’ (Spinks, 2013:6).

In transit countries like Indonesia research suggests that asylum seekers’ lack of legal status can result in meaningful protection outcomes being more challenging to secure. The lack of legal status can also place asylum seekers at a heightened risk of refoulement (Taylor & Rafferty-Brown, 2010; Taylor, 2009; Spinks, 2008). As Spinks explicates:

> Without legal status and the personal freedoms and opportunities that accompany such status, people will, unsurprisingly, feel compelled to keep moving until they reach a country in which a legal framework exists for the protection of refugees. (Spinks, 2013:8)

The lack of formal protection in the transit country coupled with the forced migrants’ desire to secure such protection is redolent of the literature examined in
Chapter Two conducted in a number of similar transit zones around the EU periphery.

**Delays in the RSD Processing and Lack of Durable Solutions**

Delays in the processing of asylum applications under the Indonesian RSD model have been cited as a primary reason why asylum seekers are turning to people smugglers *en masse* (HRW, 2013; Dodd & Horn, 2013; IRIN, 2012; Taylor & Rafferty-Brown, 2010a, 2010b; Taylor, 2009). Issues across all stages of the RSD from initial registration to final approval prolong this process (HWR, 2013). Meanwhile the increase in the number of irregular migrants attempting to access the RSD in Indonesia has created a backlog of applications that the under resourced UNHCR office is struggling to keep pace with (Taylor, 2009). The protracted nature of the RSD appears to be a major obstacle for asylum seekers attempting to reach a durable solution through this process. According to UNHCR themselves ‘for many asylum seekers and recognised refugees, the delays in processing their cases is doing little more than pushing them onto boats’ (IRIN, 2012:3). Largely this is due to the fact that third country resettlement is not a guaranteed outcome despite achieving refugee status through the RSD.

In fact research findings suggest that achieving ‘Convention status’ may have minimal impact upon the lives of forced migrants, as the lack of resettlement places available is the true determining factor. According to Taylor (2009:4) ‘positive findings of refugee status are meaningless in the current context, as there is no prospect of third country resettlement’, a supposition validated by data from contemporaneous research. Taylor and Rafferty-Brown’s 2007 study on the impact of Australia’s border control cooperation with Indonesia on asylum seekers and refugees is currently the best attempt at exploring this situation. Their findings are based upon qualitative interviews conducted with 59 asylum seekers and refugees in Indonesia as well as 25 government officials including immigration officers,

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7 It must be noted that this under resourcing of UNHCR is not unique to Indonesia but reflects the chronic under funding of UNHCR globally.
police officers and central government officials. According to Taylor & Rafferty-Brown (2010a, 2010b) the lack of durable solutions is the problem that overshadows all else in the life of asylum seekers and refugees in Indonesia. Three potential solutions are provided to this: local integration, voluntary repatriation, or third country resettlement (Taylor & Rafferty-Brown, 2010b). As the Indonesian government has actively ruled out the prospect of local integration, forced migrants are left with two choices, return to the country which they have just fled, or wait in the hope of securing a coveted humanitarian resettlement placement. Unfortunately, as the authors note, the worldwide demand for resettlement places far exceeds the supply and not all people who receive a positive decision on their RSD will be referred to a third country for resettlement consideration. At present the UNHCR estimates that only one per cent of the world’s refugee population are resettled through these types of offshore programs (Purdy, 2010). The result of this protracted situation is not hopeful according to Taylor & Rafferty-Brown, who conclude that ‘recognised refugees find themselves in a state of limbo in Indonesia … At best this state of limbo will last for years, at worst for a lifetime’ (2010b:561).

Under the RCA, forced migrants find themselves trapped in transit for a number of years, with limited capacity for civic engagement due to the lack of reception policies and legal status. The findings suggest that participants struggled emotionally in this state while many lost hope for the future. The authors attribute this state of limbo which forced migrants experience as a major contributing factor to the desire to move irregularly. According to Taylor & Rafferty-Brown asylum seekers are resorting to irregular migration ‘out of a strongly felt need to bring an end to their limbo, even at the risk of death’ (2010b:561).

As a result of the delays in the RSD and lack of third country durable solutions, forced migrants are exposed to increasingly long periods in transit. This protracted time, characterised by asylum seekers’ lack of legal status, exposes individuals to particular vulnerabilities, chiefly the prospect of refoulement.
Fear of Refoulement

Serious concerns regarding the prospect of asylum seekers being refouled from Indonesia due to the lack of awareness regarding their legal rights has been identified as a serious issue (Taylor, 2009). Taylor also identifies the worrying practice of IOM involving the 'voluntary repatriation' of both refugees and rejected asylum seekers to their country of origin which may, in many cases, be in breach of Article 33 of the Refugee Convention that guards against refoulement. Although Indonesia is not party to this agreement the principle of non-refoulement has been recognised as part of customary international law and is thus binding on signatory and non-signatory countries alike.

Taylor (2009:35) reports that a number of informants testified to being pressured by a range of officials to abandon their protection claim and return to their country of origin. In some cases this was as benign as reiterating the struggles that lie ahead if the individual chose to continue, in other cases it involved extreme acts of duress such as separating and isolating family members until they agreed to repatriate. These findings led Taylor to conclude that IOM’s staff activities amount to ‘involuntary’ returns. Referring to the IOM constitution, which mandates ‘voluntary return migration’ as part of the organisation’s platform while implicitly prohibiting forced returns, Taylor concludes:

If an asylum seeker does finally agree to be sent home, it is usually after many months or years of imprisonment, demotivation, starvation and malnutrition, often beatings and other forms of physical and psychological torture, and with the spectre of Mohammad Dawood Kalandari’s 9-year ordeal looming large behind the inaction of IOM and the UNHCR. It becomes spectacularly clear that IOM does not have any meaningful protection mandate, and that their constant encouragement to repatriate ‘voluntarily’ walks a line dangerously close to refoulement. (Taylor, 2009:35)

Taylor’s conclusion is supported by evidence provided by Taylor & Rafferty-Brown (2010a:576) who raise a similar critique of IOM’s definition of ‘voluntary’ within this climate. They argue that, ‘the simple fact that physical force is not used in procuring repatriation does not render it “voluntary”’ (Taylor & Rafferty-Brown,
The lack of agency in this scenario abolishes asylum seekers’ ability to act with autonomy and free will.

The empirical evidence attained in both Taylor & Rafferty-Brown (2010) and Taylor (2009) strongly suggests that the IOM practice of pursuing voluntary returns is problematic and that the UNHCR guidelines prohibiting the use of duress to secure such agreements cannot be satisfied under the circumstances. Taylor & Rafferty-Brown extend their critique of this practice by casting suspicion upon the RSD process more broadly, claiming that ‘the repatriation of rejected asylum seekers would not be problematic if the individuals concerned were not in fact entitled to international protection (that is, their protection claims had been correctly rejected)’ (2010a:576). However, given the surging numbers of applicants, the lack of funding and qualified staff provided to UNHCR Indonesia coupled with a lack of independent oversight or powers of review, a number of observers have questioned the veracity of the RSD system and the grounds on which Indonesia are repatriating rejected asylum seekers (HRW, 2013; Taylor & Rafferty-Brown, 2010; Taylor, 2009).

**Conditions in Immigration Detention**

The conditions in Indonesia’s IDCs and the fear of being detained in one of these centres have also been identified in the literature as a motivating factor driving irregular migration (HRW, 2013; Nethery, Raffery-Brown & Taylor, 2012; Taylor & Rafferty-Brown, 2010; Taylor, 2009). The research that has examined asylum seekers’ experiences in Indonesia has focused almost exclusively upon those who are detained in one of Indonesia’s 13 IDCs. While some IDCs are male only facilities, others cater for family groups and unaccompanied minors (Missbach & Sinanu, 2013). Research has found that the conditions of these IDCs are unacceptable, raising serious questions regarding the human rights standards and level of protection offered to asylum seekers who are detained (HRW, 2013; Missbach & Sinanu, 2013; Nethery, Raffery-Brown & Taylor, 2012; Taylor & Rafferty-Brown, 2010; Taylor, 2009). Descriptions in the literature range from ‘crowded and unhygienic’ (Missbach & Sinanu, 2013:2) to ‘maximum security third world jails’
According to Indonesia’s Director General of Immigration ‘Indonesia [does] not have the infrastructure to house immigration detainees in conditions which are ‘good, right, healthy and human rights dimensional’ (Cited in Nethery, Rafferty-Brown & Taylor, 2012:99).

A number of studies that have examined the immigration detention regime in Indonesia have found comparable results (HRW, 2013; Missbach & Sinanu, 2013; Nethery, Rafferty-Brown & Taylor, 2012; Taylor & Rafferty-Brown, 2010a, 2010b; Taylor, 2009). Within the IDCs, detainees were denied the basic necessities of life, such as access to clean drinking water, bathroom facilities, and access to outdoor spaces (Taylor, 2009; HRW, 2013). The appalling living conditions coupled with the fear of violence reported in these instances as endemic, resulted in irregular migrants taking extreme measures to avoid detection by authorities out of fear they may be detained.

Taylor (2009) found that the conditions of detention would be unacceptable by Australian standards, highlighting the chronic under funding, inadequate service provision and pervasive human rights abuses occurring in a systematic manner across the facilities. According to her, individuals were housed in living conditions ranging from ‘acceptable to appalling’ (2009:4). Field notes described situations where prisoners slept on dirty tiled flooring using flattened cardboard boxes as makeshift mattresses, while others were living where open sewerage ran through the compound. Many detainees were kept under lock and key and in one particular case individuals were confined to their cells 24/7. Taylor claims cells were usually cramped and overcrowded, with up to 40 men and women residing in spaces as small as 5 metres wide by 20 metres long. These findings resonate with her contemporaries including Missbach & Sinanu (2013) who found underfunding and overcrowding to be rampant. Two examples provided by them were the Kupang IDC, which at the time was hosting 240 detainees despite an official capacity of 80 and the IDC in Madan, which had a capacity of 50 people, but housed 480 (2013:2). In these conditions the outbreak of infectious diseases was common, adding to individuals’ suffering. More worrying still was the widespread reporting of physical abuse suffered by detainees within the IDCs, with some detainees reporting cases of sexual abuse as well (HRW, 2013; Missbach & Sinanu, 2012; Taylor, 2009).
In 2013 Human Rights Watch (HRW) found that conditions in the IDCs were failing to meet basic standards of care, suggesting that little improvement had occurred in the intervening years since Taylor’s fieldwork in 2007. HRW emphasized the widespread physical and psychological abuse witnessed within the IDCs underlining the vulnerability of children, particularly unaccompanied minors, in these circumstances (2013:32-33). This abuse is coupled with a culture of impunity where migration officials face little or no reprimand for their actions. Missbach & Sinanu (2013) emphasise this point with a chilling anecdote of a young detainee being tortured and beaten to death by up to ten immigration guards. The guards were investigated and charged for their crime, and subsequently jailed for ten months. As the authors state, ‘having served their time, the officers have now been re-employed by the immigration department’ (2013:1).

Beyond the chronic underfunding and lack of resources available to these facilities, a consternation concerning the lack of legal protection afforded asylum seekers and refugees is present across the literature. This is most often attributed to Indonesia’s status as a non-signatory to the 1951 Refugee Convention or the 1967 Protocol. According to HAS (2013:2) ‘the fact that Indonesia has not signed the Refugee Convention is always enough reason for the immigration officers to ignore asylum seekers’ basic needs and treat them as criminals or undignified people’. Meanwhile HRW (2013:20) emphasize the dangers this legal limbo poses for migrant children, claiming that the non-existent mechanisms for protecting asylum seekers has a disproportionate impact upon unaccompanied minors who are particularly vulnerable to rights violations outside of their country of origin.

HRW also raises concerns regarding the legality of the practice of detaining irregular migrants indefinitely. Despite Indonesian law allowing for the detention of any undocumented immigrant until such time as they can be deported, the practice of detaining migrants without possibility of judicial review or remedy is in breach of article 9 of the International Covenant on Civil and Political Rights (HRW, 2013:31). Despite the changes to Indonesia’s immigration law expanding the power to detain, (introduced in 2011) the use of detention for irregular migrants apprehended without official documentation remains sporadic and ad hoc. This issue is compounded further due to the limited access detained asylum seekers have to
UNHCR case workers, hampering their ability to register and put forward their case. This two tier system led one detainee to claim ‘the UNHCR has two eyes. One is blind and the other sighted. Those in front of the sighted eye are lucky and those in front of the blind eye are misfortunate’ (HAS, 2013:2).

The responsibility for the implementation of reception policies and the safeguarding of human rights standards falls to Indonesia alone within their sovereign territory; however the literature is critical of Australia’s role in this situation (Taylor, 2010b; Taylor & Rafferty-Brown, 2010b; Taylor, 2009). The RCA is an Australian initiative that has resulted in numerous asylum seekers who would otherwise have lodged applications in Australia, undergoing the RSD in Indonesia. This shifting of responsibility on to Indonesia is analogous with the detention regime that was initiated and expanded at the behest of, and funded by, the Australian government. Given Australia’s role in establishing both regimes there appears to be a consensus in the literature that rejects the Commonwealth’s position that it is not responsible for people affected by these agreements. Rather it has been claimed that Australia’s approach is an abdication of its legal and moral responsibility to asylum seekers (Taylor, 2010; Taylor & Rafferty-Brown, 2010a; Taylor, 2009). As Taylor (2009:4) states,

Australia has provided many millions of dollars of funding over the past few years through programs facilitated by IOM, among others. Australian taxpayers should not be funding programs which breach our international obligations to refugees, nor building or renovating centres where human rights violations will occur outside of Australian control.

On a similar note, Taylor & Rafferty-Brown (2010a:158) conclude their argument as follows,

Given that Australia is actively engaged in forcing asylum seekers who might otherwise have presented their claims in Australia to seek protection in Indonesia instead, it is surely morally incumbent upon Australia to work with UNHCR and the Indonesian government to ensure that upon becoming a party to the Refugee Convention and Refugee Protocol Indonesia will actually
have the capacity to make correct refugee status determinations and to accord refugees the rights to which they will be entitled under those treaties.

Failing this, the current state of affairs appears protracted, showing little sign of improving. It is within this climate where the basic rights of forced migrants cannot be assured, and individuals can see no hope for their future, that irregular migration becomes a serious consideration. This point has gained traction across the literature. The consensus is that without greater financial support for the RSD, the strengthening of safeguards against refoulement, and the maintenance of human rights standards, desperate asylum seekers and refugees will continue to seek alternative ways of accessing protection, mainly through the use of people smugglers (Missbach & Sinanu, 2013, 2011; HRW, 2013; Dodd & Horn, 2013; IRIN, 2012; Taylor, 2012; Taylor & Rafferty-Brown, 2010a & 2010b; Taylor, 2009).

The country profile of Indonesia offered in Chapter One goes some way to explaining the root cause of these conditions experienced by asylum seekers in Indonesia and accounts for why some of these practices would be able to fester unchecked. However, while not suggesting that these conditions are orchestrated by the Indonesian government, a more cynical reading of the situation could suggest that these conditions are perhaps willingly ignored and tacitly accepted as they promote onward movement, ensuring unwanted asylum seekers limit their time in Indonesia and are not tempted to stay. Given the massive drain on resources border security poses, a developing state like Indonesia may find this form of 'benevolent neglect' as it is termed by Missbach (2011) a subtle form of resistance against an inequitable pattern that sees powerful states like Australia shift their protection burden onto less powerful neighbours like Indonesia.

Whether purposeful or a by-product of ongoing development, the delays in the RSD, lack of durable solutions, and fear of refoulement or detainment stemming from a lack of legal status in Indonesia have all been identified as push factors that contribute towards the decision of asylum seekers to migrate irregularly. With these push factors identified the final link that needs exploration is the relationship between irregular migration out of Indonesia and people smuggling. The final
section of this chapter will examine this relationship and how it has been conceived of in past research.

**People Smuggling in Indonesia**

*The Causes, Effects and Relationship to Irregular Migration*

People smuggling is the procurement of the illegal entry or residence of a person into a country for financial or material gain, as defined by Article 3 of the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (UNCTOC, 2000). This form of illegal border crossing must be distinguished from ‘human trafficking’. Though these terms are often used interchangeably, in legal and academic terminology they have distinct meanings with the former prefaced upon the consent of the parties involved (Schloenhardt, 2001). As Houston, Aristotle & L’Estrange (2012:72) explain:

> In general terms, migrant smuggling is characterised by consent and a lack of exploitation. Smuggled migrants consent to be smuggled, even if the circumstances of the journey are appalling or dangerous. Their journey ends when they arrive at their intended international destination, and they usually provide payment of some kind in exchange for being smuggled. By contrast, trafficking involves the ongoing exploitation of a victim without their consent, and profits are usually derived from the process of exploitation rather than from the act of facilitating irregular migration.

Despite being a global phenomenon, most research on people smuggling has tended to focus upon Western Europe and North America (Barker, 2013). According to IOM the profits derived from people smuggling activities is upward of USD3 to USD10 billion dollars annually (IOM, 2011). Along with the global increase in people smuggling activities, there have been numerous efforts to quantify and apply exact typologies to the organisational structures of the smugglers, most notably Salt and Stein's (1997) smuggling as a ‘business model’. However the broad categorisation of these activities has been largely unsuccessful due to the variation that exists across these operations (Barker, 2013). Despite this, discernible patterns have emerged.
regarding the evolution of people smuggling operations. It has been suggested that many people smuggling syndicates around the world begin as small scale operations based primarily upon social networks or kinship, but due to the increase in law enforcement activities these operations have transformed into highly organised, professional enterprises (Barker, 2013; Balint, 2005; Icduygu & Toktas, 2002; McInerny, 2000; Salt and Stein, 1997). While the existence of small or one time venture operators cannot be discounted, the role of organised, transnational crime networks has become the prominent focal point within the discourse. As Barker notes, ‘there seems to be an emerging consensus that people smuggling tends to operate on the basis of an “enterprise model”, involving large numbers of smaller, flexible criminal networks, organisations or individuals interacting where necessary’ (2013:12). The flexibility of this model is crucial due to mounting efforts to prohibit the industry by law enforcement agencies. As McInerny (2000:7) notes, ‘people smugglers have shown themselves to be extremely adaptive – changing their vessels, departure points, routes, arrival points and other operating procedures in response to law enforcement actions’. While this is a clear strategy devised to avoid detection, one of the unintended consequences of this adaptation is the increased vulnerability of asylum seekers, as people smugglers engage in increasingly risky behaviour to maintain their business (Barker, 2013; Houston, Aristotle & L’Estrange, 2012; Hoffman, 2010; Balint, 2005; McInerny, 2000).

The small body of research that has explored this issue in Indonesia has found these global trends broadly replicated. In regards to the shift towards professionalism, McInerny argues that ‘the nature of people smuggling activities through Indonesia to Australia has changed greatly; these activities have moved from being relatively overt and amateurish, relying to a significant extent on family connections, to being increasingly covert, highly lucrative, professional criminal enterprises involving high levels of official corruption’ (2000:6). This position is widely supported across the literature (Barker, 2013; Mares, 20010; Hoffman, 2010; Balint, 2005; Tailby, 2001). This flexibility has also led to a large degree of resilience. According to Munro (2011) the same adaptability that allows people smuggling networks to evolve and withstand law enforcement measures also provides the organisations with resilience over time, engendered in the ability to remain inactive until favourable
conditions are present and they are able to resume business as usual. Illuminating this point Munro argues that the re-emergence of people smuggling operations in 2008 after a considerable hiatus ‘highlights the resilience of the criminal networks engaged in people smuggling operations and the long term investment made by criminals in this type of enterprise’ (Munro, 2011:40).

The resilience of people smuggling networks in Indonesia and their ability to adapt methods to avoid detection has seen an increase in risky behaviours being pursued. This behaviour places asylum seekers at even greater risk. These methods include disembarking crew before reaching land to avoid arrest and employing minors as crew members to guard against Australia’s mandatory sentencing laws in cases where crews are detained. Of greatest concern is the use of boats of poor quality due to the AFP practice of acquisitioning and destroying all vessels used to bring people irregularly to Australian territory (Ngiam, 2012; Missbach & Sinanu, 2011; Hoffman 2010).

Looking beyond the parallels with the international literature, within the Indonesian context scholars have tended to focus their enquiries on three main areas of importance: the notion of ‘break the people smuggling business model’, the role poverty plays in providing a willing and available workforce for these operations, and the factors that are driving the supply side of the trade in Indonesia.

There are two competing schools of thought regarding the best way to ‘end’ people smuggling as a business model. The first perspective is critical of the security discourse arguing that to reduce people smuggling activities governments must remove the demand for such journeys. It is claimed that to do this governments must be willing to engage with the issues underpinning irregular migration and the broader consequences of border control initiatives (Barker, 2013; Weber, 2012; Purdy, 2010; Hoffman, 2010). The second perspective promotes the view that with the appropriate application of border security strategies and deterrence, focused upon surveillance and policing, the people smuggling networks can be suitably frustrated as to drive the business elsewhere (Munro, 2011; McInerny, 2000). According to Munro, this strategy will amount to the destruction of the service provided by smugglers, removing their revenue, and therefore their motivation:
A greater focus on intelligence led policing, drawing from the extensive IOM surveillance network will pay dividends in the long run. By removing the people smuggler from the equation their human cargo will be caught in transit. The smugglers will have failed to service their market effectively and the buyers of their service will look elsewhere for newer, more vulnerable routes, away from Indonesia, and away from Australia. (Munro, 2011:49)

This latter perspective is problematic on a number of fronts. Primarily it is a state centric approach based upon a narrow vision of national interest – it does not ‘fix’ the problem, it merely pushes the issues onto another state or surrounding region. Secondly, the dedication to policing at all costs does not recognise the unintended consequences of this action in fostering ever more dangerous practices as has been revealed through the research. Given that the mantra of ‘saving lives at sea’ has been used as the official justification for destroying the people smuggling trade (Houston, Aristotle, & L'Estrange, 2012), the correlation between border policing practices and the increased risk to irregular migrants appears incongruent with this aim. Comments such as ‘the only way to effectively combat people smuggling is to remove the smugglers themselves’ (Munro, 2011:47), demonstrates the danger of reducing a complicated set of social relations to a single ideological position. The reality conveyed through the growing body of literature in the Asia Pacific region and internationally suggests a more nuanced response to the issue of irregular migration is needed. According to Weber (2012), ‘turning the debate solely into a discussion of the illegal activities deflects attention from the role government policies themselves have played in creating the conditions that allow them to flourish’. In other words, the politics of border control is part of the problem not the solution.

**Poverty and the Exploitation of Indonesian Nationals in People Smuggling Syndicates**

It has been suggested that the dominant model of people smuggling employed in Indonesia is one in which International crime syndicates employ impoverished Indonesians as crew members, outsourcing all the risk while maintaining control of the profits (Grewcock, 2013; Ngiam, 2012; Stewart, 2010; Purdy, 2010; Balint,
This structure appears to replicate those found in the global literature where people smuggling ventures are considered ‘low risk, high profit’ for those in charge as the labour is outsourced, along with any legal ramifications that may follow (Barker, 2013; Ngiam, 2012; Purdy, 2010; Hoffman, 2010). While in the Indonesian context charges have been laid against numerous individuals suspected of engaging in people smuggling activities, as authorities have acknowledged, these prosecutions have done little to disrupt the broader structures of the networks. Instead it has tended to disproportionately punish those at the very bottom levels of the operations (Barker, 2013; Ngiam, 2012; Balint, 2005).

Research in this area has found that these bottom rung smugglers tend to be poor Indonesian fisherman, working for low pay, who have little to do with organised crime or the organisation of smuggling activities more broadly (Ngiam, 2012; Purdy, 2010; Hoffman, 2010; Balint, 2005). Depleted fish stocks and the lack of economic opportunities to diversify their industry have been attributed to these men becoming involved in operations at the bottom rung of the people smuggling hierarchy. According to Balint:

Unable to operate within a traditional framework of survival, forbidden to modernise or to participate in the industrialised world, trapped by unworkable regulations and powerless to change them, Indonesian fisherman started living up to the myth of itinerancy foisted on to them. (2005:143-144)

Ignorance on behalf of the fishermen-turned-people smuggler is often cited within this literature, with a number of studies suggesting there is a serious lack of knowledge on behalf of the Indonesians acting as crew in regards to the seriousness of their actions and the legal consequences that may follow (Ngiam, 2012; Hoffman, 2010; Balint, 2005). Ted Wilkinson, a Western Australian lawyer who has represented a number of individuals charged with people smuggling offences in Australia, suggests that ‘his clients were as much in the dark as their paying passengers, just as ignorant of their fate that awaited them and just as frightened’ (Balint, 2005:145).
Supply and Demand of People Smuggling Services

Based upon the available data, some authors have commented upon the role ‘demand’ plays in maintaining people smuggling networks in and out of Indonesia. While this remains understudied in a methodical sense, critics have argued that the intersection of the previously discussed issues fosters the conditions for irregular migration (Dodd & Horn 2013; Missbach & Sinanu, 2011; Purdy, 2010; Taylor & Rafferty-Brown, 2010a; Hoffman, 2010; Taylor, 2009). Rebuking the call for greater policing and surveillance in order to disrupt irregular migration, scholars have instead argued for greater investment in the RSD process and more tailored development schemes in both refugee creating countries and traditional transit locations as the most efficient way to reduce irregular migration and stamp out the illicit practice of people smuggling (Missbach & Sinanu, 2011; Purdy, 2010; Taylor & Rafferty-Brown, 2010). These works explicitly reject the dominant governmental narrative that irregular migration is the culmination of attractive pull factors and poor border security policies. Instead this perspective highlights the immigration push factors in Indonesia and the role Australia’s migration policies have in limiting alternatives for forced migrants trapped in transit (Weber, 2012; Missbach & Sinanu, 2011; Taylor & Rafferty-Brown, 2010; Hoffman, 2010, Purdy, 2010). As Hoffman (2010: n.p) concludes:

The research suggests that it is the restrictive policies enacted to stop asylum seekers crossing borders that push them towards the smugglers in order to navigate the obstacles put in their way. People smuggling is without a doubt customer driven.

Chapter Summary

This chapter has charted the current literature that explores issues broadly associated with asylum seeking in Australia. It has largely focused on the ebbs and flows of Australia’s response to asylum seekers through the shifts in government policies. Debates regarding how asylum seekers have been constructed through the media, as a threat to the nation and as a problem requiring a securitised response were also discussed. The broad consensus across the literature is that this
discursive construction of asylum seekers has provided the impetus for, and justification of the increasingly hardline policies designed to exclude them from the national space. The second half of this chapter then charted a number of more recent studies that have attempted to explore the consequences of Australia’s policies. Effects upon state sovereignty, relations with neighbouring states, and responsibility for the protection of human rights were all discussed in relation to Australia’s policies. In this literature a number of similarities with Global North can be seen. The chapter concluded by examining the few available empirical studies conducted with asylum seekers in Indonesia and the small body of work that explores the issue of people smuggling within this context.

The literature suggests that Australia’s attempts to externalise its border control, and minimise the arrival of potential asylum seekers, as well as anti-people smuggling policies have had a range of unintended consequences. Research has alluded to the fact that if migration controls are too effective in reducing regular migration they may inadvertently create a demand for irregular migration supplied by people smugglers. However, this connection remains under-examined within the Australian-Indonesian context despite a handful of recent contributions. As Browning states, despite the extent of scholarly activity ‘we still know little of the regimes imposed on asylum seekers and the interplay of individual life-story, institutional practices of management and control’ (2006:12). It is precisely this interplay that this research seeks to address.

By examining the day-to-day experiences of asylum seekers in transit in Indonesia against the larger international context in which closed borders and securitisation of migration has become the norm, the depth to which these processes are inextricably linked can be revealed. Over the next two chapters participants’ own personal experiences of this will be explicated, drawing out the nexus that exists between forced migration, experiences in transit and irregular migration. Through these accounts a better understanding of how migration choices are made can be fostered.
Chapter Four

Rejecting UNHCR: Irregular Journeys from Indonesia to Australia

Introduction
In the previous chapters a review of the literature revealed that powerful nation states of the Global North have pursued policies designed to exclude asylum seekers from their national territory as a means of reducing their obligations under the Refugee Convention. This has been achieved through the construction and maintenance of non-arrival regimes that extend border control initiatives beyond the physical border of the state into extraterritorial realms. As a consequence of these exclusionary barriers forced migrants find they have a limited capacity to legally access areas where the rights of asylum are enshrined. As a result the literature revealed that many forced migrants are finding themselves funnelled into newly formed transit zones, which lack the appropriate legal framework for their protection. In this scenario a number of studies have documented that asylum seekers are turning to irregular migration as a way of overcoming these exclusionary barriers in order to seek protection.

While this phenomenon has gained traction in academia, existing research has mostly focused upon transit countries that exist along established migration pathways into greater Europe, highlighting the strength of this pattern in the region (Chatelard, 2008; Hamood, 2008; Kirisci, 2005; Papadopoulou, 2005 & 2004; Koser, 2005, 2000, 1997).

In the Australian context a number of scholars have examined a similar impulse in the government’s response to asylum seekers. Chapter Three detailed how Australia has sought to export its border control and shift the responsibility for the processing of asylum seeker claims on to a number of regional neighbours. Within this body of work scholars have explored the impact of Australia’s approach on regional neighbours at a state level and through a human rights paradigm, yet little is still known about the impact these policies have on forced migrants themselves.
The few studies that have spoken to asylum seekers directly in Indonesia have largely focused upon the experience of those in immigration detention and the conditions that they face. These studies found that the delays in the RSD, fear of refoulement and the conditions in detention all impact significantly upon people’s lives in Indonesia and shape their experiences while in transit. What is of interest and under-researched, however, is the influence these experiences have on those stuck in transit who are not detained and their subsequent migration decisions. By exploring these connections the relationship between the broader migration policies of developed states, life in transit and irregular migration can be more clearly explicated. To this end, a deep understanding of the situation that forced migrants face in Indonesia (as described by themselves) serves as prime case study to determine the extent of this relationship and whether similar migration patterns that are outlined in Chapter Two are applicable to the Asia Pacific region.

This chapter will begin by exploring why participants in this study were displaced from their homelands of either Afghanistan or Pakistan and how they came to find themselves in transit in Indonesia. These biographical accounts are important as they influence people’s experiences and decisions throughout the migration process. While Chapter Five will explore the experiences of those participants who remained in Indonesia hoping to be resettled through the UNHCR system, Chapter Four will focus exclusively upon those participants who travelled onward from Indonesia to Australia with the assistance of people smugglers and the reasons behind their decisions. Four major themes emerge from participants’ migration narratives that can help illuminate the reasons why a substantial number of asylum seekers (25,173 in the 2012-2013 financial year (Parliament of Australia, ‘boat arrivals since 1976’)) were turning to irregular migration out of Indonesia in order to seek protection in Australia. These themes are: a rejection of the UNHCR pathway, broader perceptions of Indonesia as an inhospitable and unsafe location for forced migrants, victim fatigue, and external pressures. Drawing on the accounts of participants these themes will be expanded on throughout the chapter, demonstrating how participants in this cohort came to view irregular migration as the only real option available to them in order to find safety.
Through the personal accounts of participants, the tension between structure and agency will be drawn out and used as an analytical tool for understanding participants’ choices and actions. While participants were making autonomous decisions regarding their future they were making these ‘choices’ within a sea of constraints. The transit experience, it will be argued, renders asylum seekers *immanent*, which is a state defined by Beauvoir (1997:29) as ‘the brutish life of subjection to given conditions – and of liberty into constraint and contingence’. For participants in this cohort irregular migration offered an opportunity to *transcend* this inertia or passivity through the act of ‘reaching towards other liberties’ (Beauvoir, 1997:28). For participants in this study, the sense of being alienated from their human rights coupled with the unsustainable condition of life in transit placed them in a state of anomie, as they felt unable to act in accord with the normative mode of seeking asylum. The sense that ‘the system’ did not support their situation was justification for their strategic actions, designed to reassert their humanity and access those rights even if this meant acting outside of the authorised pathways.

**Background**

*Leaving Home: Factors Underpinning Forced Displacement*

The following section will examine how participants came to be in Indonesia and the circumstances that led to this. The men in this study came from a range of backgrounds and different social locations although all were Hazaras. Some were in professional occupations others were farmers and low skilled labourers. Some were journalists and human rights activists whose activities incurred the ire of the Taliban. Others were highly skilled technicians and engineers who had been singled out for supporting US-allied troops during the war in Afghanistan in 2001. Others were merely boys of fighting age who fled before local warlords could forcibly enlist their services as was common at the time. In any case, all participants felt that their distinctive Hazara features, visibly imprinted upon their bodies, contributed towards their persecution and marked them for death as ‘infidels’. This is due to a long history of persecution the Hazaras have endured in Afghanistan and more recently in neighbouring Pakistan. The persecution of the Hazaras stems from
historic tension based primarily upon Shi’a – Sunni relations that have continued into the 21st century (Hussain, 2003). Under Taliban rule the Hazaras were the victims of numerous human rights abuses and targeting killings, the legacy of which is still evident today (Ali, 2002). This was largely due to being labelled ‘kafirs’ (infidels) due to their religious beliefs (Hussain, 2003). As one confidential informant stated when discussing the reasons people flee their home:

The history of the Hazaras is unfortunately painted with blood, misery, despair and persecution. Hazaras have been subject to a systematic genocide in their homeland – Afghanistan – from late 18th century and, to this date, this persecution continues unabated. (Indonesian NGO worker, 2013)

For the men in this study simply being born into an ethnic and religious minority – the Hazaras – in a region plagued with sectarian violence was enough to mark them for persecution from the moment they were born. For everybody in this study their minority status was central to their forced displacement. As one participant articulated:

The reason why Hazara people come here is the targeted killing in Afghanistan and Quetta Pakistan – because my face is Hazara, my religion is Shia (Aziz Ali, 2012)

While participants lived with this daily discrimination it wasn’t until an acute threat presented itself that most finally made the decision to flee. For example, after an attempted assassination in the street or after returning home to find murdered family members or waiting Taliban soldiers on their doorsteps. As a result, for most participants, their initial migration was carried out with considerable haste with little time to plan their journeys. In fact most participants stated that they had fled across international borders within days of the event that triggered their decision to leave. The abruptness of this flight clearly impacted on participants who emphasised their lack of choice and the sadness that came from their forced displacement. As Nasim states:

It isn’t something that we can say we came here by choice, everything is by force. Nobody is happy to come to this country, to a very different culture, to
a very different land, it takes years and years to settle into a new country with a new culture and a new way of living and to adopt that new way of life and to accept some things that you would of thought, no, but you have to accept those things and go on, so it is because we are forced, it is not something that is by choice it is by force. (Nasim Sakhi, 2012)

This sentiment is echoed in Imran’s comment, which once more highlights the reluctance of people in this study to abandon their home and also serves as a poignant counterpoint to the narrative that all asylum seekers are looking to be resettled in the Global North.

We don’t want to leave our country. Australian people are alike, they are happy here and don’t want to leave. We are also happy and don’t want to leave our country but the problem is that every day you don’t go to the bazaar, only Pashtu and Taliban, Al Qaeda, everybody is there. (Imran Farid, 2012)

Despite participants’ disinclination to move, all participants came to the conclusion – either alone or as a family – that they had to flee in order to save their own life. It was at this junction, however, that participants often became aware of their limited capacity to do this through regulated channels. While participants stated that they intended to seek asylum, they quickly discovered that they were unable to reach countries where the right of asylum is recognised. In this situation the relevance of non-arrival regimes and their previous analysis in the literature can be seen. Participants where limited in their movement for a number of reasons. Primarily very few had travel documents and for those that did the haste of their exodus meant that there was no time to apply for prior authorisation for international travel. Furthermore, participants expressed mistrust in the ability of any government or non-government agency or organisation to protect them, preferring to keep their movements concealed from the outside world. This perspective drove participants to escape across international borders in clandestine ways.

This mistrust in the social institutions in both Afghanistan and Pakistan also proved influential in regards to participants’ future decisions to engage UNHCR Indonesia, as their past interaction with similar organisations appeared to have solidified
negative perceptions of them in the mind of most participants. Throughout the research participants were very vocal in their criticism of humanitarian organisations operating in Afghanistan and Pakistan as the following comments illustrate:

I say here [Australia] UNHCR is working but in Pakistan and Afghanistan Red Cross is not working, UNHCR is not working, I’m not... I don’t say UNHCR is bad but I say only that UNHCR working is very different in Afghanistan, in Australia its working is good but in Afghanistan and Pakistan... the office is like every day you come and think maybe today but you just sit, and sit and every day you think maybe today but it’s just take money. (Jangi Shan, 2012)

Corruption within UNHCR Quetta and supporting institutions is considered endemic (Waqar, n.y). Participants in the study routinely made reference to corruption occurring in front of them or directed towards them, for instance scenarios where death threats were made against them unless they paid bribes to staff. The notion that these institutions function very differently in Afghanistan and Pakistan as opposed to countries like Australia appeared to be a common view held by participants:

The United Nations, the Red Cross, they are not safe [in Pakistan] all the NGOs are stopped, they cannot do their job properly, they are just idle. Here in Australia people can move in the darkness from here to here, at 6pm in my place in Quetta Pakistan can move from this place to that place it’s not possible in darkness, when they find you they kill you because you are Hazara. (Sharif, 2012)

No one in the sample considered the UNHCR office in Quetta a serious option, in fact when it came up in conversation at all it was usually denigrated through humour, demonstrating the extent of its perceived dysfunction. For example one young man recommended that in order to be seen by the UNHCR staff there one would need to take a week’s supply of food with them just to make it past the first check point. Another participant joked that you could go straight from the UNHCR office to the graveyard (Arif, 2012)
On a more sombre note, one participant, Aziz Ali, recounted a harrowing story of a young Hazara doctor who was abducted after visiting UNHCR in Quetta. The man’s captors murdered him, dismembered his body then sent it to the UNHCR office as revenge. While this account was unable to be verified, the imagery of this event clearly had real implications on the Hazara community who viewed it as a cautionary tale. This story encapsulates the risks many participants associated with trying to seek protection locally and the inability of these organisations to protect them.

These accounts, so readily conjured up by participants during their interviews, help to demonstrate the serious issues, lack of options and systemic failures that are occurring in the regions of origin which are forcing displaced people further afield in search of protection. These accounts should also illuminate why some forced migrants hold deep seated suspicions of international organisations like the UNHCR and why some people may be reluctant to trust them in any capacity or situation. In this way, demanding forced migrants seek protection through established channels can be considered ethnocentric in that this position fails to acknowledge that social institutions may not operate in a manner that we might expect in the Global North. As the following comment by Habibulla notes:

"The population of Hazaras in Quetta is very small yet in ten years over 1000 people are killed, you say why do I not go to UNHCR, where are UNHCR? Where do I go? But everyday Hazaras in Quetta are treated as not human, they are not treated like human they are treated like donkey. My community is treated like ants!"

The question of ‘where do I go?’ was reiterated by participants during the interviews. The situation the Hazara men faced in Afghanistan and in Pakistan left them feeling hopeless. All relayed that they had little option but to resort to irregular migration. In the end all participants from Afghanistan escaped in a manner that could be classified as either irregular or illegal. Some used an agent to either smuggle them across the border in a clandestine manner or bribed border guards, while others were provided with fake documents to board planes directly out of Afghanistan. A number moved into Pakistan but as previously noted the
conditions they encountered there prompted them to look for safety further afield. For those in Pakistan the most common way of escaping was to purchase fake travel documents from an ‘agent’, travelling by air into disparate parts of Asia before diversifying in their travel methods before finally reaching Indonesia. The fact that participants had to use fake documents in order to board an international flight demonstrates the effects of non-arrival regimes and also their unintended consequences – pushing desperate people towards irregular migration.

Having fled Afghanistan and Pakistan with the help of people smugglers, participants became dependent for their ongoing assistance as they found themselves abroad with no identity and no legal status or protection. Participants recounted that they would be issued fraudulent travel documents in one airport and upon landing an associate agent would be waiting to confiscate the same papers on the other end. These types of practices ensured that asylum seekers remained reliant on the smugglers and their business, which can be understood as a form of path dependency. This pattern holds many parallels with the available literature discussed in Chapter Two and Three.

As Grewcock points out ‘the popular political response in Australia has been to condemn the people smugglers responsible for organising such journeys rather than recognise the inherently criminogenic role played by border controls in generating high risk forms of illicit travel’ (2013:15).

**Coming to Indonesia**

Indonesia is a classic example of a transit country, located between a significant refugee creating region and a developed nation state with a history of successfully accepting and resettling refugees; it is also geographically diverse with porous borders, making it an easy target for individuals who wish to avoid official migration pathways or have no alternative than to move without prior authorisation. Notably Indonesia does not offer durable solutions to refugees as it is not a signatory to the 1951 Refugee Convention or the 1967 Protocol. As a result, Indonesia cannot be considered a serious permanent solution for Convention Refugees, meaning any forced migrant there will eventually have to move onward or risk being expelled. To
this end the characteristics that make Indonesia a transit location rather than a destination country for forced migrants are clear.

When asked why they came to Indonesia, most participants reported that they were drawn there due to the availability of the UNHCR office. Some reported that they had no say in the matter, few suggested that they thought it was the safest pathway available to them while a minority offered that they intended to use it solely as a launching pad for irregular migration to Australia. Despite the differences in these motivations what remains the same is that people were directed towards Indonesia for one overarching reason, they lacked the capacity to move through regular migration channels into areas where they might find safety. This situation holds many parallels to the empirical findings discussed in Chapter Two which charted that non-arrival regimes create impenetrable offshore borders that reduce regular migration options for individuals considered ‘undesirable’ (Gibney, 2005; Papadopoulou, 2004; Koser, 2001). The outcome of this, as discussed in Chapter Two, is that a growing number of forced migrants are being unwillingly funnelled into countries and regions that do not have the appropriate reception policies or legal framework to support them (Gerard & Pickering, 2014; Hammod, 2008; Chatelard, 2008). Indonesia is one such country where asylum seekers, many arriving irregularly, struggle with issues of legality. This situation highlights the reality that there are in fact ‘multiple’ borders as Francis details:

The function, effect and location of the modern border is different from group to group and individual to individual. The border for some may be experienced within a foreign state’s territory at the point of entry, whereas for others it may be experienced in a transit country or even within the individual’s own country. (Francis, 2009:379)

This perspective articulated by Francis is important in understanding how and why forced migrants move in the ways they do. The lack of available embassies, travel documents or trustworthy institutions in the country of origin means that forced migrants experience borders and mobility very differently to citizens of the Global North who are readily able to cross international borders in safe and authorised ways. It also highlights how forced migrants can experience the functional border of
a nation state that is half a world away while still in their own country through the presences of extra-territorial border control mechanisms that work to further limit regular migration options. It is these mechanisms that drive forced migrants into irregular forms of migration, which more often than not push migrants into regions that are unsuitable and situations that are unsafe.

All participants in this study entered Indonesia in an irregular fashion without legal authorisation, meaning that if they were apprehended by law enforcement they would be considered illegal immigrants subject to immigration detention and possible deportation. This left participants with two potential options. First they could present themselves to the Jakarta office of UNHCR as an asylum seeker. This registration would allow them to remain in Indonesia while their claim was assessed and a resettlement place found. Technically as a registered asylum seeker individuals would be protected from refoulement and their special status would be recognised by authorities. Alternatively people could choose to stay ‘in hiding’, waiting for an opportunity to board a boat to Australia. By remaining undocumented in Indonesia asylum seekers risk being subject to immigration detention if detected.

Having briefly established how all participants in this study came to find themselves in Indonesia, this chapter will now analyse the experiences and self-identified reasons of those participants who chose irregular migration over other options that were available to them such as applying through UNHCR Indonesia for third country resettlement.

**Rejection of UNHCR Indonesia**

One of the central reasons participants in this cohort opted for irregular migration was based on their mistrust of UNHCR and the official RSD pathway in Indonesia. Participants routinely displayed a large degree of scepticism in this pathway based on anecdotal evidence of others’ experiences. This lack of trust was often manifested in statements expressing doubt that asylum claims would be examined in accordance with international standards, or through remarks that suggested
participants felt like the merits of their case would be ignored regardless of their authenticity. Comments like Jangi’s below are illustrative of this occurrence:

I know my case is strong, I know that I am a refugee- I have all of the evidence, however I was not hopeful. (Jangi Shah, 2012)

This lack of hope that Jangi articulates in regards to being positively assessed and resettled through UNHCR Indonesia is fundamental. It is evident that the lack of trust in the official mechanism is driving people towards other avenues such as irregular migration. The perception that the RSD process in Indonesia is inept was regularly given by participants as a rationale for bypassing the system in Indonesia altogether. The testimony by Sharif encapsulates this notion. Like many asylum seekers in Indonesia, Sharif rejected the RSD process outright, instead choosing to attempt the dangerous sea crossing to Australia to seek protection. Sharif, along with many others, was intercepted by authorities when trying to board a boat and, after being apprehended, was detained in an immigration detention centre (IDC). Sharif’s incarceration left him with only one option, register with UNHCR and undergo the RSD process in Indonesia. When asked about this experience Sharif spoke of his frustration and dismay regarding the RSD:

The refugee application process is like a black hole where I can’t see any standard rules and regulation. As I have been experiencing for fifteen months I can’t see any justification to detain us for our asylum claims because seeking asylum is not a crime. There are many issues like one is interviewed after four months and the other has to wait nine months. One gets his result within four months and the other has to wait for thirteen months where I can’t see any justification and standard or rules and regulation in an international organisation. (Sharif, 2012)

Sharif’s frustration and scepticism in the RSD process is an important point to recognise as research suggests that lack of trust, based primarily upon ideas of fairness, can have wide ranging consequences (McCoun, 2005). Perceptions of fairness in procedural matters appear instrumental to individuals’ willingness to comply with the process and outcome. This is particularly true in regards to authority, official systems, and institutions of power. According to Lind & Tyler
(1988, cited in McCoun, 2005) there are two elements of procedural fairness that are of particular significance to individuals, the ability to tell one’s own story, and being treated respectfully throughout the process, or, according to MacCoun (2005:172), the opportunity to present one’s case in a dignified and respectful hearing, and receive a verdict based on the merits of said case. When these elements are not adhered to, research (MacCoun, 2005) has found that individuals are less inclined to view the process as fair or to abide by official rulings or verdicts. In light of this it is obvious how perceptions of procedural fairness in the RSD process can have far ranging consequences upon asylum seekers and their future migration choices.

It was clear that for participants in this cohort, perceptions regarding fairness, or the lack thereof, played a crucial role in the decision to avoid the official resettlement process in Indonesia in favour of irregular migration. Participants cited numerous issues that pertain to a lack of fairness in the system including corruption and bribery of UNHCR officers, the lack of a standardised processing procedure, standardised timeframe for registering and deliberation of refugee status, full compliance with the Refugee Convention and its protocols, and the observance of other human rights standards while in transit. These findings are in line with contemporaneous research which has explored the experience of asylum seekers in detention in Indonesia (HRW, 2013; Missbach & Sinanu, 2013; Taylor & Rafferty Brown, 2010a, 2010b; Taylor, 2009) that also found a lack of trust in the RSD process.

The link between perceptions of fairness under the law and individuals’ acquiescence to abide by such limitations as a result is clear. To summarise Lind & Tyler, people care deeply about the process by which conflicts are resolved and decisions are made, even when outcomes are unfavourable or the process they desire is slow or costly (2005:172). Affirming this, the overwhelming position of this cohort was that they did not perceive the assessment process in Indonesia as being fair and as a result were less inclined to subject themselves to the judgement or authority of UNHCR Indonesia and the RSD process.
In short let me say that UNHCR is an irresponsible organisation with fail system not having any proper rules and regulation. (Sharif, 2012)

These findings echo those of Taylor (2009) and Taylor & Rafferty Brown (2010a, 2010b) who have raised doubts regarding the fairness and accountability of the RSD process in Indonesia. According to Taylor:

On many occasions, we heard from asylum seekers that UNHCR staff were ill-equipped with basic knowledge relevant to claims. Afghan applicants often told us that they had to explain to UNHCR staff the complex history of ethnic and tribal tensions in Afghanistan; which facts are central to their claims of persecution... UNHCR staff’s lack of knowledge of social, political and historical matters proves to be an enormous barrier to communication. (Taylor, 2009:28)

A number of other important stakeholders also highlighted concerns regarding procedural fairness throughout the fieldwork. Confidential informants, working for government and non-government organisations in Australia and Indonesia, suggested that corruption within UNHCR was widespread, including accounts of bribes being paid to officers to advance certain cases over others (Australian NGO representative, 2013; Indonesian NGO representative, 2013; Australian government official, 2012). While these remain unsubstantiated claims, allegations of wide scale corruption have been found in the existing body of literature.

The language barrier and the lack of knowledge of their rights, responsibilities and procedures for seeking asylum also make asylum seekers more vulnerable. In addition, Indonesia’s heavy bureaucracy and corruption make things worse. Given their vulnerability, asylum seekers easily fall prey to all sorts of rip-offs. (Missbach, 2012)

Throughout the fieldwork it became clear that UNHCR Indonesia has a poor reputation among asylum seeker and refugee networks. Individuals held strong views on UNHCR’s inability to adequately assess cases. Often when interrogated as to why individuals felt this way, participants would provide anecdotes of others’ experiences trying to navigate this process as justification for their own views and
decisions as demonstrated by the following experience of one man, Aziz Ali and his family.

Prior to fleeing Pakistan in search of safety, Aziz Ali’s older brother Aamer had already escaped. Through a complicated web of regular and irregular modes he found his way to the assumed safety of the UNHCR office in Jakarta. It is here that he registered as an asylum seeker and underwent the RSD process. Despite all evidence to the contrary, and after a lengthy wait, his refugee application was rejected, resulting in the prospect that he would be deported soon after, facing the possibilities of further persecution and death. In light of this Aamer desperately turned to the only option he felt was available to him, paying a people smuggler to take him to Australia. In Australia Aamer was processed in a number of weeks and found to be a refugee. Aamer was quickly offered permanent resettlement in Australia. When Aziz Ali discussed his brother’s experience of trying to seek asylum through the RSD in Indonesia it is clear that Aamer’s negative experience impacted upon his own migration decisions.

Can I ask you a question, we put our family cases into immigration, my family is over there, we put our family cases in and they are rejected. What do we do? My brother’s case was rejected by immigration [in Indonesia] then he came here by boat and he is accepted [as a refugee]. (Aziz Ali, 2012)

His brother’s experience of trying to seek asylum through the official pathway in Indonesia clearly impacted upon Aziz Ali’s own decision to migrate irregularly rather than submit himself to the judgement of UNHCR. Aziz Ali believes that his brother’s case was not adequately assessed in Indonesia, a situation that demonstrated to him UNHCR’s inability to perform this crucial function. For Aamer this administrative error put his life in danger, for Aziz Ali it served as a warning and was instrumental in forming his own views on the ability and trustworthiness of UNHCR Indonesia.

This family’s account is paradigmatic of the general perception, conveyed by participants, that asylum seekers were unlikely to have their asylum claims fairly assessed in Indonesia. It is hard to overstate the effects this perception had upon individuals’ decision to travel irregularly. For asylum seekers caught in a state of
limbo, between dislocation and resettlement, disruption and stability, the RSD can feel like a matter of life and death, a chance for a new beginning free from persecution, or condemnation and death. With so much at stake in the RSD process, even the mere perception that the process is compromised undermines the principles governing the Refugee Convention and sows doubt in the minds of those who are subjected to its judgements.

Stories of corruption and the perception that there is a lack of fairness in the RSD system compelled many participants to reject this system altogether and seek alternative ways to find safety, often through the use of people smuggling organisation. While in the Australian polity this act has often been framed as illegal activity, or ‘queue jumping’, participants in this research offered an altogether different narrative, one that highlighted necessity over all else. This finding is further evidence of the contention in the literature that the imperative to migrate and the lack of legitimate ways to do so illuminates why attempts to criminalise the act of seeking asylum through irregular pathways has failed to act as a disincentive to potential asylum seekers. MacCoun’s analysis of the impact of lack of faith in the criminal justice system is usefully applied here to the analysis of irregular migration.

Empirical research on deterrence theory shows that the correlation between legal sanctioning and legal compliance is surprisingly weak and partially spurious. Given the impossibility (and, in a democratic society, the undesirability of absolute surveillance and enforcement), social scientists have long argued that civil order is maintained in large part by citizens willingness to comply with laws via personal moral beliefs, conformity to social norms, or informal social sanctions... the willingness to comply with laws is determined in large part by the perceived fairness of their enforcement. (MacCoun, 2005:178)

Given the lack of perceived fairness in the RSD as testified to by participants, asylum seekers appear to be rejecting UNHCR’s authority over them, instead acting outside of these official processes in order to seek protection. This situation can be conceptualised as a classic form of anomie resulting from a structural failure. According to Ritzer & Goodman (2004:246), anomie occurs:
when there is an acute disjunction between the cultural norms and goals and the socially structured capacities of members of the group to act in accord with them. That is, because of their position in the social structure of society, some people are unable to act in accord with normative value.

While the Australian government insists that the only legal and appropriate way to seek protection in Australia is through its Offshore Humanitarian Program (the normative value), the experiences of participants in this study illustrate that that pathway is not operating as it should (the disjunction between norms and capacity). The lessons from this for forced migration are twofold. First, individuals will continue to seek out alternative ways of accessing designated protection sites as long as the official mechanism for achieving this remains ineffectual (lacking fairness). Secondly, the weak connection between deterrence and compliance that is alluded to must be considered in its application of restrictive migration policies and irregular arrivals. Punishment of asylum seekers arriving irregularly will do little to deter people if individuals continue to believe their actions are just in light of other societal failures. In this instance this is the failure to provide a legitimate alternative to irregular migration as a means to have one’s refugee status assessed in accordance with international law and universal human rights as decreed in the 1948 UDHR and codified in the Refugee Convention.

The lack of trust in the RSD process leaves many asylum seekers feeling as if the official pathway is simply an unfeasible option, and the lack of legitimate alternatives creates an imperative which drives individuals towards people smugglers as a last resort. In this situation the tension between structural factors and agency is revealed. Individuals are forced to make decisions regarding their future within the structures that shape their options and limit their choices. While conceptualising this action as a form of structural failure rather than individual deviancy helps expose the more coercive factors underpinning irregular migration, it can also help explain the experience of asylum seekers who come to engender this anomie.

Despite the structural imperative driving the decision to migrate irregularly, going against the social norms and expectation can have serious repercussions for the
individual asylum seeker. By engaging in irregular migration, asylum seekers are exposed to new forms of vulnerability similar to those highlighted in the literature in Chapter Two. In the case of participants in this study this vulnerability was borne through new risks associated with people smugglers including the obvious risk to one’s life through the dangers of drowning at sea; the prospect of detainment in one of Australia’s offshore detention facilities; the possibility of being cheated or robbed by unscrupulous people smugglers; the loss of control over the migration journey; and economic exploitation or even debt bondage to pay off large sums associated with people smugglers fees.

The act of irregular migration also appeared to impact upon participants’ sense of self and identity in a number of harmful ways. All participants in this cohort spoke at lengths about their apprehension of engaging in activities that could be misconstrued as illegal or reflect badly upon their own character. Individuals were ostensibly troubled by the idea that through their efforts to be accepted as refugees they might be seen as anything less than law abiding. This was strongly connected to individuals’ sense of victimhood and the feeling that they lacked any real alternative. This sense of worry regarding their status as ‘illegals’ as a result of their anomie conveyed by participants reflects findings from earlier research conducted in the Global North (Chatelard, 2008; Hamood, 2008; Koser, 2000).

Participants’ fears of being thought of as illegal despite their limited capacity to act within this context is realised through Australia’s treatment of IMAs, designed in numerous ways to demonise asylum seekers and impart a sense of criminality on the newly arrived (McNevin, 2007; Lawrence, 2007; Browning, 2006; Pickering, 2004b). Ahmad’s comments below exemplify the inner struggle many forced migrants endured when contemplating irregular migration.

I respect the Australian Government and respect the Australian law but this problem is the same for all of my community, not just Afghanistan, not Pakistan, not Tehran, but everywhere in Hazara is torture and killing and I say please, we are also human, please save the Hazara people. (Ahmad Khan, 2012).
The current findings demonstrate that for individuals who find themselves in this precarious situation, irregular migration is not seen as an advantageous option as it is so often framed as in the Australian popular discourse or for that manner an option that is particularly attractive to asylum seekers themselves. Rather, it is viewed by forced migrants as the last hopeless attempt to secure protection given the lack of options available to them. In this sense the decision to travel irregularly can be viewed as a complete lack of faith in the state sponsored pathway which fails to provide legitimate options for forced migrants’ resettlement.

While perceptions regarding the structural failure of UNHCR Indonesia to process protection claims effectively can lead to a sense of anomie among asylum seekers – underpinning their decision to migrate irregularly – other factors can also be seen to coalesce in this decision to reject UNHCR Indonesia. Chief among them is forced migrant’s perception of the Indonesian state as an unsafe location for asylum seekers to reside in long term. This feeling adds a sense of urgency to the impulse to move irregularly out of Indonesia.

**Broader Perceptions of Indonesia as a Transit Location**

Prior to 2008 very little attention was paid to the conditions experienced by asylum seekers in transit in Indonesia. However since Australia has called on Indonesia to play a greater role in Australia’s border protection strategy more focus has been placed upon the conditions asylum seekers face while there. UNHCR has conducted inquiries into alleged abuse in detention centres while NGOs and human rights groups have documented widespread neglect and mistreatment of asylum seekers under UNHCR and IOM care (see, for example, Human Rights Watch, 2013; Amnesty International, 2012; Taylor, 2009).

The sharper focus on human rights violations occurring in Indonesia has clearly infiltrated the Hazara diaspora, with websites and blogs dedicated to monitoring the treatment of asylum seekers in Indonesia (for example the Hazara Asylum Seekers Wordpress). This scrutiny has led to an increase in the notoriety of Indonesia as an
unsafe location for forced migrants. This notoriety appears to play a significant role in fostering conditions for irregular migration based on participants' testimony.

The general perception conveyed by participants during the formal interviews and fieldwork was that Indonesia was a dangerous place for asylum seekers to be. There is no doubt that this perception played a crucial role in motivating participants to transit through Indonesia as quickly as possible. As with the general perception of procedural unfairness, informal communication networks played a critical role in forming this opinion. Participants in this study tended to emphasise negative experiences other asylum seekers had encountered in Indonesia as justification for their decision to avoid the long UNHCR process. Horror stories of abuse, indefinite and indiscriminate detention, torture and exploitation were highly prominent in these narratives. These types of encounters were presented as justifications for individuals limiting their time in Indonesia as the following examples illustrate.

The people in Indonesia they have also been arrested by police, they have been tortured, they have been put into the solitary cells. I have witnessed some of them. They have been put into the solitary cells, I don’t think this is a very good; this is no way to treat people, not in a human way. (Ahmad Khan, 2012)

There is likelihood that you will be tortured, I have a friend who has seen the torture and depression of asylum seekers before his very eyes. (Abdul Hazrat, 2013)

The matter-of-fact way individuals spoke about such issues is suggestive of how commonplace these issues were perceived to be. The lack of effective reception policies in Indonesia’s domestic law contributes to the negative perceptions of Indonesia as asylum seekers are held in a state of exception as non-citizens, lacking proper protection or rights while in transit.

This finding further illustrates how applicable similar analyses from the Global North are to this context as it highlights the connection between poor reception policies, the vulnerability of asylum seekers in transit and an increase in irregular
migration (Hamood, 2008; Chatelard, 2008; Danis, 2006; Papadopoulou, 2005; Kirisci, 2004; Salt & Stein, 1997). According to Spinks:

Without legal status and the personal freedoms and opportunities that accompany such status, people will, unsurprisingly, feel compelled to keep moving until they reach a country in which a legal framework exists for the protection of refugees. (Spinks, 2013:8)

Issues pertaining to the lack of fairness (both real and perceived) and trust in the RSD, and the perception of Indonesia as an inhospitable, unsafe place for asylum seekers are critical to properly understanding the attractiveness of irregular migration as a viable alternative for forced migrants who lack greater options.

**Victim Fatigue**

While these issues could be considered tangible structural factors that shape the everyday experience of participants, the following section will focus more on the ephemeral aspects that contribute to an over-arching sense of hopelessness forced migrants come to embody while in transit and the relationship this has to irregular migration. This section will consider, using an existential ethic, what makes a life liveable and argues that the actions of participants in this cohort can be understood as a strategic attempt to ‘transcend immanence’.

To appreciate the gravity of the migration decisions that forced migrants must confront following their displacement, it is imperative to understand how participants make sense of their own life choices and chances in these circumstances. For participants in this study, the overarching image they presented of themselves was as individuals denied their subjectivity. Participants spoke at length regarding the persecution of the Hazara people in both Afghanistan and Pakistan, the impact this had upon them and their ability to live a full life free from violence and suffering. Participants stressed that the nature of this persecution followed them, even after they had escaped the immediate danger in their homeland. The lack of recognition they received in the country of origin was viewed as the central issue that had shaped their life course, and continued to impact upon
them to this day. It appeared that individuals had come to embody a sense of victimisation, as a result of their life being shaped by constant discrimination.

Everyday Hazaras in Quetta Pakistan are treated as not human; they are not treated like human they are treated like donkey. All Pakistan is Taliban, all Pakistan is Al Qaeda. My community is treated like ants. An Hazara life is worth the cost of a piece of goat meat. (Jangi Shan, 2012)

The systematic discrimination and targeted killings of Hazaras represented a great anxiety for participants, most of whom still had family members living in these volatile regions. This sense of victimisation as a result of ethnic persecution appeared to operate on an individual level as well as bearing upon the collective consciousness of participants at all times. While the violence and instability that beset the lives of participants prior to their dislocation is obviously central to this feeling, it became clear how this was often compounded by their experiences post-exodus. This was largely through a lack of control and ability to act autonomously to improve one’s own circumstance once in transit.

**Lack of Choice and Hopelessness in Transit**

This lack of choice or ability to direct one’s own life free from the coercive constraints impacted upon all participants who often expressed feelings of hopelessness. According to Spinks (2013) ‘asylum seekers generally have limited options available to them, and choices are made within a very narrow field of possibilities’. Participants’ frustration with their own circumstance was evident in the presentation of their migration narratives which were commonly framed around reacting to external events rather than freely chosen courses of action that were being pursued, highlighting the lack of choice underpinning participants’ life course.

The lack of control over their lives articulated by participants illustrates a fundamental aspect of forced migration, that those who are subject to its process are separated from their agency in a multiplicity of ways. The initial displacement and losses that accompany it, such as the loss of home, family, and culture renders the forced migrant inconsequential. Once in transit this state becomes entrenched. The
lack of legal recognition in transit positions forced migrants as ‘non-citizens’ who lack the basic human rights of citizens, holding the forced migrant in a state of alterity. Meanwhile the lack of options or opportunities for social participation as a result of asylum seekers’ marginalised status reduces individuals further to the rudimentary state of existence without purpose – the basic condition of bare life. It is within this situation that the Beauvoirian notions of immanence and transcendence are useful instruments for understanding individuals’ motivations for irregular migration. The lack of autonomy to make decisions to guide one’s own life coupled with the broader denial of individuals’ subjectivity can be conceptualised as being rendered immanent through an existentialist perspective on what accounts for full personhood. For Beauvoir (1997) personhood can only be achieved through liberty, where ‘every subject plays his part as specifically through exploits or projects that serve as a mode of transcendence; he achieves liberty only through the continual reaching out towards other liberties’ (1997:28).

In transit asylum seekers are relegated to the ‘brutish life’ defined by Beauvoir (1997) as they find themselves severely limited in their ability to act with purpose, thus the powers of coercive structures became the key determinant in people’s lives while in transit. Participants’ lives were reduced to the prospect of years of socially marginalised submissive waiting where they are relegated to surviving on charity. This state, sustained only through the distant hope of resettlement that most viewed as unachievable can easily be conceptualised as being rendered immanent:

I was an engineer but I left my place due to instability I had a good lifestyle but I left my place now here I am just living, there I was a very established person, I had 35 staff, very good lifestyle I had – then they targeted me, they tried to beat me, they attacked me so I left my place and now I am nothing. (Jangi Shan, 2012)

Yet within this relegated state, participants demonstrated how individuals can find small openings to contest their condition. Irregular migration in this instance can be conceptualised as a strategy to overcome the state of inertia forced upon asylum seekers caught in transit locations – a tool used to subvert their oppression or, to draw upon the Sartrean discourse a ‘radical and deep-seated refusal of that which
others have made of us’ (Sartre, 1961:7), a rejection of immanence through reaching towards transcendence. This scenario is not unproblematic as this action is circumscribed within the confines of the security apparatus of the nation state looking to exclude and dehumanise the forced migrant. Given this, while participants held strong personal beliefs that they lacked any real alternative to act otherwise and found this space to recontest their humanity and assert their human rights to seek asylum, they were still acting within a sea of constraint and faced with the consequences of their actions. For participants their lack of legitimate migration options was reinforced through the lack of local integration available in Indonesia or the ability to safely repatriate to their country of origin, reinforcing the dichotomous position within the confines of a zero-sum course of (in)action.

Through the clear frustration that emanated from these narratives, it became clear that people were turning to irregular migration because they were tired of feeling powerless in their own life. Once more drawing on the existential ethic, we can see how the notion of transcendence elucidates this phenomenon. ‘Every individual concerned to justify his existence feels that his existence involves an undefined need to transcend himself, to engage in freely chosen projects’ (Beauvoir 1997: 29). As such irregular migration can be conceptualised of as a strategic act of becoming transcent, rejecting the immanent state that is imposed through the transient experience, which itself is the consequence of developed states’ exclusionary regimes. Through the conscious act of seeking alternatives, participants expressed striving for a sense of hope and purpose that had been destroyed through the process of being displaced.

**A Threshold of Tolerance**

Yet this path is not without its own challenges. Irregular migration was consistently presented as a desperate and extreme measure by participants throughout this study. For those who decided upon this course of action, many attributed their decision to a feeling that they had ‘reached their limit’ and had no alternative. Individuals had been living in a state of dislocation for so long that they simply could
not tolerate the conditions any longer and were determined to resolve the situation one way or another:

I should say that most of them have had very bitter experiences over the last ten to twenty years so they think it is better to take the journey by boat with the risk of losing their life in the ocean or the sea than to stay in the third country having the same experiences which they had back in the other two countries, so they take the risk and they come to Australia, and many of them drown yet still people are coming. (Mohammad Sharif, 2012)

For many, the conditions in Indonesia were viewed as a continuation of the violence and persecution they were fleeing from with the lack of recognition in Indonesia reminiscent of the lack of recognition in their own country. Therefore rather than reducing their suffering, individuals’ time in transit became analogous with, or even an extension of, the purgatory and misery they were so desperately trying to escape from.

Everyone has been traumatised in Afghanistan, been through hell in Pakistan, by the time they reached Indonesia they are not willing to put themselves through that pain again and submit themselves to that treatment again as they had reached their threshold. No more abuse. (Arif, 2012)

Irregular migration could therefore be understood as an attempt by desperate individuals to overcome the sense that they are passive victims of circumstance and push back against the structural constraints forced on them. In this situation a coalescence of factors can be seen. The non-arrival regimes and policies of developed states that target legitimate migration pathways are clearly influential in pushing asylum seekers into transit zones from the outset and limiting their options once there. Meanwhile the conditions in transit, primarily the lack of protection and legal status, intensifies this feeling of insecurity, prompting asylum seekers to take desperate action to overcome the situation. As Mohammad demonstrates:

it is true that there is insecurity in those countries so why do all the other countries blame the refugees? Like saying they are queue jumpers, or boat people, I think this is not very civilized way to call me, what is boat people?
...it is difficult for them to live in their own country so they have to come. Safety of life is everything, if you are not safe anywhere you are not going to think in terms of money, in terms of status, in terms of respect, dignity also in terms of relationships, primarily you are going to think about safety and I think this is why people come. (Mohammad Sharif, 2012)

This action can readily be interpreted then as a strategic act of transcendence as outlined above. Forced migrants, having been subjected to persecution their entire lives reach a stage where they are unwilling or unable to subject themselves to any more instability hinged upon passive victimhood. Asylum seekers in this study appear to be rejecting the structures that have failed them their entire life and are taking advantage of the only means available to them to overcome this state-irregular migration. This notion is best summarised through the words of one participant, Hussain:

To be honest I am never given the right to live my life. Where there is not freedom of thought, freedom of speech how could I live? I’m always discriminated, killed, persecuted as if its sin to be Hazara how sad it is the tears come in my eyes when I realise the reality of my life throughout the history. Though I’m not a religious person but I’m always the victim of race and religion. I’m killed by the name of infidel. Can I live where there is terror, discrimination, bloodshed? I’m human so I need a society where there is peace prosperity and love. I could not survive in a jungle with the vicious wild extremists and fundamentalist. To live my life that’s why I fled my home country. I wish and love to have a peaceful country where I can live my life and use my creative abilities for my society but it has always remained for me a dream. The more I say the more I’m sad I have left my country because of war, terrorism, discrimination because I have the right to live, think and say and it’s my universal right. (Hussain 2012)

This feeling of desperation was driving asylum seekers to take extreme risks in order to break the cycle of subjugation and reassert their agency through the conscious act of survival. This strategic action can be seen as the embodiment of Beauvoir’s conceptualisation of transcending immanence while highlighting her
departure from other existential thinkers by acknowledging the power of constraint. Traditionally while existentialism has overemphasised the level of freedom that individuals retain in any given situation (for discussion of the differences between Sartre and Beauvoir on this see Nicholas 2014), Beauvoir states that subjectivity and the ability to act autonomously is always linked to the ‘relation of situation to freedom’ (2005:201). For these participants their migration cannot be classified as a freely chosen project as it is the result of external pressure and situations beyond individual control, however, their ability to direct their course, while clearly constrained, is not negated completely. This scenario represents a more nuanced perspective between structure and agency where individuals are making choices for themselves but are severely limited in their options. Given the circumstances they face in Indonesia participants felt compelled to act outside of regulated pathways, but given that their current condition foreclosed more suitable options this act is neither simply autonomous nor structured. As Beauvoir states, for one who is rendered immanent by circumstances, ‘there’s nothing left to do but keep going’ (Beauvoir 2005: 101). In this regard asylum seekers turning to irregular migration can be understood as transcending their immanence, if only momentarily.

While this act may offer asylum seekers the opportunity to feel agentic in the face of structural barriers, and overcome their sense of insecurity, it comes at a high cost. Asylum seekers were exposed to news forms of vulnerability as a result of this irregular migration. As the following statement demonstrates, participants were under no illusion about the dangers of putting their life in the hands of less than scrupulous people smugglers. However, for participants in this cohort, this was a risk that they were willing to take as it offered the prospect of breaking the cycle of immanence:

It’s a very big decision to take, it’s about fifty-fifty whether you make it or you die under the water. (Melad, 2013)

Melad’s comment regarding the danger associated with irregular migration is paradigmatic of participants’ views on the topic. No one spoke of irregular migration as an option they readily embraced or rejoiced in, but rather as their only strategic weapon of survival. Through the empirical evidence collected during this
investigation a pattern emerged in which irregular migration was regarded by participants as a way to regain a sense of agency and autonomy that had been lost or taken from them throughout their life. It was also viewed as a way of actively rejecting the unsuitable conditions of transit that were imposed upon them.

In light of asylum seekers’ accounts and experiences it is clear that these migrations should not be considered in an atomised manner. The interconnected nature of different pressures at differing points in time are central to understanding the broader context in which asylum seekers are forced to make life altering decisions and the conditions that underpin these choices. For people in this study their lives had been shaped in one way or another through their minority status in their home country. This biographical history of persecution and suffering must be taken into consideration when examining factors that shape their future decisions. For this cohort, a life time of oppression and marginalisation led them to fiercely reject the situation they confronted in transit as it was perceived of as an extension of the conditions they were trying to escape.

Thus far this chapter has explored a number of issues that shape the migration decisions of asylum seekers transiting through Indonesia. It has been argued that a number of important factors combine to exacerbate a feeling of being rendered immanent and contribute to the situation where irregular migration is considered the only real agentic option for asylum seekers who lack other alternatives. This analysis hinges upon the notion that irregular migration is therefore a product of structural failure that individuals are strategically reacting to within the bounds of their limited capacity. The inability to provide an effective mechanism through which forced migrants can seek asylum gives rise to irregular migration on a large scale. These findings largely reflect similar themes from the literature in the Global North discussed in Chapter Two. In these studies it was found that asylum seekers were responding in a predictable manner to a system designed to exclude them and limit their ability to seek protection (Chatelard, 2008; Hamood, 2008; Kirisci, 2005; Papadopoulou, 2005 & 2004; Koser, 2005, 2000, 1997). Similar to forced migrants held at the periphery of other parts of the Global North, individuals in this study did not want to move irregularly but were acting pragmatically within a constrained set of circumstances.
While the above findings sit comfortably within previously established narratives regarding factors that drive irregular migration more broadly, the following section examines a number of external factors, not often found in the literature. While not widely discussed in the literature, these issues had a significant bearing on participants in this study and their decision regarding irregular migration.

**External Pressures and Migration Choices in Indonesia**

It is established that migration decisions are not made by the self as merely an autonomous actor, but rather are more often than not determined by relations to others and influenced by external processes (Castles, 2000). This section will consider the external factors identified by participants that shaped their migration decisions. It will look at the difference in the processing systems of Australia and Indonesia at the time of participants’ migration and how this discrepancy influenced the trend towards irregular migration at the time. It will then explore how family responsibilities played a considerable role in prompting irregular migration for a number of participants in this study and the reasons why.

**The Scarcity of Humanitarian Visas and Path Dependency**

Based on participants’ accounts it appeared that as more people began moving irregularly from Indonesia to Australia pressure mounted on other asylum seekers to do likewise. This relationship highlights the complex and interconnected nature of migration systems. As irregular migration became the dominant mode for seeking asylum, one consequence of this was that it appeared to limit the attractiveness of the UNHCR pathway for other asylum seekers. This section will explore this issue and how it impacted on participants’ migration choices.

Anecdotal evidence suggests that during 2008-2010 the average processing time from application to final resettlement for asylum seekers in Australia was between three and six months closely mirroring the target set by DIAC. Indeed the average processing time for participants in this study who came to Australia was less than 6 months. This is in stark contrast to UNHCR Indonesia where the backlog of
applications had exceeded five thousand and the average processing period was anywhere between two and five years with no guarantee of a resettlement position being found even after people received their refugee status (Indonesian NGO representative, 2013). This situation in itself provides a clear motivation for individuals to attempt to reach Australia irregularly (since they lacked the means to do so regularly) in an effort to be processed through the far more efficient Australian system. The radical difference between the two countries illuminates, in part, how people smugglers were able to establish such a lucrative trade during this time by capitalising on this discrepancy and people’s fears of being caught in transit for such a long period of time. The Australian system was not only faster with a greater ability to assess claims but provided an extensive range of services to asylum seekers to support them throughout the process – support denied to people processed in Indonesia. The lack of support during this long waiting period is a significant factor driving people towards irregular migration as individuals felt unable to sustain themselves in Indonesia for such long periods of time (a point that will be examined more thoroughly in the following chapter through the experiences of participants who were undergoing the RSD in Indonesia). During this time Australia was also seen as a much safer destination for asylum seekers to undergo their processing in contrast to the situation asylum seekers were facing in Indonesia.

Anecdotal evidence suggests that prior to 2009 most asylum seekers were travelling to Indonesia with the intention of registering and being processed through UNHCR Indonesia (Taylor, 2009). However this trend began to shift in 2009 and by the end of 2010 had considerably reversed as demonstrated through Australia’s official immigration figures (DIBP, Fact Sheet 60). From this point onwards the figures suggest that the UNHCR pathway ceased to be the predominant avenue for asylum seekers to seek protection in Indonesia. By this time the majority of forced migrants

8 Recent events such as the murder of Iranian asylum seeker Reza Barati on Manus Island as well as the drastic increase in cases of self-harm being reported in Australian detention centres has seriously damaged Australia’s human rights record. However at the time of this research it was clear through participants’ comments that in general Australia enjoyed a much better reputation among asylum seekers than Indonesia.
were not registering with UNHCR but rather using Indonesia as a means to reach Australia irregularly with the assistance of people smugglers. Again this trend is evidenced by the number of irregular migrants arriving in Australia at this time.

Figure Four: Boat Arrivals in Australia, 2009-2013

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of boats</th>
<th>Crew</th>
<th>Number of people (excludes crew)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>60</td>
<td>141</td>
<td>2726</td>
</tr>
<tr>
<td>2010</td>
<td>134</td>
<td>345</td>
<td>6555</td>
</tr>
<tr>
<td>2011</td>
<td>69</td>
<td>168</td>
<td>4565</td>
</tr>
<tr>
<td>2012</td>
<td>278</td>
<td>392</td>
<td>17204</td>
</tr>
<tr>
<td>2013</td>
<td>300</td>
<td>644</td>
<td>20587</td>
</tr>
</tbody>
</table>


As outlined in Chapter Three, within the Australian polity the dominant interpretation of this phenomenon was reduced to the misinformed notion of ‘queue jumping’. Critics used the upswing in the number of boat arrivals to criticise Australia’s weak border security policies and demonise asylum seekers arriving irregularly as undeserving, fake, economic migrants, or even threats to national security. As in the past, the key line of reasoning was that ‘genuine’ refugees would wait to be resettled through the official pathway, while these ‘boat people’ where simply economic migrants trying to force their way into Australia through the backdoor, taking the place of ‘genuine’ refugees waiting in disparate camps around the globe. In this narrative only ‘genuine refugees’ were deserving of Australia’s kindness, compassion or protection, and false asylum seekers were to be suspected and punished. The following comment from Tony Abbott, while still leader of the Opposition, captures this sentiment:

The people who have come illegally to this country need to know that they are breaking our laws, that they are, if I may say so, taking advantage, unfair advantage of our decency as a people...There needs to be consequences for people who do the wrong thing and that’s what rigorous offshore processing is all about. (Tony Abbott, cited in Scarr, 2012)
What this ‘queue jumper’ narrative ignored however was the broader context that forced migrants were operating within. While a more robust processing system in Australia was clearly acting as a pull factor, it was by no means the sole motivation for irregular migration, as clearly demonstrated by participants who fiercely rejected the notion that the mere expedience of their claims was driving them towards people smugglers; a point that was once more underpinned by participants’ personal views on irregular migration as a dangerous and unattractive option. This view is evident in the following comment by Mahzar Ali, who is critical of what he sees as a lack of legitimate alternatives for asylum seekers in Indonesia:

They are putting us into the same dark ditch; this is something by force this is not something that is providing avenues by providing opportunities, by providing the easy way to stay in Indonesia. The amount of money spent on Australian detentions centres it should be directed to the UNHCR office in Indonesia, more spaces and more rooms for refugees in Indonesia with basic facilities provided and the same time for the processing this would make it easier for the people to stay in Indonesia instead of coming to Australia by boat. (Mahzar Ali, 38)

By examining the standpoint of forced migrants who are placed in this situation the need to analyse this topic in a thoroughly contextualised manner is once more revealed. Participants’ experience in this case demonstrates the unsuitable nature of assessing this action in an atomised manner based on reductionist causality and individual deviancy. While the quick processing system available in Australia may seem like the obvious or even sole reason why people were resorting to people smugglers, the evidence from this research found that this was not the case and that peoples’ decisions were contingent on much more than this single element.

One alternative analysis often overlooked but central to the ‘queue jumper’ narrative is the role that Australia’s asylum policies have played in fostering the conditions that might drive irregular migration rather than subdue it. For example, the changes made to Australia’s Humanitarian Program introduced under the Howard Government in 1996 created a scarcity model of protection which limited the number humanitarian visas issues in any given year. The then Immigration
Minister, Philip Ruddock created an artificial link between the places available in Australia’s Offshore Humanitarian Program, through which refugees in third countries are resettled and Australia’s Onshore Program which deals with individuals who seek asylum once in Australia (Karlen, Phillips & Koleth, 2011). For a number of years Australia has had a quota of roughly 13,700 humanitarian visas per year to resettle forced migrants from third countries through the Offshore Program. However the changes introduced by Ruddock allowed quotas to be set aside given the number of onshore visas granted. As a result, rather than the offshore visas being a complementary form of protection to onshore applications, the 13,700 figure would now represent the total sum of Australia’s Humanitarian Program. As a result, every time a person was granted a visa through the Onshore Program a place would be subtracted from the Offshore Program (Karlen & Phillips, 2011), specifically from the Special Humanitarian Visa category. By linking these programs and limiting the number of humanitarian places available in any given year the government unwittingly laid the foundation for future irregular migration. This is because this new model meant that for every person that embarked on irregular migration to Australia, people waiting to be resettled in transit locations such as Indonesia were disadvantaged by the loss of available protection visas being given to the Onshore Program. So when the number of people seeking asylum directly in Australia increased, so did the impetus for others waiting in transit sites to follow suit. This trend can be seen in the allocation of humanitarian visas between the Onshore and Offshore programs from 2008-2012 in the table below.
Figure Five: Humanitarian Program Grants by Category 2008-2013

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Refugee</td>
<td>6499</td>
<td>6003</td>
<td>5998</td>
<td>6004</td>
</tr>
<tr>
<td>SHP</td>
<td>4511</td>
<td>3233</td>
<td>2973</td>
<td>714</td>
</tr>
<tr>
<td>Onshore</td>
<td>2492</td>
<td>4534</td>
<td>4828</td>
<td>7041</td>
</tr>
<tr>
<td>Total</td>
<td>13 507</td>
<td>13 770</td>
<td>13 799</td>
<td>13 759</td>
</tr>
</tbody>
</table>

*Source: Fact Sheet 60 – Australia’s Refugee and Humanitarian Programme*

This phenomenon clearly impacted the way future asylum seekers travelled, as Jangi matter-of-factly states:

> No, I not go to UNHCR I wait a short time in Indonesia and after that with the people smugglers we go to Australia. In self I say do not go to UNHCR, everybody is going by boat. (Jangi Shan, 2012)

Jangi’s comments, which are typical of participants’ perspective on this issue once more highlight that irregular migration is strongly associated with structural factors, much more so than individual choice. Yet Jangi’s comments also illustrate the dilemma asylum seekers are confronted with given their situation; do they approach UNHCR, resigning themselves to years of insecurity in terrible conditions with no guaranteed outcome, or risk the dangerous journey to Australia? For participants neither option was considered positive. The comments below demonstrate how this flow of people arriving irregularly in Australia placed further pressure on others waiting in Indonesia.

> When the refugees started coming in bulk, or coming together in the beginning of 2009 that made many more people to come by boat, to choose that dangerous journey. (Ahmad Khan, 2012)
There is a trend, a pattern of people coming from Indonesia to Australia by boat they have the choice to come by boat or to go to UNHCR office mostly they come by boat because there is a trend before them with people mostly coming by boat. (Mohammad Sharif, 2012)

Furthermore the establishment of an alternative migration route worked to increase pressure on UNHCR Indonesia which was already struggling to present itself as a legitimate pathway to seek protection. With the weight of all the previously mentioned issues working against it, attempts to convince asylum seekers that the UNHCR pathway was the only appropriate avenue for resettlement appeared to be falling on deaf ears as the numbers of IMAs continued to grow.

In the following statement a convergence of previously discussed issues can be seen. Ahmad’s comment draws together a number of important factors that appear to underpin participants’ migration decisions. These include the treatment of asylum seekers in Indonesia, biographical accounts of suffering, the systematic failure of UNHCR Indonesia to both process and protect asylum seekers in their care, and the establishment of irregular migration in response to such failures:

The people in Indonesia they have also been arrested by police, they have been tortured, they have been put into the solitary cells. I have witnessed some of them. they have been put into the solitary cells, I don't think this is a very good, this is no way to treat people, not in a human way, they are coming from the part of the world like Afghanistan and Pakistan, maybe from other countries from Africa, if they are coming it is not because they want a new place to live, but they want a new environment to live, like if there is peace and justice so people like to live in that area, it is a natural instinct of people so get their natural instinct to fulfil this... basic requirement which they can’t get in their home country so they flee, so they go to places like Europe, America, also Australia, the easiest possible way is always sought and with the trend of the people coming so if they are in prison in the solitary cells in Indonesia I think it would be very difficult to convince the others to go to the UNHCR office and get them registered and wait for their process of their application for their claim for asylum and I think it is a very lengthy
process in Indonesia so most of the people, they will try and come by boat. (Ahmad Khan, 2012)

It is the combination of factors outlined above that led participants in this cohort to reject UNHCR Indonesia in favour of irregular migration to Australia. Yet the critical point for all was simply this, there was no real choice. Participants were adamant that the choice between staying and going was a false binary, there was only one pathway to safety and that was achieved only through irregular migration.

**Family Responsibilities**

Another vital external pressure that appeared to play a significant role in guiding people’s actions towards a course of irregular migration was the welfare of family members they had left behind. This is not an issue regularly found in the available literature yet it was the single most common response in this sample all the same. All participants in this cohort raised the issue of family members remaining in the country of origin and the impact this knowledge had upon their own desire to find safety as soon as possible. The men in this study felt responsible for their family’s welfare and were motivated by their desire to get them out of their current situation, highlighting a migration impulse that was thoroughly gendered in nature.

While over half of the world’s refugees are women, only a minority of asylum seekers are female (Freedman, 2007). These types of spontaneous migrations are predominantly undertaken by men. Hailing from patriarchal societies such as Afghanistan or Pakistan, it is common for people to pool their limited resources to send one member of the family on this journey in the hopes of being reunited through family reunification programs in the future. Traditionally the person who embarks on this journey is the breadwinner of the family, usually the father, husband or eldest son. The following section explores the emotional pressure these men faced when trying to balance their role as an economic provider for dependents with their own conditions in transit. Through participants’ own accounts it became clear that caring responsibilities for family members abroad played a crucial yet under-examined role in the decision to abandon or avoid UNHCR in favour of irregular migration to Australia in search of safety.
For many asylum seekers forced to flee their family home the people they were leaving behind had little to no income and struggled to sustain themselves without the traditional breadwinner of the family unit available. Remittance payments, the money earned in a different country and sent back to the family, can play a vital role in sustaining the remaining family members economically. For countries with low employment and high emigration, remittance payments make up a substantial part of the economic equation (Taylor, 2002). Many asylum seekers who embark on their journey do so with the expectation that they will continue to provide economically for the family they are leaving behind. This of course becomes problematic when individuals are caught in transit places, such as Indonesia, for extended periods of time with no income, barely able to support themselves let alone families back home. This reality was at the forefront of many participants minds when speaking of the pressure they felt to resolve their status quickly, as Nasim illuminates:

In Indonesia they do not go to UNHCR because they are thinking about their family back in their home country. So for their family and the expenditures because the run out of money, they keep some amount of money with their family but when they come to Indonesia for four or five years then they will run out of money and it will be very difficult for them financial and so they also think in those terms. (Nasim Sakhi, 2012)

Many participants highlighted this pressure as a vital reason as to why they chose irregular migration over UNHCR processing in Indonesia. They simply could not sit idly by for a number of years, knowing their family was suffering as a result of not having any income.

Most of the people who are coming there are the breadwinner of their home, so they come, they risk the journey and they come to Indonesia so maybe the father of the family or the eldest son of the family or the one that is... you know the system over there is not that everyone is going to work to earn something, maybe one, two person they go to earn the livelihood and maybe seven-eight people they stay home, so those who are the breadwinner, they come to Indonesia, if they stay in Indonesia it becomes very hard in terms of
finance so maybe they being to think of moving to Australia by boat. (Imran Farid, 2012)

The notion that people were choosing irregular migration over the UNHCR RSD process based on economic pressures originating from the family unit was something that has not been discussed in the literature to date. Yet from the very first interview participants began citing this as a key factor in why they simply could not remain in Indonesia and wait to be processed. For many this was a matter of life and death, not just for them but for their loved ones, and the only way to avoid it was for them to fulfil their role as breadwinner by making it to Australia as quickly as possible to re-enter the workforce.

You asked me why I not go to UNHCR in Indonesia, I say I respect UNHCR, why I not go, my problem is that I live long time in Indonesia, my mother, my wife, my children, my brother, my everything go to...beggar, so what do I do? I say boat is very dangerous, it is very very dangerous, very bad, but what do I do? Where do I go? I respect the Australian government and respect the Australian law but this problem is the same for all of my community. (Arif, 2012)

As Arif’s comments demonstrate once more, participants knew the clear risks associated with people smuggling, yet felt compelled to act not for their own safety but for the safety of others towards whom they felt a duty. This point was expressed most earnestly in elder participants; however younger men were not immune to this anxiety. For younger participants it was clear that they agonised over the financial burden their journey was inflicting upon their family at home and again expressed concern about the impact a long transit period would have upon their family as money became scarce.

Yet this issue is about much more than pure financial incentives as for most participants, their families remained in regions plagued with dangers, the same dangers that forced these men to flee in fear of their lives. Participants spoke at lengths regarding the constant fear they felt knowing that their loved ones were in such dangerous circumstances. The major goal for most was to be resettled in a safe country as quickly as possible to begin the process of bringing family members
across through family reunion programs. This placed these men in a difficult position of having to take action in circumstances which offered no clear positive outcome, where either option played against their sense of morality or justice.

Sally, it’s taking too long here, to get interview appointment from UNHCR. I might have told you that I was an interpreter and I was chased and threatened, so now my family is not safe and it’s getting unsafe for them day by day as foreign forces tending to leave Afghanistan. My primary intention is to get somewhere safe sooner and then to move my family to a safe place as well...you know family is very important and I am extremely worry about them. (Mahzar Ali, 2012)

Unsurprisingly this subject tended to invoke the strongest emotional response from participants; the stoicism displayed throughout the interview process usually disappeared rapidly when individuals began speaking of the hardships their families were suffering. While participants struggled valiantly to overcome the issues they faced as a by-product of being forcibly displaced and as a result of life in transit, the thought of family and loved ones undertaking such hardship often appeared too much for them to bear.

Once more it is vital to examine this issue within the broader context. The pressure these men felt in regards to securing their families safety did not result in irregular migration necessarily; rather it is when this pressure point coalesces with other factors that it can create the conditions that fosters irregular migration. It can be said that this issue has a direct relationship with a number of the structural factors previously discussed. For example if the RSD system was better equipped to process and resettle people in a suitable timeframe while providing them with a level of support that would sustain them then one of the biggest motivations driving irregular migration could be drastically mitigated.

**Lack of Knowledge Regarding UNHCR and Effective Communication**

The last major reason participants provided for choosing irregular migration over UNHCR was that they simply did not know this option existed for them. Individuals
were simply unaware of the role of UNHCR and that there was an alternative available to them other than irregular migration. Participants' testimony throughout this research suggested that there was a serious lack of communication on behalf of UNHCR towards asylum seekers and people who have been forcibly displaced. Chapter Five will discuss communication issues in the transit location in more detail, however the lack of knowledge regarding the role of UNHCR at the site of initial displacement appears equally important, as demonstrated by participants in this cohort.

While some participants appeared extremely well informed with regard to UNHCR and the work that they perform, others admitted that until reaching Indonesia they had never heard of UNHCR and were unaware that there was an international system in place to support and resettle refugees. This finding echoes that of Taylor & Rafferty-Brown (2010:11) who claim that many of their participants reported only learning of the existence of UNHCR from other asylum seekers once arriving in Indonesia. Although UNHCR may not wish to ‘advertise’ per se, providing information about alternatives to irregular migration in areas undergoing serious displacement appears to be a vital activity to combating illicit people smuggling organisations.

International research conducted on the rapid increase in people smuggling activities suggests that these operations not only pop up in areas of forced immobility but also tend to be path dependent, meaning that once an individual has embarked upon a course of irregular migration they are more likely to continue to move in an irregular manner, either through coercion or lack of legal status or documentation (Chatelard, 2008; Papadopoulou, 2005; Kirisci, 2005; Koser, 2000; Morrison, 2000; Ghosh, 1998; Salt & Stein, 1997). As a result, preventing irregular migration at the primary point of departure, by ensuring people have access to legal, regulated avenues may be an efficient way to reduce further irregular migration down the road. This is an important aspect as the lack of knowledge regarding their rights and options appears to be placing asylum seekers at further risk of exploitation at the hands of people smugglers and their recruiters. For example a number of participants in this cohort noted that they had no idea where they were going or even the geographical location of places such as Australia or America, they
had ceded all control over their migration to the people smuggler. This lack of control over the migration process once more echoes findings from the Global North (Gerard & Pickering, 2012; Koser, 2000). As one young man, discussing his reasons for coming to Australia by boat, states, he simply did not know of any alternative available to him:

The reasons being that in Indonesia when I first arrived I didn’t know there was any such thing like a proper channel because these things that you are hearing are from here in Australia, many people move first to Indonesia and Malaysia they don’t know about UNHCR in Quetta. In Pakistan, Afghanistan there is no such thing, there is no refugee camps. (Abdul Hazrat, 2013)

This sentiment was repeated by other participants as well, such as Raheem, who admits that the situation may have changed since his time in Indonesia but that his own reasons for participating in irregular migration – when he was an unaccompanied minor at 16 years of age – were based around a lack of information.

Most of the Hazaras are unaware of the UNHCR, now maybe I think they know about UNHCR because they have relatives in Australia and they talk and there are channels but my reason was that I didn’t know about UNHCR. (Raheem, 2013)

Participants who reported not knowing about UNHCR before embarking on their journey often went on to provide reasons why this information was unavailable to them in their former homes. Most attributed this lack of information to two primary factors, the remoteness of their dwelling and/or illiteracy. Indeed for many Hazaras their journey east was not simply their first time in a different country but the first time they had been outside of their birthplace or village. The isolation of rural communities clearly limits the amount of information available to these individuals, particularly in regards to the informal networks that play such a large role in facilitating the spread of information. Illiteracy or lack of education was also offered as a reason why people were unaware of UNHCR. Two young men who were minors at the time of their journey recounted the fact that their parents were uneducated labourers and farmers from a remote village when they decided to send the boys off in search of safety. The men said there was no possible way that their parents could
have known of any international organisation or system designed to help them (Clark, field notes 2013).

While not everybody in this cohort fits this description, the fact that any did is cause for concern and highlights an issue that needs addressing. It is unreasonable to expect individuals to follow a course of action they do not know is available to them. On a different note one young man commented upon policy changes that were occurring in Australia while he was waiting for the call from his ‘agent’ regarding the specific details of his passage from Indonesia. When asked whether the shift in policy (the Malaysian people swap agreement) gave him pause to reconsider his journey, his response was that he had already organised and paid for the passage before arriving in Indonesia and that he was unwilling, or felt unable, to stray from this course. This scenario highlights a convergence of factors previous outlined included family pressure to successfully migrate, lack of knowledge or understanding of what reception policies entail as well as a loss of control over the migration pathway to agents or smugglers. It also speaks directly to the process whereby non-arrival regimes create the conditions for irregular migration to occur in the first instances which then becomes path dependent.

These findings highlight the fact that any effort to combat irregular migration is unlikely to be successful if it is approached in an isolated state-centric manner focused solely on limiting the mobility of potential asylum seekers which appears as the original trigger for irregular migration to occur.

This finding also contributes to the debate regarding the knowledge of reception policies and migration decisions raised in Chapter Three. It is clear that for a number of participants in this study, they could not have been swayed either way by the existence of punitive reception policies of receiving states as they lacked any or all knowledge of them. This speaks directly to the claims made by Spinks (2013), Richardson (2010) and Koser (2010) that the policies of receiving states have minimal impact upon asylum seekers’ decisions regarding irregular migration. While there is clearly some truth in this, it remains unsatisfactory to discount the role that reception policies and border security play in dissuading irregular migration. This is largely due to the fact that asylum seekers appear to be ceding
control and decision-making to prospective agents or smugglers, who, on the contrary, seem very well informed as evidenced by their adaptive methods in response to changing policies and states efforts to disrupt their operations (Munro, 2011; McInerny, 2000). Therefore it is argued here that the lack of knowledge on the part of asylum seekers is itself not sufficient to claim punitive receptions policies have no effect on migrations. This is supported by the loss of control articulated by the migrants themselves:

When I came to Australia I didn't know anybody, I didn't have any family, when I came to Indonesia, that is when it became known that I was going to Australia up til that time I didn't know if I was going to Australia, New Zealand or any other country – I didn't know the location of Australia or other European countries. (Melad, 2013)

Further evidence for this was witnessed during the fieldwork where a number of asylum seekers shared that they had been provided information from prospective smugglers that seemed incorrect or purposefully misleading in an effort to garner their business, regardless of the predictable result. In this situation the vulnerability of forced migrants is once more at the forefront and their limited subjectivity is revealed.

**Chapter Summary**

This chapter has examined the reasons that led participants to avoid UNHCR Indonesia in favour of irregular migration to Australia. A number of important aspects were identified by participants that were crucial in shaping these decisions. These comprised of both structural constraints as well as more ephemeral aspects of life in transit. The chapter began by detailing the events that led participants in this study to be forcibly displaced from their home and the circumstances that led them to Indonesia. From the beginning of their narratives participants revealed their limited capacity to move through regular migration channels owing to a number of structural restraints. Forced into irregular migration from the outset, this status – or lack thereof – limited participants’ options further still and constrained
their agency. This situation appears to be the result of the failure of the Afghan and Pakistani governments’ ability to protect the Hazara people within their territories, forcing many to flee across international borders in any way they can. This lack of safety and protection in their homes coalesced with the non-arrival regimes of the Global North which contributed to the (legal) immobility participants confronted in their attempts to escape. This convergence was identified as the central aspect driving asylum seekers into irregular forms of migration and into transit locations such as Indonesia.

Having established how participants came to be in Indonesia, participants’ motivations to undertake further irregular migration were explored. From these accounts four major themes emerged that can be considered the major co-constitutive factors that shaped migration decisions. These include a rejection of the UNHCR pathway, broader perceptions of Indonesia as an inhospitable and unsafe location for forced migrants, victim fatigue and external pressures.

Primarily participants stated that they turned to irregular migration as they felt like they had no *real* alternative available to them. This viewpoint has been examined in a number of ways highlighting the lack of choice participants were able to exercise as a result of structural inadequacies. These left people in a state of anomie, unable to conform to the expected societal norms. Rendered immanent in this situation, participants were left feeling that the only *real* agentic decision was to engage in irregular migration in order to seek protection.

Chapter Five will now examine the experience of participants who decided to wait in Indonesia, undergoing UNHCR processing in the hope of being selected for third country resettlement in order to determine whether there are any discernible differences between those who made the decision to move irregularly and those who wait in transit spaces. In particular, Chapter Five will chart the challenges and conditions these men experienced while trying to navigate the official UNHCR system in Indonesia. Chapter Six will then draw these narratives together, analysing them alongside regional and global contexts that co-constitute the migration patterns that these narratives are a part of.
Chapter Five

Navigating the RSD: Seeking Asylum through UNHCR Indonesia

Introduction

Chapter Four explored the motivations of participants who rejected the RSD pathway in Indonesia in favour of irregular migration to Australia. Participants’ responses suggested that a range of external pressures, coupled with negative perceptions of both Indonesia as a transit location and UNHCR as an organisation contributed to their decision to avoid the UNHCR program there. Yet despite the insights provided by participants, these narratives only account for half of the story. To address the research questions, and fully appreciate why some people choose to embark on irregular migration to Australia in search of asylum, it is important to understand why others in a similar position reject this option, and instead attempt to find safety through the RSD program in Indonesia.

Chapter Five will therefore turn its attention towards the experiences of participants in this study who attempted to navigate the RSD process in Indonesia in the hope of being resettled through UNHCR. In contrast to the previous chapter, participants in this cohort are identified by their commitment to be processed through UNHCR’s RSD system and hopefully selected for third country resettlement. This group placed their trust, and their future, in the hands of the international protection apparatus, firmly rejecting the option of further irregular migration.

Participants in this category discussed their experiences in transit living in the Indonesian community, existing on the fringes of society. They interrogated their motivations for engaging UNHCR, their desires to be resettled and their fears regarding the process. Yet despite individuals’ commitment to this pathway, primarily what participants emphasised throughout the interviews and fieldwork were issues that impacted upon their ability to remain engaged with the RSD over time. Despite the tenaciousness of individuals’ dedication to this course of action, a convergence of personal and structural factors over time led individuals to question
their decision to approach UNHCR and to contemplate other avenues for gaining protection, notably by turning to the assistance of people smugglers. In this sense participants in this cohort were similar to those discussed in Chapter Four as their migration decisions appeared flexible and subject to change given the circumstances they encountered.

Based on participants’ accounts, a number of issues can be identified across the data that contributed towards participants either losing faith in the RSD system, or feeling like they simply lacked the capacity to endure it any longer. These consist of the length of the RSD process and the lack of communication from UNHCR during this time, material deprivation, social exclusion, and an increased sense of vulnerability and insecurity while in transit. Together these elements created significant challenges for participants attempting to be resettled through UNHCR Indonesia. Each of these issues was then underpinned by the visible differences in the Indonesian and Australian processing systems at the time of the study (2010–2013). In a similar fashion to participants in Chapter Four who opted for irregular migration, participants in this cohort were also affected by the existence of Australia’s onshore processing system. The flow of people leaving Indonesia on boats and being swiftly assessed and resettled in Australia served as a source of resentment and temptation to those who were waiting in Indonesia.

Through the following analysis the challenges asylum seekers face in attempting to navigate the RSD in Indonesia will be discussed in more depth. The experience of these participants provides insight into the working of the RSD system and the daily experience of seeking asylum and life in transit. What emerges is the realisation that despite asylum seekers’ best intentions and efforts, the UNHCR pathway poses serious hurdles forced migrants find hard to overcome. The challenges individuals face appear to play a key role in driving people towards irregular migration over time as people begin to feel it is the only option available to them.

In many ways, these accounts serve to justify the concerns raised by the previous cohort in Chapter Four and their decisions to avoid UNHCR Indonesia. Yet the most salient point that can be taken from this data is that there appears to be no clear distinction between those who chose to move irregularly and those who try to be
processed through the UNHCR. Forced migration, by definition, requires adaption and flexibility. Individuals, regardless of their original intentions or best laid plans find themselves moving in ways that they did not either desire or conceive of, yet the compulsion to survive feeds fluidity within the journey. Like the participants in Chapter Four, many of the participants in this cohort came to view the RSD with serious doubt and apprehension. Many engaged with UNHCR lost hope in the prospect of ever being resettled, and as the following narratives will demonstrate, as the challenges people faced during this period became insurmountable, individuals began to contemplate alternative pathways for seeking protection, most notably through the use of people smugglers to bring them to Australia. This serves as a serious counter point to the dominant ‘queue jumper’ narrative promoted in some quarters of Australia by those who seek to demonise irregular arrivals, or cast them as undeserving of compassion and protection. As will be discussed in greater depth in Chapter Six, from these collective accounts it appears that the distinction between the ‘good refugee’ and the ‘bad asylum seeker’ is a false binary. Forced migrants make decisions regarding their migration and their future from a position of restricted agency, often in circumstances which present no positive path of action. As a result these personal accounts help illuminate the conditions that shape the decision making of forced migrants in transit and highlight the precarious nature of seeking protection in a space that is not governed by the appropriate conventions.

Throughout this analysis the notion of immanence and transcendence will be utilised once more as these concepts are instrumental in understanding how participants experienced this process. Giorgio Agamben’s political analysis of the ‘state of exception’, introduced in Chapter Two, will also be drawn on as a complementary analytical tool for understanding the larger social structures that shape people’s lives in transit. This will be applied in a similar manner to the scholars discussed in Chapter Two. Throughout this chapter it will be demonstrated how the theoretical positions of Beauvoir and Agamben are highly complementary and useful for understanding where migration decisions intersect with the personal and the political. Once the primary empirical data has been outlined, Agamben’s state of exception will be applied to the transit experience in Indonesia. It will be argued that participants undergoing the RSD can be theorised as being reduced to
bare life within the state of exception based upon their political exclusion and status as non-citizens. Upon establishing how participants in transit can be understood as existing in the state of exception, a state not dissimilar from Beauvoir's concept of immanence in regards to the personal experience of such, the chapter will conclude by examining ways in which individuals contested this state, and struggled to reclaim their sense of autonomy through acts of transcendence.

**Overview of RSD and Protracted Processing Times**

Participants in this cohort are identified by their desire to be processed through UNHCR Indonesia. However throughout the fieldwork and numerous conversations with individuals, either previously or currently pursuing this avenue, it became strikingly clear that this process was more complex and challenging than any could have imagined. Whenever participants spoke about the difficulties they encountered in attempting to navigate the RSD, the primary concern they identified was the protracted length of the processing. The lengthy processing period appears, at first glance, to be the key definitive feature that is pushing so many asylum seekers towards irregular migration over official resettlement. Unfortunately, the protracted assessment period is often presented as the sole cause of attrition from the UNHCR program, feeding into the common narrative that people who arrive in Australia irregularly are ‘queue jumpers’ unwilling to wait their turn. However, as this chapter will demonstrate, this simplistic analysis based on crudely drawn templates of ‘bad asylum seekers’ verses ‘good refugees’ fails to acknowledge the complexity of issues that pushes people towards irregular migration. Regardless of this, the issue of protracted processing times does act as a fundamental obstacle to resettlement and requires critical attention before a more comprehensive analysis can be developed.

The UNHCR office in Indonesia has a notorious reputation among asylum seekers. Based on conversations with participants in this study it was clear that many asylum seekers were arriving in Indonesia with the expectation that they would face some difficulties in applying for asylum. As Chapter Four demonstrated, for many this was instrumental in directing people towards irregular migration facilitated by
people smugglers. For participants who were more resolute in their desire to navigate the official system, it was another hurdle to overcome. As one young man, Amjad, reflected during a conversation regarding his perception and experience of the processing system in Indonesia:

> In Indonesia everybody has the knowledge, everybody knows that if you go to UNHCR it will take more than five years and it is not confirmed like when you go to UNHCR they say like ‘we cannot say anything, there is a list, a very long list’. Plus I had a friends who have been, not directly but indirectly told by UNHCR that if you want to go there fast just take a boat. (Amjad, 2013)

This comment is exemplary of the perception participants held of UNHCR Indonesia, it also suggests that in reality the RSD is functioning quite differently to the official version being promoted by government officials. The common narrative provided by participants depicts the operation as being in disarray, lacking the proper framework and procedural guidelines for the assessment of protection claims. The result of this is that the UNHCR process is often viewed as being so inept that it is seen as being barely functional by many.

Participants presented in-depth commentary on their attempts to register and be processed by UNHCR Indonesia. Upon arrival in Indonesia, individuals presented themselves to the UNHCR office in Jakarta to register as an asylum seeker. This process can prove challenging in itself. Given the serious under-resourcing of UNHCR Jakarta the office is only capable of registering a small number of claims per day. If individuals were unable to be seen by a staff member that day, their only option was to return and try again another day adding to the backlog. Fieldwork visits to the Jakarta office revealed asylum seekers desperately trying to register their claims. Some individuals reported lining up since the early hours of the morning in an effort to be seen by officials. Yet the pure volume of people attempting to register meant that for many, their effort would be in vain. This point is illustrated by the shared experiences below. Jan Mohamad is a young man living in the West Java highlands in a region known as the Puncuk Pass. On the day that we spoke he had travelled four hours into central Jakarta in an effort to be seen by a
UNHCR case worker and his comments display just some of the frustrations participants experienced while trying to register a claim in a timely manner.

Surely there were issues not having enough staff for meeting people's problems and not dedicating enough time for their work are the major challenges or issues that we face, taking a refugee card even takes months which we have to travel a long way and after all get back with nothing. Then we have to go for so many consecutive days to obtain a card. (Jan Mohamad, 2013)

The everyday nature of this experience was repeatedly displayed in the grievances of participants, as demonstrated by Sayd Alam, another young man from the Bogor region.

There were issues, there were so many people waiting in the lines but not enough staff to handle their cases and also not enough speed in their works. For getting a certificate I had to travel long way for many days to get to UNHCR in order to obtain one. (Sayd Alam, 2013)

This scenario was witnessed firsthand during field visits to the UNHCR Jakarta office, behind the wrought iron gates and security station, the triage area was consistently filled with anxious looking asylum seekers desperately hoping to be attended by a UNHCR staff member. In one conversation with a group of men outside the compound walls the men explained that despite getting up at 5am to make the long journey to town, by 9am when they arrived the line was too long and that they were leaving as their chances of being seen that day were hopeless.

For those who are registered with UNHCR, this is just the first step in a very long and arduous process. Registered asylum seekers are then given a date on which they may return to collect their official registration documents, otherwise known as an asylum seeker certificate (ASC). For an asylum seeker in Indonesia without identification or authorisation, this ASC document is their only legal shield from arbitrary arrest or deportation. In other words this document is vital to individuals' survival. The interval between first presenting oneself to UNHCR and receiving the identification document varies considerably. Some participants reported receiving
this within weeks of first contact while others reported being given dates that stretched months into the future, and in one case one participant reported being given a date a full twelve months in the future just to receive his identification card.

After registering with UNHCR, asylum seekers should, in theory, be assigned a date for their first official interview with a UNHCR case worker. However in practice this did not appear to be occurring. Participants in this study were routinely given registration documents with three to six month expiry dates. Upon expiry individuals were required to travel back to the Jakarta office to re-register. It is unclear why this is the case and appears only to congest the process further. Participants reported this happening multiple times; on average participants re-registered between two to three times each over an extended period before being given an official interview date, again usually months into the future. As a result individuals may wait upwards of a year and a half before their initial interview. Basim, a married man with a young family he was forced to leave behind in Iran while he sought safety, relayed his own account of trying to register and then secure an interview date with UNHCR. Basim’s account is representative of the experience of many participants in this study.

First I obtained a token\(^9\) and after one whole month I managed to get registered with UNHCR and then regularly I renewed my card each two month until I got a chance for interview. On the day that I was supposed to have interview after long time waiting they finally put it off for one more month. Its fourteen months that I am here and it’s been three months since I am interviewed but no word yet from UNHCR whether or not I am a refugee. (Basim, 2013)

Once an asylum seeker has registered with UNHCR the next step is to undergo an official interview, during which a case worker will attempt to determine the merits

\(^9\) Depending on the number of applications UNHCR Indonesia is receiving, at times the organisation implements the ‘token system’. A ‘token’, or appointment slip, is a piece of paper the size of a business card which has an appointment date and time to return to UNHCR. The token has no legal bearing and offers no defence against police action, leaving asylum seekers with even less protection than they would have once they gain an ASC.
of the individual’s refugee application based on the evidence provided by the individual. Again the waiting time between steps is long and arduous for the asylum seeker. A UNHCR report published in March 2013 casts light on the extent of this issue; as of January 2013, the backlog of asylum seekers awaiting first instance interviews stood at 4,848 (UNHCR Indonesia Fact Sheet, 2013). This accounted for almost fifty per cent of all asylum seekers in Indonesia at the time and demonstrates the specific challenges UNHCR officers face in managing such a large number of cases.

The length of time between the initial interview and receiving an assessment outcome varied significantly across participants. The inequality of this ad hoc process caught the ire of many participants. As Jan Mohamad states:

> On the UNHCR side, the challenges that refugee people are facing are unfair UNHCR processing because one is getting interview chance after three or four months and some are getting after nine months and even there are people that haven't got a chance for interview after two years while most of these people are in a same situation. (Jan Mohamad, 2013)

The inability to process people in a systematic manner was a source of frustration for many participants, and appeared to undermine the perception that UNHCR was trustworthy or accountable. As one young man points outs:

> Most of the staff or even the organisation has forgotten the rules and regulation and human rights of the migrants so they process the cases without any time period. This is irresponsible and senseless actions of case officer of UNHCR. Whenever we ask to process our case on time or faster our families are under target the answer is that you can go back, we are not responsible of your family. (Gulzari, 2012)

Once individuals are found to be Convention Refugees they are afforded certain privileges denied to asylum seekers. However, attaining refugee status does not resolve the liminal state in which individuals find themselves. Only once a person is granted a refugee certificate (RC) does the search for a resettlement place begin and even this is not assured as the final decision to offer a resettlement place remains
with the countries that run such programs. UNHCR are limited in this sense and are only able to recommend suitable candidates for consideration.

As of January 2013, there were 8,584 persons of concern to UNHCR in Indonesia, (1,823 refugees and 6,761 registered asylum seekers). In the twelve months from January 2012 to January 2013, 359 refugees were approved for resettlement in third countries around the world, with 247 individuals completing this process (UNHCR Indonesia Fact Sheet, 2013). Australia was the largest contributor to this resettlement taking 190 people.\textsuperscript{10} Based on these figures, at this rate with no further increase to the numbers arriving in Indonesia it would take 34.7 years to resettle all current asylum seekers registered with UNHCR Indonesia. These figures suggest that the scepticism regarding UNHCR’s ability to find durable solutions displayed by participants in Chapter Four is perhaps well founded. They also demonstrate why many participants begin to lose hope of ever being resettled through UNHCR and instead decide to embark on the risky boat journey to Australia despite their original intention. It should be noted however that this situation is not unique to Indonesia. The reality is that the single biggest challenge facing UNHCR today is that there are simply more asylum seekers, refugees and displaced people in the world than there are available resettlement positions, and that each year this gap is growing wider.

\textsuperscript{10}This is well above Australia’s average offshore resettlement from Indonesia. For figures on Australia’s annual resettlement from Indonesia see Karlsen, 2015.
Figure Six provided by UNHCR shows the number of refugees in Indonesia approved for resettlement against the actual resettlement figures for the twelve months from January 2012 to January 2013 (UNHCR Indonesia Fact Sheet, 2013).

Figure Six: Third Country Resettlement 01.01.2012- 31.01.2013

<table>
<thead>
<tr>
<th>Country</th>
<th>Applications for resettlement pending</th>
<th>Acceptances</th>
<th>Departures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>683</td>
<td>265</td>
<td>190</td>
</tr>
<tr>
<td>Canada</td>
<td>40</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>USA</td>
<td>50</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>New Zealand</td>
<td>68</td>
<td>72</td>
<td>47</td>
</tr>
<tr>
<td>Denmark</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Sweden</td>
<td>0</td>
<td>15</td>
<td>9</td>
</tr>
</tbody>
</table>

The obvious lack in official resettlement positions attained through the RSD has seriously eroded the perception among asylum seekers that this pathway represents a legitimate opportunity for resettlement. It appeared throughout the research that the lack of progress being made by people already in the system in contrast to the high resettlement success rates of IMA’s played a considerable role in dissuading people from the UNHCR. This point is demonstrated by the comment below by Sayd Alam, who illuminates the insurmountable mental challenge asylum seekers confront in their efforts to be resettled through UNHCR.

I saw a number of Hazara people who were living in Indonesia since 2000 from that time when the Nauru camps started, from that time people were
living in Indonesia, they got their refugee status yet still they were waiting for a result from Australia or some European country so when people come from the home town back in Pakistan or Afghanistan and they see these people who are still living with refugee status and no future, nothing like this so they don't have any other option than to come by boat then so if they stay in Indonesia and wait for the UNHCR it takes another ten years or more than ten years. (Sayd Alam, 2013)

Sayd’s point highlights a very common issue for asylum seekers in this study, that they simply could not see any progress being made to their protection claims, or the claims of people before them. The lack of hope that results from these kinds of experiences illustrated by Sayd, clearly acts as a push factor for many people, as the lack of progress seriously undermines the validity of the UNHCR in participants’ eyes. In this sense the long waiting period is more than just a frustration for participants; when there is no sign of progress being made, asylum seekers start to question whether this option holds realistic outcomes to their plight and many begin to consider alternative pathways to finding safety. Hope is clearly a major determinant, the correlation between losing hope in resettlement and the decision to abandon UNHCR appeared particularly salient. As Muhammad Hussain articulates below, more needs to be done to provide a sense of hope to encourage asylum seekers to remain engaged with UNHCR Indonesia. As he sees it, without hope of resettlement, people will give up on UNHCR and search for alternative ways of securing refuge.

We spoke about logistical things, like if Australia really wants to save people’s lives they can resettle refugees, not asylum seekers but refugees to Australia straight away from Indonesia. This would give the impression or message to asylum seekers that if they wait in Indonesia there is a real hope that they could be resettled. But Australia is not doing that and I don't know why. (Muhammad Hussain, 2013)

The issues raised by participants regarding the effectiveness of the RSD reflect previous studies that have examined the experiences of asylum seekers in Indonesia. In her 2009 research on the conditions of Australian funded detention
centres in Indonesia, Taylor (2009) cited key issues such as huge delays in processing times, under-funding of UNHCR Indonesia and an inadequate assessment process that all contributed toward the suffering of detained asylum seekers. According to Taylor, the protracted nature of the RSD process left many individuals feeling hopeless and distressed at the lack of progress being made (Taylor, 2009:4). As with the present study, Taylor (2009) also documented multiple cases where individuals were waiting several months before being seen by UNHCR employees to lodge their initial protection applications.

According to Taylor (2009) these problems were compounded by the serious under-funding and under-resourcing of UNHCR Indonesia, a situation that contributes to the long RSD process. At the time of her investigation there were 12 members of UNHCR staff and approximately 2000 asylum seekers undertaking the RSD, a situation that based on today’s figures has clearly grown exponentially. Beyond issues of under staffing, Taylor also raises serious concerns about the assessment process itself. She argues:

On many occasions, we heard from asylum seekers that UNHCR staff were ill-equipped with basic knowledge relevant to claims. Afghan applicants often told us that they had to explain to UNHCR staff the complex history of ethnic and tribal tensions in Afghanistan; which facts are central to their claims of persecution... UNHCR staff’s lack of knowledge of social, political and historical matters proves to be an enormous barrier to communication.

(Taylor, 2009:28)

Parallels with the 2013 Human Rights Watch (HRW) report on challenges facing unaccompanied minors in Indonesia are also readily available. The investigation, conducted over the same time period as the current research identified many of the same issues, including the difficulties asylum seekers face in obtaining refugee protection through the RSD in Indonesia, delays in processing applications, failure to register asylum seekers in a timely manner and lack of resettlement positions. According to HRW:

Asylum seekers in Indonesia find it difficult to obtain refugee status, which is granted by UNHCR as the Indonesian government has no mechanisms for
processing refugees... these delays occur because the Indonesian government takes no responsibility and because UNHCR is understaffed. (Human Rights Watch, 2013:62)

The protracted nature of the RSD is a major challenge for asylum seekers and it is contributing to attrition rates, or outright rejection of the UNHCR pathway. However what became exceedingly clear throughout extended conversations with asylum seekers was that there was much more contributing to this situation than just the waiting time. The following section explores issues that simultaneously impacted upon participants’ ability to remain engaged with the RSD process, each contributing in their own way towards a backlash against the UNHCR.

**Poor Communication**

Communication issues appeared to have detrimental effects upon asylum seekers and their engagement with UNHCR in numerous ways. Participants reported that UNHCR was not providing them with the basic information they felt they needed in order to successfully navigate the RSD process. The UNHCR is a bureaucracy, and like all bureaucracies, it poses a number of challenges to the lay person in understanding its operations and procedures. Drawing on the experiences and accounts provided by participants, it is reasonable to conclude that the harder the RSD process is to navigate, the higher the likelihood is that people will abandon this avenue and instead seek out other ways of finding protection. In a conversation with one young man who had travelled to Indonesia alone, when asked how he got his information regarding the UNHCR, he responded by saying that he had researched it on the Internet. However, when he arrived in Indonesia, he discovered that the reality was very different from the information he had been provided. As a result he had turned to his kinship network to find accurate information on what to do. This reliance on informal networks over official support structures will be discussed in further detail below:

I got my information off the UNHCR website but it is not like that. It says it is but in real life it is not how it works at all. (Talib, 2013)
For participants in this study the lack of communication during the RSD process appeared destructive to their desired aim of being processed through UNHCR. A common feeling among participants was that UNHCR were failing to communicate effectively with people whose claims they were assessing. Ongoing communication between asylum seekers and UNHCR is important for a number of reasons. Clear communication between the parties promotes trust and works to reassure asylum seekers that they have been heard, that their claims are being investigated and, importantly, progress is being made. Alternatively when there is little or no communication between asylum seekers and UNHCR tensions rise and asylum seekers feel like they are being ignored. The notion of progress seems particularly relevant given the protracted processing period and the importance of keeping people engaged with this process over a number of years. However most participants felt like UNHCR was making little effort to maintain lines of communication and felt left in the dark when it came to the status of their application as the following comment demonstrates:

To be honest my experiences with UNHCR staff has always been unsatisfactory. I have been attending meetings for fifteen months but I’m never given proper answers for my questions. Whenever I have raised issues about the rules and regulation long process so they have always been with no answer... they say, ‘Jakarta knows’, though they belong to the same organisation. (Gulzari, 2012)

Most asylum seekers reported struggling to communicate with UNHCR, either in person at the Jakarta office or over the phone. On top of this participants consistently stated that when they were able to speak with officers their interactions were usually of poor quality. Officers were reported as being rude, unhelpful and in some cases outright obstructionist.

Whenever issues are raised regarding case processing and other issues they have never been able to answer the questions and we are never supported instead treated rudely. When I ask the representative she always ignores me and her behaviour is like playing hide and seek. (Gulzari, 2012).
It is tempting to dismiss the poor communication record of UNHCR as an unfortunate outcome of a benevolent organisation crippled by lack of staff, facilities and funding. However this perspective runs the risk of dismissing this practice as an unfortunate, yet essentially harmless distraction from the core priority of case workers struggling to process the vast number of asylum claims. This would be a grievous mistake. From all accounts, poor communication leads to poor relationships with UNHCR, and poor relationships lead to an increase in attrition rates either through a lack of trust in the process, or creeping suspicions that individuals’ claims are not receiving the attention they deserve. This situation is then underpinned by the perception that the UNHCR simply does not care about the asylum seekers under its care. Khalid’s case is a prime example of how poor communication between UNHCR and asylum seekers can directly contribute to individuals abandoning the process all together and turning towards people smugglers. Khalid spoke in great detail about his reluctance to travel to Australia by boat, it was his intention and desire to be processed through UNHCR Indonesia and be resettled through formal channels. However upon arrival in Indonesia his perceptions quickly changed:

I had heard about UNHCR and the processing centres here and I thought this might be the best option for me...I was planning on doing this, if things were going ahead well and smoothly, I was not planning on putting my life in danger and heading to the leaky boats. (Khalid, 2012)

Khalid quickly realised that things were not going to ‘go as smoothly as planned’ when he first made contact with UNHCR. Despite his aversion to using people smugglers the uncertainty of life in Indonesia finally outweighed his fears of leaky boats. For Khalid, it was UNHCR’s inability to communicate any clear timeline for his processing that eventually led him to the heart wrenching decision to attempt to reach Australia by boat:

If the process was short, if it was, at least one year with an identity card as soon as possible. If I had timeline like this, after a year or maybe January, February 2013 this is the maximum time it will take for the processing of your application and I was provided an id card for my protection I would
definitely not taken this decision to go ahead with this dangerous boat journey. UNHCR, I think there is something wrong, somewhere with UNHCR. (Khalid, 2012)

Khalid reiterated several times throughout his interview that had he simply been provided with some kind of timeline, he would have been willing to wait out the RSD in Indonesia. Instead, the lack of such information made waiting unbearable. Khalid embodies the experience of many participants, who said they would have endured the RSD had they been told how long that process might be. This was a reoccurring theme across the interviews, it was also a focus point for a number of NGOs and service providers whose views were sought as part of the research. As one confidential informant stated:

The waiting time is too long – people need hope at the end of the tunnel and at present there isn’t any. If UNHCR communicated better with people about the length and progress of their case people would be more engaged. People need to know what to expect, so being told after one year you will be assessed after two years you will be resettled for example. (Australian NGO representative, 2013)

Although this may appear to be an issue of protracted processing times, the critical element in these narratives was not so much the waiting time (although clearly still an issue), but rather the knowledge of how this process would be and what it would look like. Whether to mentally prepare themselves or simply to find relief in the fact that their dislocation was temporary and the purgatory indeed had a foreseeable end date to it, participants all lamented the lack of communication regarding the process. Put simply, if UNHCR clearly communicated with asylum seekers regarding the RSD, outlining a basic timeline of events, individuals would have found it easier to accept. The lack of information however appeared to only increase individuals’ sense that the RSD pathway lacked fairness and progress, solidifying perceptions that participants would never be successfully resettled regardless of whether they had a genuine refugee claim or not.

Poor communication issues had other – more immediate – effects on some participants in this study. One young man retold an incident where this lack of
communication resulted in him being detained by local police. Ghulam was going about his business one day when he was approached by police and questioned about his presence in Indonesia. At this he produced his UNHCR identification card. The police officers did not accept this and demanded that he call the numbers on the card to verify his identity. However when he called he found that both numbers were invalid or disconnected. As a result he was taken into custody until his identity was confirmed. The young man showed me his registration document with the information numbers clearly printed on the top left hand corner under the contact details. He explained that this was not an isolated incident, that he routinely tried contacting UNHCR on the official numbers provided and was routinely unable to get through.

When I call UNHCR they do not answer, none of the numbers work. They just don't work. (Ghulam Hazrat, 2013)

While this is clearly an extreme case of a basic communication breakdown resulting in a drastic outcome, the difficulties participants experienced in contacting UNHCR presented regular frustrations.

A more traditional form of communication breakdown that participants cited as problematic was in regards to the language barrier. The language barrier poses a considerable challenge for asylum seekers trying to navigate the UNHCR system. During the fieldwork in Jakarta I met a young man outside of UNHCR. He told me that he was there on that particular day helping a friend to re-register by acting as a translator. His friend did not speak any English, the primary language in which UNHCR business is conducted. While most participants reported being provided with proper interpreters for their official interview, it appears under resourcing has resulted in staff proficient in languages common to the asylum seeker demographic are not always on hand during day-to-day operations.

This finding echoes Tylor (2009) who reported a number of issues in UNHCR Indonesia linked to communication problems. Taylor notes that a significant number of first instance rejections of refugee claims were being overturned on appeal based primarily on the grounds that translation errors led to the original negative outcome.
Finally in regards to communication, an important challenge for UNHCR is how to best combat the spread of misinformation that circulates at alarming speed throughout the diaspora. The informal networks that operate in these transit spaces are an important aspect for survival, however in many cases they also support the dissemination of inaccurate information. This effect was seen in both cohorts of participants. Asylum seekers in Indonesia appear desperate for any information that might help them. During the fieldwork it was observed how this desperation is easily exploited by people smugglers telling potential clients falsities about their reception in Australia and the dangers (or lack thereof) of travelling by boat. The use of false information to attract customers was apparent in the previous cohort as well. What was also concerning was the more benign yet still potentially disruptive rumours that permeated throughout these communities. Asylum seekers contemplating their next move were facing one of the most important decisions of their lives, and in many cases they were basing their judgements on second hand, inaccurate information. A redoubled effort on behalf of UNHCR to clearly communicate with asylum seekers about the status of their case, the progress, expected timeline and broader changes being made to regional refugee policies has the potential to reassure individuals that the RSD is working. This may counteract some of the dangerous misinformation propagated by unscrupulous characters looking to capitalise on the confusion and desperation of asylum seekers.

Practical Survival and Material Support during the RSD
As previously established, participants engaged with UNHCR raised the issue of the extended processing time and the long waiting period they were subjected to as a result of this. However what became abundantly clear was that the timeframe itself was not the sole issue participants in this cohort were struggling with. One of the most prominent factors that contributed to asylum seekers struggling to remain engaged with the UNHCR in Indonesia was the conditions they were expected to endure while waiting for this process to run its course. The following section will examine the material demands asylum seekers and refugees routinely confront in Indonesia, and how these pressures impact upon peoples’ migration decisions.
It is evident that registered asylum seekers have a protracted waiting period ahead of them in Indonesia. In this time individuals must determine how they will survive life in a foreign country, as little more than illegal aliens. While the ASC card in theory protects against refoulement, it affords basically no further rights to individuals. This places asylum seekers in a precarious position, most often under conditions of abject poverty. Asylum seekers receive no living assistance from UNHCR or the Indonesian authorities. Once a person is recognised as a refugee and receives their RC they become eligible for limited financial support through IOM and UNHCR; however, as previously demonstrated, it may take years to reach this point and many asylum seekers struggle to survive until then.

Compounding the lack of financial assistance is the fact that asylum seekers and refugees undergoing the RSD are denied work rights. The denial of this basic right has far ranging consequences. The lack of income erodes the ability of individuals to secure the most rudimentary material needs such as food, housing, and medical care. This is further exacerbated by the fact that individuals who are forced to flee their homes as a result of war or persecution generally have little to no savings and, given the abruptness of their flight, have had little to no time to plan accordingly. This situation is further compounded by the fact that individuals have already spent the little they had to escape the violence of Afghanistan or Pakistan through the use of agents. Participants noted that in many cases they were only able to raise this money through the pooling of resources throughout extended kinship networks or by taking on large loans. This debt only added to the financial pressure individuals experienced during their time in transit.

All participants who spent time in Indonesia spoke of the hardship they faced in terms of practical survival, as Mohamad points out:

Asylum seekers approach UNHCR and told UNHCR, we are not allowed to work here and we don’t have any money to eat or to live or to pay our rent please help us. And UNHCR are like, ‘we cannot help you we are sorry we don’t have funds and then only if you are a refugee.’ And even those that are refugees they cannot survive on the amount of money they receive from IOM – they have to ask their families to send them money and given that their
families are already in an area where they cannot go outside or work, how can they support somebody who is in Indonesia or a foreign country? (Mohamad Nabi, 2013)

Mohamad's account is exemplary of the financial pressure forced migrants encounter in transit and the strain this puts on people. Yet these comments are also redolent of the critical issue raised by the cohort in Chapter Four: family pressure. For the participants undergoing the RSD in Indonesia it appeared that the spectre of family pressure and the guilt those who have left must endure during their time in transit is omnipresent. The combination of financial stress coupled with the knowledge that family members are suffering as a result appeared as a constant source of anguish for participants.

A more concrete concern for asylum seekers is the lack of affordable accommodation. All of the participants in this study were living in crowded shared housing, most outside of urban areas. Smaller towns such as Cisarua and Bogor, approximately 70km West of Jakarta were popular destinations for Hazaras. The cost of living is generally cheaper outside of the metropolitan region; however, this leaves asylum seekers further away from valuable resources such as the UNHCR office. Beyond struggling to secure affordable housing, food was also raised as a major issue. Asylum seekers reported struggling to feed themselves as financial pressures increased the longer they were in transit. The simple reality was that participants felt that they could not afford to support themselves throughout their time in transit and that the limitations placed on people, such as the lack of work rights contributed to this.

A number of NGOs operate within this space, providing support for asylum seekers, however, as one confidential informant stated, the size and scope of the problem is too great for non-government actors with limited resources (Indonesian NGO representative, 2013). HRW confirmed this in 2013:

While waiting for the outcome of the refugee status determination process, some asylum seekers receive some material and financial assistance through NGOs such as JRS. However, as the numbers of asylum seekers in Indonesia
grows, the need far outstrips the capacity for NGOs to respond to this need. (HRW, 2013:67)

Once individuals are granted a RC their financial burden decreased slightly as they became eligible for limited support. However the easing of economic pressure is narrow and appears to have a limited impact. Discussions with refugee certificate holders in Jakarta revealed the inadequacy of the stipend in relations to the standard cost of living. Refugees also testified that the services IOM claimed to be offering were either of poor quality or non-existent. This accusation is not all together new. IOM receives lucrative contracts from the Australian government to provide these services in Indonesia yet highly critical statements by refugees in this study, which back up findings by Taylor (2009), point to major problems with the IOM (in terms of service delivery and transparency). Criticism has also been levelled against the lack of governmental oversight and accountability in regards to these contracts (Taylor, 2009; Taylor & Rafferty-Brown, 2010). Participants extended their criticism of IOM to the Australian government more broadly when speaking about the lack of funding available for UNHCR:

I think that the Australian Government has been spending not millions but billions of dollars now on putting people into offshore detention centres, if rather they directed that money to UNHCR to care for and shelter asylum seekers, if they feed asylum seekers in Australia and in Papua New Guinea, why can’t they feed asylum seekers in Indonesia, they are literally such a small number, 10,000 and Australia can afford and other countries can afford to feed and shelter asylum seekers in Indonesia. (Khairullah, 2013)

Khairullah’s comments reflect a common desire for governments of the Global North to do more to support asylum seekers who are trying to ‘do the right thing’. The overwhelming response from participants in this cohort was that they did not want to travel irregularly, that they set out with the intention of being processed through the UNHCR system – the desired pathway of the Australian government. However, the structures and policies in place in Indonesia do not support them in this course of action and in the end the material pressures became too much and individuals were forced to make alternative arrangements. Without the most basic support, it
appeared people could simply not survive the long waiting period despite their best
efforts to do so:

If they are provided, not very good, but reasonable accommodation and other
recreational things they would obviously wait – they don’t want to take this
perilous ride if they know the wait is certain. (Khairullah, 2013)

Once more the testimony of participants reflects previous research findings calling
for greater support and focus on capacity building rather than barrier building
(HRW, 2013; Purdy, 2010; Taylor, 2008).

The financial pressures facing asylum seekers in Indonesia are so severe that during
the fieldwork informants relayed accounts of individuals wilfully surrendering
themselves to local authorities to be detained in immigration detention, the
conditions of which have been previously outlined in Chapter Three. This was
usually achieved by bribing officials to secure their own imprisonment. This action
can be interpreted as a sign of ultimate destitution and desperation. When
individuals were no longer able to feed or shelter themselves they would trade their
liberty for the certainty of a prison cell. This finding is alarming given that the
terrible conditions of detention are well known throughout asylum seeker networks
in Indonesia, as documented across the literature (HRW, 2013; Nethery, Rafferty-

This situation illuminates the systemic failure of the RSD pathway in Indonesia and
its inability to support asylum seekers. It also highlights the constrained agency
people have in this environment when individuals’ options are reduced to a ‘choice’
between freedom or starvation. In this scenario participants are once more
rendered immanent, relegated to the ‘brutish life’ through the acceptance of
conditions beyond their control.

This finding is also perhaps the most resounding evidence to date that asylum
seekers in Indonesia are in desperate need of financial and material support
throughout the entire length of the RSD process. It is clear that without this vital
support all other efforts to encourage individuals towards UNHCR are futile.
Medical care was another area of concern for participants. Again this presented a direct correlation between individuals’ financial status and their ability to endure the RSD. Asylum seekers reported forgoing treatment for medical conditions ranging from minor irritants to life threatening issues during this time. For the majority of people medical care was seen as a luxury well beyond their financial reach. In addition to physical ailments, most participants, particularly those who had spent long periods in transit or in detention, reported mental health issues. Depression and anxiety related symptoms were common in participants and were clearly more prevalent in individuals whose processing was becoming protracted. The rampant nature of this can be witnessed in the following testimony from Gulzari, a young man who had been held in immigration detention for fifteen months at the time of his interview:

Yes it has been fifteen months that I’m detained. Actually it’s not detention centre it’s a jail because if it was detention centre it would have better facilities like playground, gym, sports facilities, excursions. It’s like hell not detention because I don’t get sun light and get skin disease, physical and psychological problems are very concerning issues that none of the organisations UNHCR, IOM, and immigration care about though they notice it but still don’t take any action. Within fifteen months there is one suicide attempt, five self-harm and three mental cases as I have seen in here because of the long period of detention asylum seekers get mental, physical and psychological problems that lead them to unbelievable decisions. (Gulzari, 2012)

The causality between extended periods of detention and negative health outcomes has been clearly established across the literature (Austin, Silove & Steel, 2007; Canty & Benjamin, 2007; Theologou & Roberts, 2007; Steel, Silove, Brooks, Momartin, Alzuhairi, & Susljik, 2006; HREOC, 2004; Silove, Steel & Watters, 2000) and in this respect Indonesia appears to be no exception. However, what participants in this study demonstrated very clearly was that this correlation could be extended beyond the confines of immigration detention to include the entirety of the transit experience. Extended periods of time spent in transit appeared to
replicate the negative outcomes found in those detained for protracted lengths of time. As one participant demonstrates:

Financial problems, lack of job here for us to make money and also the long processing of UNHCR, are the major challenges that we face. These challenges not so much effect on our future plan but greatly pose negative effects on our thoughts and is truly harmful for our mental health. (Sayd Alam, 2013)

Sayd’s comment raises an important yet often ignored aspect of the forced migrant’s existence. His comment highlights, in a very personal way, the struggles individuals encounter during their time in transit as people are reduced to passive waiting. While they may not be physically detained, they are without a doubt placed in a stasis. Throughout the fieldwork this effect on people was notable. When I first visited Indonesia in June 2013 I met with a young man named Talib. He had just arrived in Jakarta after a convoluted and dangerous journey from Afghanistan which had left him feeling distressed and anxious. I met Talib when he was attempting to register with UNHCR. He was resolute that he was going to be found a Convention Refugee and that he would be resettled. Despite the recent trauma he appeared confident and hopeful. When I returned to Indonesia six months later I visited Talib at his home. In contrast to our first meeting the young man in front of me appeared deflated, emaciated and stripped of all confidence. His body language had changed considerably and his once optimistic attitude regarding his future appeared extinguished. Over the following hours Talib slowly revealed more and more of the challenges he had faced during his months of waiting and the effects this was having upon him, both physically and mentally. The most resounding aspect of this encounter was the shift in his attitude, while six months earlier Talib was committed to the UNHCR pathway and migrating ‘through the proper channels’, the hardships he had endured had clearly diminished his resolve and he had lost all confidence in ever being resettled. The lack of employment, precarious living arrangements and general poverty had all contributed to this change.

The lack of suitable reception policies for asylum seekers places people in a dependent situation that restricts their ability to support themselves. The state of abjection asylum seekers are forced into by their financial status clearly contributes
to poorer health outcomes both mentally and physically. This situation was viewed by participants as yet another hurdle they needed to overcome if they wanted to successfully navigate the RSD. It was clear from the data how this situation contributes to the attrition rate of UNHCR and increases the allure of irregular migration as it becomes seen as the only way to overcome the mounting challenges.

**Life in Transit and Social Exclusion**

The following section explores the often overlooked yet highly relevant topic of social exclusion and its effects on forced migrants within the transit space. The monotony of life in transit is not often recognised within the literature but clearly played a central role in shaping participants’ experiences in transit. In this state asylum seekers are disconnected from everyday life and the actions that make life meaningful. Denying asylum seekers the ability to work or to be educated while in transit strips individuals of the numerous social benefits associated with these endeavours, while the uncertainty regarding their RSD contributes to a sense of hopelessness concerning their future. In this context the concept of immanence is once more a useful analytical model to help illuminate both participants’ situation and the actions and strategic choices within the confines of their condition. The existentialist perspective suggests that ‘man’s design is not to repeat himself in time: it is to take control of the instant and mould the future’ (Beauvoir, 1997:97). Yet in transit asylum seekers are denied this possibility and are instead reduced to a position of immanence, effectively negating reasons for existence beyond mere repetition of biological life. The natural progression of this state is twofold: the lack of economic resources to sustain or improve life, and the mental deterioration that follows. The lack of economic resources restricts individuals’ choices in numerous ways. Beyond the raw material requirements discussed previously, this situation manifests most prominently in the denial of any recreational activities that may bring people a sense of purpose or enjoyment. Most participants reported that their time in Indonesia was, by and large, reduced to the act of passive waiting. Individuals rarely left their place of residence due to the combination of having neither the motivation to leave nor the economic freedom to do so. Fear of
harassment – or worse – contributes to this social isolation, a point that will be returned to shortly. Having no expendable income required individuals to be ultra-frugal, commonly resulting in individuals foregoing most public spaces and becoming confined to the place of residence.

This situation is compounded by the fact that asylum seekers are also denied the freedom of movement while in Indonesia, as stipulated in Article 26 of the Refugee Convention. The official identification system in Indonesia, the ASC, is designed to limit asylum seekers’ freedom of movement by being valid only in particular areas, mainly centred on Jakarta and a number of smaller regional towns in North West Java. Ostensibly this is an attempt to keep asylum seekers away from port towns where people smuggling operations are rampant, yet it also confines asylum seekers to the busier metropolitan areas where the cost of living is much higher. This system has resulted in the concentration of asylum seekers in a few smaller towns just outside Jakarta where the UNHCR card is still accepted, mainly Cisarua and Bogor.

The concentration of asylum seekers in these regional communities appears to be following a broader pattern in regards to the effects of an irregular population within a national border as described by Papadopoulou (2005). Hostilities have emerged and there appears to be growing tension between locals and the asylum seekers with an increase in violent attacks being reported on the Hazaras (Indonesian NGO representative, 2013). Official immigration documents leaked by *The Australian* demonstrate that Indonesian authorities are aware of the problem. According to Alford & Nathala (2013: n.p) ‘the department believes Indonesia faces worsening public-order problems unless steps are taken to isolate asylum seekers from the general community’. A radical response to this fear is outlined in a proposal from the Immigration department:

> To avoid social jealousy from local communities and to reduce potential negative impacts from the presences of irregular migrants and their social interactions, a special area (island) needs to be established separate from local communities. (Cited in Alford & Nathala, 2013: n.p)

Secular tensions also appear to be on the rise in these areas resulting in a number of NGOs responsible for the welfare of refugees and asylum seekers being forced to
relocate individuals for their own safety (Indonesian NGO representative, 2013). While perhaps not comparable to the effects of not being able to acquire adequate food and housing, the denial of this basic right to freedom of movement plays a psychological role in dehumanising asylum seekers and further stripping them of their autonomy. Once more this situation holds a number of parallels with the situation discussed in Chapter Four, highlighting the way asylum seekers in transit are reduced to a state of immanence and denied the basic liberties that are essential for a meaningful life.

The effects of this should not be underestimated. The conditions inflicted upon people during their time in transit drove many to despair that their lives lacked meaning. These finding illustrate parallels with previous research on transit experiences. Taylor & Rafferty-Brown (2010:573), for example, label this phenomenon ‘dying by degrees’. This situation again led to poor outcomes for people, physically and mentally. While some of the young men in Indonesia made light of this during the interview process, for example making jokes about ‘getting fat’ (Khairullah, 2013; Hussain, 2013), others saw the deterioration in themselves in more stark ways. Individuals spoke about the uneasy feeling that their life was slipping away and that if something did not change soon it would be ‘too late for them’ (Akhtar, 2013). This sentiment appeared particularly strong in the younger men. The stories they told and the way they reflected on their life illustrated that they felt that they were at a crossroad in their life. They felt like they were losing their ability to make something of themselves every day that passed them by, they thought that if they did not do something soon, then the life that they imagined – one lived with purpose – would become permanently unattainable.

In many circumstances this idea was expressed with a sense of urgency, as if there was a clear cut off point; that once they had reached a certain age the damage that had been done could no longer be reversed. For older men a similar feeling was evident yet was generally expressed through concern for their children approaching a similar fate. They worried that their children were not being educated, that their lives lacked meaning, and that if they did not change something soon the circumstances of their upbringing would condemn them to a cycle of unemployment, poverty, or even statelessness. Similar to the position of those in
Chapter Four, the desire to transcend immanence is clear in these narratives and helps illuminate why participants – so dedicated to being resettled through the official channel – eventually began seeking out alternatives to regain a sense of purpose in their life. Participants felt like their life had been reduced to nothing while in transit, and this lack of personhood afforded to them meant that they began looking towards the only strategic action left to them to overcome this condition. In this context it is unsurprising that many abandon the UNHCR and embark on irregular migration, highlighting once more the fluidity between these cohorts and the shortcoming of categorising people as either ‘good refugees’ and ‘bad asylum seekers’. This type of ephemeral motivation for onward migration also speaks directly to notions of freedom and purposeful life coveted by existential thought given Beauvoir’s statement that ‘one does not exist without doing something’ (Beauvoir 1976:156). The act of ‘doing something’ allowed participants to feel as if they were taking control of their life and their future. Despite the fervent dedication to the UNHCR pathway and the zealous rejection of irregular migration participants originally expressed, it was clear to see how participants resolve had weakened as the months had stretched into years and no progress was seen. As participants began to view the UNHCR pathway as untenable, they too found themselves occupying a place of anomie, unable to conform to the societal norms expected of them. In this Fanon’s notion of strategic violence can aid our understanding of how actions can be strategically useful to subjugated peoples – even when these actions may be antagonistic to the principles of those who practice them. As noted by Sartre:

The first action of these oppressed creatures is to bury deep down that hidden anger which their and our moralities condemn and which is however only the last refuge of their humanity. (Sartre, in Fanon, 1961:8)

Many participants in this cohort began to identify the conditions they faced in Indonesia with those conditions that had forced them to flee their homes initially. The deprivation of common liberties, taken for granted in the Global North, are aspirations for many asylum seekers searching for a life free of violence. This is demonstrated in the following comments made by Akhtar:
When the people there are confined to very limited area they have to think of something, like first they think of their own safety, then the safety of their children and their other family members, so they are not safe, first thing. Second thing they can’t get education and they can’t go to Hazara town for business, they can’t go to their offices were they are working ... so they cannot fulfil their basic needs so the time comes and they try to think about the alternative ways, so the best alternative way is to flee and come to Indonesia. But if they face the same problem that they were facing in their home country, they face the same problems in Indonesia then they try to do something else and maybe that is a more dangerous way of coming out of those plights so they opt for the boats and they just come by boat. (Akhtar, 2012)

Akhtar suggests that while the deprivation takes a different, perhaps less deadly form in Indonesia than in Afghanistan or Pakistan, it is still a life constrained – shaped by dislocation and the denial of basic freedoms – a life void of transcendence. In this sense, participants did not view Indonesia as an escape but rather an extension of the oppression they were originally fleeing. Many participants spoke about the damaging effects the years in transit were having upon them in a similar manner to Akhtar, some in much less uncertain terms, for example Gulzari, who, after fifteen months stated most poignantly ‘I feel like my humanity has died here’ (Gulzari, 2012).

Gulzari’s statement illuminates perhaps the most fundamental challenge asylum seekers must overcome – the incremental destruction of oneself through the specific targeting and denial of all rights and personhood in transit. An NGO worker, speaking on the grounds of anonymity in Melbourne, summarised the situation facing asylum seekers in Indonesia as follows:

People are aware that they have no future in Indonesia but also that they have no short term prospects either. People there are like smoke in the air, a gust of wind could take them anywhere. (Australian NGO worker, 2013)

After enduring months or years of this slow erosion of self, many asylum seekers undertaking the RSD began to feel that their only real hope of transcending the
immanence imposed on them in transit was through the strategic act of irregular migration, which can be interpreted as a form of political resistance to the policies that support their negation and as a compulsion based on survival.

**Increased Vulnerability and Insecurity in Transit**

As discussed in Chapter Two, a small yet growing body of international literature has explored life in transit for forced migrants. Scholars working in this area have conceptualised of this period as a distinct stage in the forced migration journey that is fundamental in defining future movements. Unequivocally these studies have found that vulnerability and insecurity permeate the lives of individuals caught in transit spaces and that these experiences play a major role in dictating future migration plans (Hamood, 2008; Chatelard, 2008; Balwin-Edwards, 2007; Papadopoulou, 2004). Findings from the current study appear in line with the research in this regard. There is also a strong correlation with previous research conducted on asylum seekers in Indonesia although this research largely focused on those held in immigration detention (HRW, 2014; Missbach & Sinanu, 2013; Taylor, 2009). The following section will explore participants’ experiences through the prism of vulnerability and insecurity and the impact these experiences had on participants’ abilities to maintain their engagement with UNHCR throughout the protracted process.

Participants in this study were all too familiar with persecution and the daily pressures of living with the threat of violence as demonstrated in Chapter Four. It was this constant fear that originally drove individuals from their home in search of refuge. In Indonesia this vulnerability took on new aspects for participants. The lack of legal status for asylum seekers in Indonesia makes people incredibly vulnerable to all sorts of exploitation.

Individuals’ lack of legal status in Indonesia exposes them to an array of possible abuses, many shared with other migrant groups around the world, such as exploitation in the informal labour market, street harassment and lack of legal protection against perpetrators. According to Missbach (2012:2), writing on the
conditions in Indonesia, 'the language barrier and the lack of knowledge of their rights, responsibilities and procedures for seeking asylum also make asylum seekers vulnerable'.

Individuals in this study felt they were being targeted for harassment as a result of their distinguishable facial features and high visibility within the community. It is true that within Indonesia, Hazaras are easily recognisable and most often associated as belonging to an underclass of irregular migrants. Participants commonly reported being abused or targeted because perpetrators knew there would be no recourse for the victims. In most cases these accounts included incidences of physical assault and robbery and contributed to participants feeling exceedingly vulnerable in Indonesian society during their stay. The following comments are representative of the experiences many participants recalled:

There are too much of challenges for us. We don't feel safe for ourselves and for our money and properties because robbery and extortion are occurring and also the Indonesian police won't listen to us if we report it to them. Yes these challenges affect our future plan, if it continues like this we might take the risk to our lives to get on boat for Australia. (Basim, 2013)

Beyond the generalised crime participants experienced in their daily lives many individuals reported incidents when authorities were the ones targeting asylum seekers. In most reports these actions appeared financially motivated. One man recounted experiences with law enforcement as follows:

The police in Indonesia do not accept those refugee cards, they will tear them up in front of them and throw them in their faces – this is very degrading and insulting and once they don't accept those refugee cards in their own country they will put them in prison or they will ask for money or they will put you in prison and all these things together force the people to leave. (Khuda, 2013)

Khuda’s account of police corruption is suggestive of a culture in which a blatant abuse of power routinely occurs with impunity. Stories such as this were provided numerous times in the field and affirmed through the testimony of numerous NGO workers and confidential informants in the sector.
While these narratives constructed a bleak account of life on the fringes of society, individuals who were still waiting to be registered or to receive their ASC documents appeared to fare even worse. During a visit to Bogor, one local recounted a story of immigration officers sweeping entire towns looking for asylum seekers without documents, those who were found were extorted for money or detained indefinitely (Clark, field notes 2013). Anecdotes such as these have also been documented by other independent observers such as Human Rights Watch (HRW, 2013:68). Stories like these highlight some of the issues that arise for asylum seekers who are struggling to register with UNHCR due to delays and the backlog of claims. One participant, after being told by UNHCR staff that he would have to wait six months to receive his official registration documents, spoke of the impact this had on him:

We would not leave the house, we were too scared. We would stay indoors all the time. We thought we would be caught by police and they would send us home or put us in detention. It got so bad that when we ran out of food we would argue – whose turn is it to go buy the food; we were all that scared of going out. (Mohamad Nabi, 2012)

Mohamad's story is a familiar one, the long delays in processing and providing legal documentation to individuals heightens the risk for asylum seekers who are expected to remain in the community without any form of legal protection for long periods. Mohamad eventually gave up on registering with UNHCR, although this was his preferred pathway, and he boarded a boat to Australia in June 2012. Not far from the Indonesian coastline the small boat he was travelling on got into trouble and sank. Although Mohamad survived, 18 other men on his boat did not.

Mohamad's experience is by no means unique. Khalid offered a similar account of feeling vulnerable when reflecting on his experience of trying to register with UNHCR and being told he must wait twelve months before receiving his identity card:

That was not quite pleasant, it obviously increased my concerns and frustrations of how I was going to stay here with no official documents, no identity card ... I was expecting to have a difficult time here, to be arrested by
police or immigration and go to detention ... I was so afraid of that [referring
to a recent boat tragedy that killed 250 people at sea] I was totally against
this to make such a decision to take a boat to go to Australia. I was certainly
against this. But when I actually come here [Indonesia] and faced the realities
of how this processing centre with UNHCR and how they are dealing and how
I should be with this life, this illegal life in Indonesia, that was a serious
[pauses] I considered it to be another threat ... people were talking about the
situation in Indonesian detention centres – it’s horrible. (Khalid, 2012)

The connection between the ill-defined legal status of asylum seekers undergoing
the RSD in Indonesia, extended processing times, and an increase in vulnerability
has been reaffirmed by contemporaneous research. According to HRW:

The consequences of lengthy waits for refugee status determination include
the risks of arrest and prolonged detention. Migrants, including children can
remain in detention while various stages of their claims are processed ... they
are vulnerable to abuse while they wait, whether in detention or outside,
because Indonesia fails to protect them or provide them with even minimal
assistance. (HRW, 2013:62)

This situation increases individuals’ vulnerability by placing them in a precarious
situation where they are denied any formal recognition under the law for an
extended period of time. A refugee support worker operating in Australia relayed
common stories he would hear while working with unaccompanied children’s from
Indonesia:

The instability grips people while there, they feel no sense of security or
safety while in Indonesia. People feel particularly vulnerable in Indonesia.
The boys would say to me, “if something were to happen to us, if we were
arrested or killed, no one would know and no one would care”. There is no
one there to take care of UAM. (Australian NGO representative, 2013).

The worker, who was a refugee who had travelled to Australia by boat himself in
order to seek protection, went on to provide a metaphor for these experiences:
Life in Indonesia is like being on a shaky bridge never knowing when it is about to collapse – but being constantly aware that at any second it could all fall away. (Australian NGO representative, 2013).

A poignant example of this fear was conveyed firsthand during the fieldwork. A group of men were apprehended by Indonesian police who suspected they were trying to organise passage to Australia via a people smuggling organisation. The men were taken away and placed in jail for five months. Throughout the duration of their captivity no information was passed along to UNHCR or any other appropriate authority or support organisation. Nobody outside of the jail had any information regarding their whereabouts or condition, and their rights as asylum seekers were denied. Nobody knew anything about what had happened to the men until after they had been released, to those who knew them they had simply disappeared (Ghulam Hazrat, 2013).

While the fear of police corruption and exploitation through bribery placed added strain on asylum seekers, the fear of incarceration was much worse. While extreme deprivation saw some people surrender themselves to immigration to survive, many others lived in terror of being arbitrarily detained, placed inside one of Indonesia’s infamous detention facilities, or worse, deported. This signifies the major source of vulnerability looming over asylum seekers while in transit.

You must have heard about the torture, and the detention of refugees in Indonesia. In Indonesia if you are an asylum seeker not a refugee you do not receive any support whatsoever from UNHCR. UNHCR cannot do anything if the Indonesian government wants to deport you or if the Indonesian government wants to keep you in jail or to put you somewhere you don’t have access to anyone from the outside world. UNHCR cannot do anything because you are not a refugee. (Muhammad Hussain, 2013)

This statement conveys the fear and anxiety that asylum seekers feel in Indonesia, and the extent of their vulnerability due to their lack of legal status in the country. These accounts illuminate a decisive factor motivating individuals to transit through Indonesia as quickly as possible. While plans for Indonesia’s accession to the Refugee Convention are currently under way, these changes, if successful, are
unlikely to have any impact on this situation for a number of years and may even act as an impediment. In numerous ways the personal accounts of those people attempting to navigate the RSD confirm and justify the action of those discussed in Chapter Four who decided early on to escape Indonesia as soon as possible.

Many participants undertaking the RSD raised the fear of detention during interviews and attributed this fear as a key determinant in their desire to leave Indonesia as swiftly as possible. The conditions within these centres, often referred to by asylum seekers in Indonesia as ‘refugee camps’, were common knowledge. Nearly all participants in this cohort who raised issues of detention spoke about the physical abuse of detainees occurring inside the centres, abuse that appears to be carried out by immigration officials with impunity.

It is worth noting that this is not simply conjecture on the part of asylum seekers. While the mainstream media in both Indonesia and Australia pay little attention to the abuse, smaller media institutions and human rights groups have documented specific cases attesting to the validity of these claims (Ahang, 2012; Amnesty International, 2012; Hazara Asylum Seekers, 2012). Evidence of physical abuse in these facilities has also been documented within academic work such as HRW (2014), Taylor & Rafferty-Brown (2010) and Taylor (2009).

The issue of abuse in detention centres received wider attention when on 26 February 2012 a sixteen-year-old Hazara asylum seeker, who had been held in detention for twenty months, was beaten to death by immigration guards after an attempted escape. It was commonly reported in this case that torture techniques, including electrocution and waterboarding were employed against the youth, in full view of other detainees as both retribution for the attempted escape and as a deterrent to other detainees. A statement issued by Amnesty International in the wake of this tragic event proclaimed:

The use of torture and other ill-treatment by law enforcement officials in detention is still widespread in Indonesia. The lack of accountability and the failure to criminalise acts of torture in the Criminal Code contributes to this culture of impunity. (Amnesty International, 2012)
Again the informal communication networks that connect the Hazara community across the diaspora have ensured the notoriety of these facilities. Asylum seekers that took part in this study had a well-founded fear of Indonesian detention centres.

Fear of repatriation, or more correctly refoulement, was also prominent in the responses of participants. Officially Indonesia does not forcibly return asylum seekers to their country of origin, however, accounts of refoulement were numerous and hard to ignore. These accounts appear to have lodged themselves into the psyche of many distressed asylum seekers in a similar fashion to those of torture occurring within the detention facilities. The fear of refoulement, coupled with the lack of legal sanctions to protect oneself against the arbitrary nature of the state, appeared to contribute to individuals’ desire to escape the instability of Indonesia as quickly as possible. As a direct consequence of the insecurity and vulnerability asylum seekers were exposed to during their time in transit, participants felt less able and less inclined to submit themselves to the years of waiting required to undertake the RSD process.

**Disparities between the Australian and Indonesian RSD System**

For participants undergoing the RSD in Indonesia, the knowledge of Australia’s vastly quicker resettlement program operating at the time was a constant psychological challenge they needed to overcome in order to remain engaged with the RSD. In a similar way that participants in Chapter Four identified Australia’s superior processing system as a factor underpinning their decision to opt for irregular migration, participants in this cohort struggled with this knowledge. The following section of this chapter will explore the impact this had on participants. Given all the hardships forced migrants confront, it seems natural that they would pursue the most effective way to resolve their displacement and achieve a durable solution for themselves. For forced migrants who find themselves in Indonesia, the lure of a more efficient, established and credible processing system in a neighbouring developed country poses a serious dilemma for them, and for the UNHCR and their efforts to promote the RSD pathway.
All participants who arrived in Australia by boat highlighted the fact that if they had waited in Indonesia to be processed the likelihood is that they would still be waiting. It was common knowledge at the time of the research that it was much quicker to be processed through Australia’s system, even if that meant being processed in an offshore detention centre, than it was to go through Indonesia’s RSD process.\(^\text{11}\)

Asylum seekers undertaking the RSD in Indonesia demonstrated that they too were acutely aware of the more expedient outcome for those who abandoned UNHCR Indonesia in favour of irregular migration to Australia as the following quote illustrates most poignantly:

> I heard that UNHCR is taking asylum seekers cases here in Indonesia. Then I decided to respect Australia’s rules and to pursue my appeal through legal channel. Those people who came here along with me encouraged me a lot to come along with them to Australia by boat but I didn’t agree with them instead I tried to discourage them but they didn’t listen to me. They went toward Australia by boat and they have in fact arrived to Australia but I feel so much regret now as they are in Melbourne and Sydney instead of being in Nauru but I have stuck to the entity of UNHCR with no destiny yet known. I have found that I can’t forgive myself for my miserable decision. (Basim, 2013)

Basim’s statement demonstrates a sad reality, those who do resolve to wait feel they are being penalised or neglected for their efforts. The lack of progress and investment in UNHCR Indonesia contributes to this cycle. It appears that as long as this process remains under resourced, people will be persuaded by other options.

For participants in this study who migrated irregularly to Australia, the average time from arrival to resettlement (or at least, community detention on a bridging

\(^{11}\) All participants interviewed in Australia for this study who had travelled irregularly from Indonesia arrived before the 13 August 2012 processing freeze and introduction of the ‘no advantage’ rule. The processing times for individuals who arrived after this date are significantly longer as a result of this policy change.
visa) was under 6 months. This is in stark contrast to the contemporaneous average processing time in Indonesia that ranged between three to five years from first arrival to eventual resettlement.

This discrepancy is because Australia is much more equipped to process refugee claims in a fast and effective manner than their Indonesian counterparts for a variety of reasons. Australia also provides the peripheral support structures that assist asylum seekers through this process. The difference between the two systems appeared to be a major frustration for participants undergoing the RSD in Indonesia. It was obvious that for those participants who chose this option, they felt like they were being punished for ‘doing the right thing’. As one participant put it:

So you might want to include in your research, why do people choose this dangerous boat journey instead of going to the UNHCR office in Indonesia? Something that is very clear that if you provide the same processing time for their claims in Indonesia, first thing is the same time then maybe the same facilities. The same time, the facilities, the same treatment, the same behaviour, if this was provided in Indonesia then nobody would risk his life or her life or their children’s life on the boat to come to Australia. (Amjad, 2013)

Participants reported that if the processing time and assessment quality was the same in Indonesia as it was in Australia there would be no incentive to travel irregularly to Australia. By improving the RSD process in Indonesia, people smuggling businesses would be greatly diminished and a primary motivator driving irregular migration would be removed. This simple fact is demonstrated in no uncertain terms, when participants discuss their deepest fears of travelling to Australia by sea. Participant’s spoke openly about their fear of catching a boat to Australia. The terror individuals expressed in regards to this journey was in direct contrast to the populist narrative espoused by Australian politicians that this was

12 This is purely the average for participants in this study. Actual processing times in Australia were dependent on when individuals arrived due to the numerous policy shifts taking place between 2009-2013 and the number of applicants in the system at any given time.
somehow the ‘easy option’ taken by duplicitous people as the following comments show:

Yes when I was forced to leave my country I had the intention to go to UNHCR in Indonesia and I did not want to get on boat as it is dangerous because I am the only caretaker of my family. So not my life is important only but my family is important for me. Getting through all these difficulties and fears was so pressing especially getting on boat to sail from Malaysia to Indonesia made our journey more difficult as there was fear of encountering storms and getting drowned. (Jan Mohamad, 2013)

This was the toughest decision of my life ... I was not worrying about myself that much, I was worrying about my sons. About their future, say if something bad happens to me. What happens if I went into the water? There was a very real chance that I would die in the water. (Khalid, 2012)

Asylum seekers know people die on this journey, that this option was by no means a guarantee of safe passage; individuals readily spoke about the prospects of ‘disappearing under the water’. During the fieldwork some individuals indicated that they planned to wait out the processing as it was too dangerous to travel by boat. However, the people who expressed this view the strongest tended to be those most newly arrived in Indonesia. It was hard to suppress the suspicion that these views would change as the process became more protracted. What was clear was that for most participants the uncertainty of life in transit simply became too hard and the prospect of ever being resettled through UNHCR Indonesia a distant pipedream. Asylum seekers who had travelled to Indonesia with the hope of being resettled through UNHCR were slowly turning to people smugglers en masse, often with tragic results. One participant described the horrific consequences of his decision to abandon the RSD and take his chance at being assessed through Australia’s Humanitarian Program after suffering a long time in Indonesia.

Yes of course it was my intention to apply of asylum through UNHCR. When I got registered with UNHCR the period for interview was so long and I had to wait. Many of the asylum seekers were not satisfied with UNHCR process due to its long period for interview and result so I decided to go for risky boat
journey. I paid four thousand US dollar cash before getting on the boat. When I got on the boat it was over crowded we hardly managed to sit in. After five hours of the voyage the people panicked because there was much water underground in the boat and there was a hole inside. We were one hundred and five people included families, children, and men so everybody was fearing the situation. Most of the people and myself were vomiting and had no energy so were feeling so worst and were not able to take out the water coming inside. All were shouting and praying it was late night there were big waves in the sea and our boat steering was broken and was leaning to one sided so the captain could not control and manage the big waves hardly. Women and children were crying and shouting helplessly and I was just thinking about my mum and sisters, what will happen to them? Who will support them? How will they survive in bloodshed? I could not imagine the boat journey was that much dangerous. There was just two people the captain and his assistant young guy about eighteen years old. The water was coming in leaky boat so the chances of being alive was decreasing, people were getting hopeless every second and crying. Everybody was shouting crying and calling for help but there was not any hope for us. All the night we died every second with fear and shocks. (Gulzari, 2012)

The graphic description of the voyage and the terrifying effects it had upon those on board should serve as compelling evidence as to why it is not accurate to assume that asylum seekers were making foolhardy decisions on a whim but rather were coming to this position as a result of absolute desperation and lack of alternatives.

From this study it appears that people do not want to travel by boat. The position of participants was clear: if there was a legitimate option available to them in Indonesia (or arguably anywhere along the transit route) that offered real outcomes for forced migrants then individuals would not consider this option. It is the lack of available alternatives that drives people into the hands of people smuggling in Indonesia out of desperation.

Despite the Australian government’s devotion to deterrence based policies, what became clear through these interviews was that for this cohort, catching a boat to
Australia was not an undertaking individuals preferred. People did not come to Australia by boat because they were ‘migration shopping’, ‘economic migrants’ trying to ‘sneak in the back door’, or simply taking advantage of Australia’s ‘good nature’. While it is undeniable that the higher quality refugee processing available in Australia was acting as a migration pull factor, the strength of this seems largely overstated, privileged at the expense of other substantial push factors operating in the transit location. For many people this course of action was seen as the only legitimate option left to them due to the failures of UNHCR Indonesia to adequately process their claims, and the inability of government and non-government organisations to provide the adequate support structures that would enable individuals to navigate this process from beginning to end in a safe and timely manner. The formidable amalgamation of various push factors converging in Indonesia appeared, in the end, so insurmountable that individuals were abandoning the RSD in search of a different option.

Like I said in my own case, if something was ... if an effective system was in place in Indonesia I would never have decided to come this way to Australia. (Khalid, 2012)

These findings add considerable qualitative weight to the arguments developed by Taylor (2010, 2008; 2005) that any long term shift to regional processing, a coveted ambition for the Australian government, must focus upon improving standards across regional locations rather than decreasing reception standards in Australia. Decreasing reception standards in Australia as a deterrence policy lever has been the clear ideological framework guiding Australia’s asylum policy for over a decade. However, as critics of this hard line approach have consistently stated, deterrence based policies designed to make Australia an unattractive destination for asylum seekers through the implementation of inhumane practices will continue to fail as push factors operating in sending and transit locations remain stronger. As a result, the conditions in Australia, regardless of their orchestrated cruelty still provide more security to forced migrants than the alternatives. As Amjad summarises below, despite the best of intentions, the culmination of these challenges people face makes waiting in Indonesia extremely difficult for individuals.
Despairing from UNHCR due to dull processing is the first major challenge, secondly lack of safety for us here in Indonesia and thirdly running out of money by staying here for a long time. Well, the effects that these challenges have is that sometimes it makes us to think of getting on boat no matter what happens but we do our most efforts to be patient and stay here. (Amjad, 2013)

The Transit Experience and the Production of Bare Life

The final section of this chapter will apply the work of Giorgio Agamben to the empirical data in order to consider how asylum seekers in transit can be understood to be reduced to the bare life and held in a state of exception. As outlined in Chapter Two, bare life (homo sacre) is produced when one enters the state of exception, that is, when one is at once brought under the power of the sovereign yet removed from the standard rule of law or political order. In this state people are stripped of their legal and political rights becoming unclassified and being reduced to mere biological existence (1998). For Agamben, the ability to classify somebody as a ‘non-entity’ cuts to the heart of modern democratic states as it allows for illiberal practices to occur by suspending elements of the law designed to protect individuals from excessive executive power. The application of bare life in the transit setting is considered complementary to the earlier framing of participants’ experiences in Indonesia as being rendered immanent in the existential sense. Each of these perspectives draws attention to processes whereby one is rendered less-than-human. Beauvoir’s perspective speaks to the subjective and internalised aspects of life in transit, illuminating the immediate experience participants embody in their situations. The concept of bare life on the other hand helps to illustrate the broader political processes that position people in such a way for them to be considered beyond the care of the state in a legal capacity. Politically, socially, and subjectively, what emerges is a scenario where asylum seekers in Indonesia are held in an anomic state where they are disconnected from the broader structures and values of society. It is argued that this positioning contributes towards irregular migration as people view it as an avenue to overcome this marginalisation and reassert their rights.
Indonesia, like many other transit countries, lacks the legal framework for the protection of asylum seekers. This lack of rights afforded asylum seekers in transit can be considered the source of their political marginalisation from which a number of salient issues flow. Because Indonesia has not signed the Refugee Convention, asylum seekers are received by the Indonesian government through a number of ad hoc domestic policies and informal arrangements rather than through international human rights instruments. As non-citizens asylum seekers occupy a legally precarious position within the political order, that is, they are included only through their exclusion, making Agamben’s (1998) political philosophy on the state of exception particularly relevant to this analysis. Asylum seekers in Indonesia are at once inside the border of the Indonesian state placing them under their jurisdiction while simultaneously outside of the boundaries of citizenship and legal recognition. Agamben’s notion of the threshold of insider/outsider aptly describes the position participants in Indonesia inhabited. For example, asylum seekers are permitted to remain in Indonesia while UNHCR processes their protection claims but they are denied the right to permanently resettle in the community. During this time they are limited in their right to movement, they are unable to participate in formal education and they are denied the right to work leading to widespread poverty. Agamben’s notion of bare life allows the combination of the subjective analysis of this situation as immanence, with the more structural analysis afforded by the notion of bare life. Using this concept, the structural elements are revealed, demonstrating institutional accountability for the production of this state.

Asylum seekers in Indonesia are further reduced to the bare life through their lack of political recognition, held on the threshold of indistinction (Agamben, 1998). Furthermore they are at constant risk of being detained arbitrarily through the discretionary powers introduced in the 2011 immigration law reforms (Indonesian Immigration law UU6-2011), a situation that can be the catalyst for further human rights abuses once detained. Exposure to this type of excess power due to their status as non-citizen exposes asylum seekers in Indonesia to what Rajaram & Grundy-Warr, (2004:39) refer to as ‘degrees of violence and abjection visited upon the body of refugees or irregular migrants as a consequence of his or her confinement within zones where there normal law is exempt from operating’. The
consequences of inhabiting such a space are expanded upon by Johnson, who suggests that (2012:118) ‘such a state means that literally anything can happen within the camp as the exercise of sovereign power is arbitrary’.

For participants in this study this formal invisibility under the law that reduces individuals to the Agambian notion of bare life was often compounded by a lack of recognition (in practice) of the few protections that they were tentatively afforded in Indonesia. The arbitrary behaviour of law enforcement officials and authorities who disregard these rights is evidence of this. For example the ‘tearing up’ of refugee registration documents, threats of capricious detainment or worse – refoulement – despite international conventions to guard against this all contribute to the state of bare life where participants are denied recognition. Individuals’ lack of protection under the law while in transit can be conceptualised as a state of exception exposing the ‘forms of life the sovereign will protect and represent and those it will not’ (Rajaram & Grundy-Warr, 2004:34). Forced migrants in transit in Indonesia are the embodiment of those considered not worthy of protection.

The notion that asylum seekers are reduced to the bare life in a state of exception is not a new perspective. A number of scholars have used Agamben’s work to make sense of asylum seekers’ place within the political order and their subjectivity. However, as was previously mentioned, this analysis has generally been reserved for those held within immigration detention. For example Browning’s (2006) research on individuals being detained on Naura and PNG during the Pacific Solution. The similarities between her findings and the current study are strong despite the locations and difference in status. For Browning, those in detention are held in a state of exception:

The Australian government has generated an innovative strategy to separate human rights from asylum rights as a means to manage the government’s broad political goals. Individuals who seek refuge thus enter a legal and psychic limbo, disconnected from the ‘normal’ world of individual respect and recognition, until they are specifically re-attached to normality with recognition of refugee status. (Browning, 2006:4)
The data from the current study reflects Browning’s position in numerous ways as it becomes clear through participants’ narratives how the transit experience suspends the rights of asylum seekers and holds them in exceptional state. Like Browning’s participants who were held in immigration detention, this study found that those held indefinitely in transit in Indonesia were held in a limbo that sets parameters for the seekers’ experience of ongoing and intensifying insecurity. It specifically and intentionally fractures the identity of detainees. (Browning, 2006:i)

A key difference between the use of this concept for detention and its application to the data in this study, however, is that for Browning the state of exception asylum seekers inhabit on entering immigration detention is overcome with the recognition of a person’s refugee status. In the transit setting this is arguably not the case. It is clear from this study, and others similar to it, that the original displacement triggers a chain of events that catapults individuals into a life of shadows and uncertainty. Forced migrants are separated from the structures and normality of everyday life (i.e. forced in to a state of exception) and funnelled into unregulated spaces where their rights are curtailed and their humanity is most often denied through deliberate (in)action from states looking to deny them recognition and access. Through non-arrival regimes forced migrants find they are denied all legal pathways of fleeing danger, instead they find themselves pushed into areas where their rights are not recognised. This appears as a purposeful strategy by states to minimise their own future responsibilities towards them.

Similar to Australia’s mandatory detention regime which functions to disconnect asylum seekers from their basic human rights as a means of achieving a political end, the situation in Indonesia appears engineered to hold people in a state of isolation and despair. The lack of official recognition and support places overwhelming pressure on asylum seekers and works as a deterrent to future migrants, sending a clear message that Indonesia is not a hospitable place, and that the state, while tolerant to a degree, is unwilling to exert any economic, political or social capital to redress this.

A further similarity worth noting between these studies is that while Browning views immigration detention as a state of exception she does not suggest that
individuals lose all capacity to resist. In fact she argues that detainees go to great lengths to maintain ways of resisting:

To give up hope for asylum is to face the possibility of endless wondering and death. Mechanisms of resistance, whether explicit protest or more passive waiting, are parts of the continuing struggle by the detained against mechanisms of exclusion and exception. The detained carve out small openings to contest their exclusion and to reassert an identity as survivors. (Browning, 2006:ii)

Again Browning’s reading holds parallels with the current findings. Asylum seekers find ways of resisting their exclusion in order to assert their rights, whether through persistent commitment to the UNHCR or through irregular migration, to force resolution of their claim. It is this resistance that makes the existentialist analysis of transcending immanence sit comfortably alongside Agamben’s work on the state of exception. Agamben’s position allows for the critical examination of the broader structures (non-arrival regimes and extraterritorial powers) that directs the lives of forced migrants and positions them outside of the ordinary functions of a liberal state through the creation of exceptional spaces. The existentialist perspective then allows for the exploration of individuals’ subjectivity and actions within this relegated state. It helps account for people’s actions in order to overcome dehumanising circumstances within a constrained environment. Similar themes can be found across the literature as a number of migration scholars turn their attention towards the persistence of political agency, demonstrated by asylum seekers and refugees in the face of broader practices of control and border regimes that seek to diminish or destroy any possible recuperative actions (Dines, 2015; Johnson, 2012; Doty, 2011; Owens 2010; Edkins & Pin-Fat, 2005, Nyers, 2003)

As Dine notes, various terms have been devised ‘to recognize the active ways in which irregular migrants shape the political order despite their position outside the formal realm of law’ (Dines, 2015: 436).
As structural constraints continue to permeate the lives of forced migrants within Indonesia (and other transit locations across the globe), it can be seen how individuals continue to find space to recontest their agency and humanity and overcome their exception through the forced recognition of their rights. As noted by Doty (2011:610), ‘Spaces of exception are always incomplete with numerous fissures and cracks that hold the possibility of letting in some light, however dim and wavering that light may be’. The rejection or abandonment of UNHCR and the RSD is the most political and outward demonstration of this act, with individuals forging their own pathways in direct response to state based exclusion and neglect. This analysis sits unproblematically alongside larger arguments developed thus far that suggest that irregular migration is the result of structural factors. This is based on the reasoning that it is the structural barriers that minimise forced migrants’ ability to seek protection through regulated channels that leaves them with only one option – to travel irregularly to a place where the rights of asylum are recognised. A lack of voice in the political process further contributes to this situation as forced migrants are unable to participate in the formal political realm; they are therefore limited in their capacity to advocate on their own behalf for changes to the political status-quo that would improve their condition. This scenario evokes the position of Arendt (1966) (whom much of Agamben’s work is inspired by), who highlights the paradox of modern notions of human rights. Arendt claims that it is those most at risk of seeing their ‘inalienable’ human rights violated or disregarded completely that have the least capacity to defend against this. This paradox appeared in participants’ narratives. In many ways it was participants’ sense of entitlement to the fundamental right to seek asylum coupled with their inability to defend against the obliteration of this right that led many to move outside of the formal political realm (in its broadest sense). The lack of legal status and recognition that positions forced migrants outside of the political order as non-citizens is, paradoxically, the same mechanism that leads them to act outside of the formal structures of states. In this sense Arendt’s notion that human rights are not possible outside of the structures of citizenship lends itself to the notion that ‘non-citizens do not have a recognised capacity to act’ [in the political sense] (Johnson, 2012:120). As a result
any action taken by non-citizens will appear illegitimate from the perspective of the state. In the case of forced migrants, irregular migration is a transgression of the expected behaviour as it momentarily fractures the established paradigm and is therefore vilified as a devious subversion of legitimate power and order.

**Chapter Summary**

This chapter has focused upon the experiences of seeking asylum through UNHCR Indonesia and the challenges people face in remaining engaged in the RSD process. Based on empirical evidence provided by participants, it became clear that for many, these challenges begin to feel insurmountable, leading many individuals to despair. Some participants in this cohort, despite their hesitation, abandoned their attempts at being resettled through the official pathway, turning instead to irregular migration facilitated by people smugglers; others carried on with their goal but have lost all hope of achieving it.

The major challenges participants identified can be broadly categorised into six themes. The length of the RSD process in Indonesia; lack of communication between UNHCR and asylum seekers during this time; the lack of material support provided to people while undergoing the RSD; the social exclusion and suspended state of existence individuals embodied while in transit; increased vulnerability and insecurity as a result of a lack of legal status and insufficient reception policies; and the disparities in the processing of asylum claims between Australia and Indonesia. Collectively these themes construct the major narrative as to why individuals struggled to remain engaged with UNHCR or abandoned their efforts all together. Despite participants’ best efforts to move through authorised channels, people were turning to irregular migration out of Indonesia in search of asylum as they came to believe it was their only real option.

These findings are particularly illuminating as they provide empirical evidence that challenges the pervasive assumption regarding the cause of irregular migration. Strong push factors, operating at multiple sites along the migration journey, accumulating in Indonesia, are forcing many desperate asylum seekers to turn to
irregular forms of migration due to a perceived lack of legitimate alternatives. In this way irregular migration can be conceived of as a strategic action designed to transcend immanence and overcome the state of exception forced migrants’ experience. While participants did not cherish this option, it was seen as one of the only avenues available to them given their limited agency in the situation where bare life is produced.

Chapters Four and Five charted the forced displacement of a number of Hazara asylum seekers from Afghanistan and Pakistan and their attempt to seek international asylum. These chapters have detailed the primary challenges these participants faced, with a particular focus on their experiences in transit in Indonesia and the effects these challenges had upon future migration decisions. Chapter Six will now synthesis these findings and attempt to locate this case study within a global context while drawing out the conceptual analysis designed to further our understanding of the relationship that exists between forced displacement, life in transit and irregular migration.
Chapter Six

Broader Implications and the End of Asylum

Overview of Findings and Original Contribution to Knowledge

In Chapter One, four central research questions were posed. These questions focused on the experiences of asylum seekers in transit in Indonesia, the factors that shaped their migration decisions, and the implications of border control policies on their ability to seek international protection. The thesis also sought to investigate whether the situation in Indonesia was comparable to broader patterns of irregular migration identified in other parts of the Global North that were charted in Chapter Two. Through the analysis in this thesis it is possible to draw conclusions to these questions. Chapter Six will provide a brief summary of the thesis findings that speak directly to the research questions, it will then conclude with a discussion pertaining to a number of broader implications that emerged from the analysis.

This thesis has examined the migration experiences of thirty Hazara males, forced to flee their homes in Afghanistan and Pakistan due to on-going insecurity and persecution. This forced displacement saw the men resort to the only means available to them to escape across international borders, being smuggled out by agents. This process set the men on a path that eventually led them to Indonesia. Once there the men were confronted with a momentous choice, register with UNHCR and hope to be resettled through a third country program or continue to travel irregularly on to Australia to apply for asylum directly through Australia’s onshore system.

Chapters Four and Five investigated how individuals navigated this decision, exploring the relationship between forced displacement, life in transit and irregular migration for these participants at that time. From this analysis emerged a number of issues that shaped the migration decisions of participants. Central to this was the tension between structure and agency. This research found that participants did not
want to travel irregularly and emphasised the dangers associated with this action. However, the overwhelming sense that they lacked any real alternative to gain protection drove people towards this avenue regardless. This research found that a number of factors contributed towards this feeling. Primarily, participants viewed the RSD as ineffective and incapable of finding durable solutions. Participants also stressed that they felt unable to endure the protracted processing time due to a lack of material support during this period. Other factors that contributed towards this perspective included the widely held view of Indonesia as an inhospitable location for forced migrants to live indefinitely. The lack of legal status and protection contributed to a sense of vulnerability participants experienced while in transit. This vulnerability was coupled with a fear of being arbitrarily detained in one of Indonesia’s infamous IDCs, or worse still, refouled.

Not only are these findings compatible with the few studies previously conducted in Indonesia (despite their focus on people in immigration detention), they are also highly compatible with studies conducted with other forced migrants in disparate transit locations around the world, as charted in Chapter Two. The strong parallels that can be seen in the experiences of forced migrants in transit locations globally suggests that the situation in Indonesia may not be anomalous but rather a local iteration of a global pattern of forced displacement. The strong parallels also indicate that the rapid increase in irregular migration occurring in these areas could be considered both predictable and rational given the convergence of structural factors that deny other options.

Despite the strong correlation with contemporaneous studies conducted in transit locations globally, this study found factors that contributed towards individuals’ consideration of irregular migration that have not been represented in the literature to-date. One such factor was a sense of victim fatigue experienced by participants. Participants in this study viewed the conditions in Indonesia as an extension of the persecution and suffering they were fleeing from. As a result of this perspective many felt inclined to continue their search for safety as Indonesia did not satisfy these conditions. This situation appeared closely related to the fact that participants
viewed their flight from Afghanistan or Pakistan as representing the end of their tolerance for this persecution. Having been displaced from their home they appeared unwilling (or even unable) to settle for a similar sense of insecurity in transit and felt compelled to act purposefully to resolve this. In this sense irregular migration was also seen as a strategic action to overcome processes participants deemed dehumanising. While once more this was not viewed positively by participants it was seen as one of the only ways available to people to act with agency and assert their rights.

Extrapolating from the empirical findings outlined in Chapters Four and Five a number of broader issues related to asylum seeking can be explored. In this final chapter three of these will be discussed along with their implications more broadly. Firstly, from the data it becomes clear that the false dichotomy that separates ‘good refugees’ and ‘bad asylum seekers’ can be deconstructed revealing the considerable overlap in the experiences and the motivations of both groups. This is an important consideration as it challenges the notion that people who travel irregularly are less deserving of protection and may not be genuine refugees but rather economic migrants who are trying to exploit the humanitarian pathway. Deconstructing this dichotomy also helps expose the reality of irregular migration as an act that occurs as a consequence of structural limitations embedded in state-centric responses to global displacement, rather than as a result of individual deviancy or criminality. Following this, Chapter Six will then turn its attention towards the role that transit countries play in maintaining the non-arrival regimes of the Global North. Through this research a critical analysis of the ongoing use that developed states make of transit countries can be explored. This thesis argues that transit locations can be understood through the application of the Agambian concept of The Camp, arguing that these spaces represent the expression of exceptionality that underpins the international protection system itself. Through the exploitation of transit sites, powerful states of the Global North are able to outsource their protection responsibilities and foster practices outside the bounds of the liberal state. Finally Chapter Six will conclude by discussing the most significant theme to emerge from
this research, the shrinking of the international protection system, or more specifically the shrinking of access to international protection. The combination of non-arrival regimes of the Global North coupled with a lack of protection in transit sites has led to a situation whereby displaced people are finding it increasingly difficult to access areas where the rights of asylum are enshrined. This results in the paradoxical situation where increased border controls directed towards excluding asylum seekers forces people to move outside of state sanctioned pathways in order to access protection which, in turn, leads to further intensification of border control.

**Deconstructing a False Binary: the ‘Bad’ Asylum Seeker Verses the ‘Good’ Refugee**

This study found that there was no clear distinction between ‘good’ refugees patiently waiting for resettlement and ‘bad’ asylum seekers advantageously exploiting the humanitarian program – both ‘groups’ were trying to assert their human right to seek asylum. From the perspective of the participants, people did what they could to survive, and they did this to the best of their abilities. When one avenue became unsustainable or impossible to maintain they then changed their course of action in whatever way was available to them. In all cases people were reacting to larger structural factors beyond their control.

The failure to provide suitable pathways that allow forced migrants to exercise their human right to seek asylum creates situations where individuals, being forced to move, feel compelled to act outside of government sanctioned pathways and move in any way available to them. Given this scenario, propagating the false binary between ‘good’ refugees who wait to be resettled and ‘bad’ asylum seekers who move irregularly appears grossly simplistic given the subject position that asylum seekers inhabit whilst in transit, and the significant limitations imposed on their agency during this time. This research has found that in transit, asylum seekers are forced to make life altering decisions within a tightly bound set of circumstances beyond their control. In this position people were responding in a rational way to
resolve their ongoing insecurity and to seek the protection they felt they were entitled to. There was no distinction among participants in regards to this goal.

The limited opportunities available for forced migrants to seek protection through ‘regulated’ channels prior to arrival in Australia also serves to problematize one of the most pervasive myths around ‘boat people’, primarily that people who get on boats are not refugees at all but are rather economic migrants trying to jump the queue. The framing of asylum seekers as economic migrants is based on the assertion that having fled across international borders ‘real’ asylum seekers should stay in the country of first asylum to be processed. As outlined in Chapter Three the act of moving through multiple countries deemed ‘safe’ in order to be processed in a developed country is viewed as migration shopping rather than genuine flight. How participants in this study made sense of their circumstances provides a counterpoint to this typology. In Australia both sides of politics have drawn upon this discourse to argue that ‘boat people’ are not really searching for protection or else they would have remained in one of the countries that they transited through. Rather, it is claimed that ‘secondary’ movements are evidence that people who arrive by boat are in fact economic migrants seeking to subvert and exploit the humanitarian process. Statements by Scott Morrison, the former Immigration Minister are indicative of this point of view, for example:

A passage here is nothing more than an economic migration seeking to illegally enter Australia ... The suggestion that people who have left a safe country are somehow fleeing persecution, I think, is absurd. (Morrison cited by Hunter, 2014: n.p)

A similar sentiment can be seen across the aisle, for example the comments by the former Labor Foreign Minister, Bob Carr, who claimed that ‘people are coming here, not now as a result of persecution, but because they’re economic refugees who have paid money to people smugglers’ (Carr cited by Davies & Phillips, 2013: n.p). This perspective hinges on the notion that once someone has escaped the immediate persecution they should remain in the transit country until a durable solution can be
found. What this research found, however, is that this is easier said than done. This research found that Indonesia was not an appropriate location for asylum seekers to remain long term while they are processed. Asylum seekers themselves did not consider Indonesia a ‘safe country’ for them for numerous reasons. The vulnerability people experienced while in transit was viewed as an extension of the conditions they were originally fleeing. Furthermore participants’ narratives strongly suggest that most people viewed the RSD pathway as ineffective or broken. Based on this perception people did not consider Indonesia as a country of first asylum and often viewed onward migration as part of their original search for safety. Given the lack of protection available to asylum seekers in Indonesia people felt compelled to continue moving until they reached a place where their rights were recognized. Yet despite the lack of protection available to people in transit it appears that the Australian government continues to consider irregular arrivals as economic migrants or queue jumpers rather than people with genuine protection claims. These findings exhibit strong parallels to the international literature discussed in Chapter Two where researchers have documented a similar impulse in response to irregular arrivals by receiving states (Gerard & Pickering, 2012; Papadopoulou, 2005, 2004; Kirisci, 2004; Brouwer & Kumin, 2003; Morrison & Crosland, 2000; Crisp & Van Hear, 1998; Koser, 1997). Just as Papadopoulou notes in regards to Europe, the same is true in Australia where contemporaneously asylum seekers’ mode of arrival has become the de facto arbitrator of their legitimacy:

The main problem is the fact the state seems to be holding the type of entry (illegal) as the criterion for the categorisation of migrants, at least in its conception and policy rationale. Thus, the fact that many among the stowaways and those irregularly crossing the border are in need of international protection is overshadowed by the suspicion about their illegal action. In fact, it is a vicious circle where intensification of border controls leads refugees to resort to illegal alternatives, which in turn leads to the securitization of migration…it is necessary to distinguish between means and
motivation to prevent a person’s claim to refugee status from being reduced because of illegal entry. (Papadopoulou, 2004:173)

Linking the mode of arrival with the legitimacy of protection applications appears in breach of Article 31(1) of the Refugee Convention that outlines the ‘no penalty obligation’ of contracting states. According to the Geneva Expert Round Table (2001) that explored issues of secondary and irregular migration:

Article 31(1) requires that refugees shall not be penalised solely by reason of unlawful entry or because, being in need of refuge and protection, they remain illegally in a country.

(b) Refugees are not required to have come directly from territories where their life or freedom was threatened.

(c) Article 31(1) was intended to apply, and has been interpreted to apply, to persons who have briefly transited other countries or who are unable to find effective protection in the first country or countries to which they flee. The drafters only intended that immunity from penalty should not apply to refugees who found asylum, or who were settled, temporarily or permanently, in another country. The mere fact of UNHCR being operational in a certain country should not be used as a decisive argument for the availability of effective protection in that country. (Geneva Expert Round Table, 2001)

Across Asia and the Pacific the fact that very few countries have signed the Refugee Convention significantly reduces the prospect that forced migrants can access effective protection as the legal framework does not exist in the region. The lack of legal framework, either at the international level through the ratification of human rights instruments or the lack of reception policies legislated into the domestic legal systems exposes asylum seekers to vulnerable situations in these countries, fuelling conditions for onward migration. As the panel found, the mere fact that people could apply to a UNHCR office in these locations does not automatically result in the
availability of effective protection in these same areas. Therefore while countries such as Indonesia may appear ‘safe’ to an Australian audience in a way that countries like Afghanistan and Pakistan certainly do not, for forced migrants who must reside in these uncertain circumstances the situation is less clear. Given the findings from this research it appears that Indonesia as a transit country does not provide the safety and the security that would satisfy the UNHCR criteria. This fact was demonstrated powerfully by participants throughout this research on a variety of levels.

Whether or not Indonesia can be considered a ‘safe country’ is an important legal distinction that appears obscured in the current asylum debate in Australia. Simply claiming that the existence of the Jakarta UNHCR office makes Indonesia a country of first asylum ignores crucial factors that disrupt people’s ability to seek protection there and distorts the broader context that shapes forced migrants’ experiences and decisions while in transit. Yet despite the inadequate consideration of this issue in the Australian polity, there is a strong foundation from which to argue that asylum seekers do not have access to effective protection in Indonesia despite the availability of the RSD. According to the UNHCR:

First, there are good reasons why one should require that states be parties to the 1951 Convention and the 1967 Protocol before concluding that they offer effective protection. While one can argue that the norm of non-refoulement has achieved the status of customary international law, a treaty foundation for such an obligation is preferable. This draws states into the wider webs of reciprocity, embodied in the maxim *pacta sunt servanda*, that underpin international obligations more generally. When a state is not a party to the Convention, the danger exists that considerations of ‘national interest’ may incline it to act in ways that would violate the spirit and the letter of the Convention. (UNHCR, 2004:2)

Beyond the ratification of the Refugee Convention into domestic law, access to a range of cultural and civil rights have also been considered a fundamental aspect of
providing safety for asylum seekers. According to Goodwin-Gill effective protection ‘would appear to entail the right of residence and re-entry, the right to work, guarantees of personal security, and some form of guarantee against return to a country of persecution’ (Goodwin-Gill cited by UNHCR, 2004:1). Based on the empirical evidence of participants judged against the definition provided by UNHCR it seems reasonable to conclude that in Indonesia the criteria for ‘effective protection’ was not being met, providing justification for onward migration in search of protection. As a result it appears that the blanket suggestion that asylum seekers are moving from Indonesia to Australia for economic reasons rather than out of a genuine search for safety appears to be a discursive strategy designed to strip irregular arrivals of their legitimacy as asylum seekers and harness support for their increasingly harsh treatment upon reception.

This positioning of Indonesia not as a safe country where forced migrants can undergo processing, but rather as a country that ignores the rights of asylum seekers and holds people in a vulnerable position, helps challenge the queue jumper narrative. It does so by problematizing the false dichotomy of the ‘good refugee’ verses the ‘bad asylum seeker’ by shifting the emphasis away from an individual’s actions (deemed deviant) onto the broader social arrangements that inform them. One of the strongest themes to emerge from this research was that people do not consider embarking on a course of irregular migration if safe, and reliable, alternatives are available to them. However in lieu of these alternatives (including the unsustainable nature of life in transit while undergoing arduous RSD processes), forced migrants, it seems, will continue to seek out ways to find safety and assert their claims as refugees – most commonly by turning to irregular migration. Once more this finding closely resembles empirical data from studies that have examined irregular migration from transit countries around the periphery of the Global North (Johnson, 2013; Harmood, 2008; Chatelard, 2008; Collyer, 2007; Baldwin-Edwards, 2006; Boubakri, 2004). One conclusion that can be drawn from this is that the malaise of irregular migration is a structural issue – stemming from the lack of
available migration options – rather than the result of queue jumping or individual
deviancy as it is so often framed.

Given this it appears that the purposeful closure of migration pathways that seek to
limit the arrival of asylum seekers in national territories plays a central role in
driving irregular migration in a co-constitutive manner. As Papadopoulou notes, ‘it
is a vicious circle where intensification of border controls leads refugees to resort to
illegal alternatives, which in turn leads to the securitization of migration’ (2004:17).
Australia’s efforts to foster a buffer zone around its sovereign territory, through a
variety of leavers that push the functional border ever outwards as charted in
Chapter Three, has resulted in asylum seekers being denied legitimate pathways
through which they may seek asylum directly. As a result asylum seekers are finding
themselves caught in an anomic state in these newly forged buffer zones. The
outcome of this stalemate is that new migration pathways are being forged, outside
of state regulated passages.

Individuals in this study, despite their original intentions, felt they had little choice
but to act autonomously of official structures in order to find protection. As a result
it can be said that receiving states play a key role in determining the form the
migration takes. If legal channels exist, migrants will use these pathways; however,
in situations where receiving states have actively sought to close all potential
avenues through which individuals may seek asylum it becomes clear that forced
migrants will forge new migration pathways, through irregular channels. This
analysis supports the reframing of the dichotomy of the good refugee and the bad
asylum seeker as both are striving for recognition through the international
community. Whether or not people are able to achieve this through the current
system appears to be more of a question of state practice than anything else.

From this perspective emerges a sense that there is dual culpability between actors
that are sustaining the attractiveness of irregular migration in this situation. While
Australia and other developed states bear responsibility for the targeted closure of
migration routes due to their pre-emptive border control mechanism that direct forced migrants into these legally ambiguous spaces, Indonesia as a transit country also bears responsibility for the poor conditions that asylum seekers encounter while in transit. Based on the findings from this research it is clear the conditions in transit contribute towards asylum seekers' desire for onward migration in search of safety as Indonesia does not offer people the security they require.

Traditionally the conditions in transit have been ignored and the sole cause of irregular migration from Indonesia to Australia has been attributed to pull factors in Australia. As demonstrated in Chapter Three, previous governments have responded to this by trying to counteract these assumed pull factors by making Australia’s reception of IMAs as punitive as possible. This approach ignores what asylum seekers are saying very clearly – it is not the allure of Australia that is driving people onto boats, it is the lack of alternatives along the migration route that accumulates in Indonesia that is doing so. Even though participants signalled the better processing system available in Australia as a factor underpinning their choices this was only ever framed in comparison to the lack of opportunities prior to this. This point is equally true for those who made the decision when first displaced from their home as it was for those who spent years in-between searching desperately for alternatives.

What this finding indicates is that if governments want to address one of the underlying causes of irregular migration out of Indonesia then focus must be placed on improving the conditions there (and in other transit countries) for asylum seekers and refugees. This includes ensuring access to migration pathways that are sustainable and offer real hope of achieving an outcome. Rather than downgrading Australia’s processing capacities, what is needed is a harmonisation of systems across the region achieved through capacity building. Participants in this research clearly articulated that if the RSD system in Indonesia was better, no one would ever consider getting on a boat. People only risk their lives at sea because they believe they have no other option. In this regard participants’ perspectives align neatly with
views previously expressed by UNHCR who have previously called for the
harmonisation of policies across regions to reduce secondary movements. It is the
position of UNHCR that ad-hoc bilateral or multilateral agreements create
imbalances in the region that contribute towards secondary irregular migration by
creating push and pull factors as people try to move to countries with more
favourable conditions. Instead, the UNHCR argue that one of the key strategies to
reduce irregular migration is through the universal adoption of the Refugee
Convention and efforts towards capacity building that reduces discrepancies in the
processing and treatment of forced migrants. Evidence ascertained in this research
certainly supports this approach.

Despite increasing evidence that testifies to the necessity of this approach Australia
continues to direct funds towards border security and offshore processing rather
than direct money towards programs such as the RSD in Indonesia. While Australia
does engage in capacity building activities in the region the funding of these
activities pales in comparison to the figure spent on more punitive responses.13
While investing in the RSD in Indonesia to improve the processing time may seem
like an obvious solution to this issue there are a number of reasons why this may
not be considered an attractive avenue for a developed country such as Australia to
pursue. Building on the broader pattern of forced migration that has been developed
across the thesis thus far the following section will expand the application of
Agamben’s notion of The Camp to argue that developed states actually benefit from
the existence of transit countries.

13 For example the Refugee Council of Australia (2015) claims that in 2014-15 Budget the Australian
government allocated $2.963 billion on detention (both onshore and offshore) with another $957.9
million dedicated to border security operations while cutting funding in aid and capacity building in
Indonesia to $86.8 million.
**Transit Sites and the Emergence of the International Camp**

In Chapter Five it was stated that asylum seekers undergoing the RSD in Indonesia can be understood through Agamben’s notion of the bare life. While this concept has traditionally been applied to asylum seekers who are physically detained in immigration detention it was argued that the lack of social and political rights, as well as the lack of recognition under the law, reduced forced migrants to the bare life in ‘the state of exception’ while in transit more broadly. Agamben argues that ‘the state of exception is an anomic space’ (2005:39). Based on this analysis the following section will expand on this proposition, suggesting that Indonesia as a transit country could be conceptualised as representing The Camp in the Agambian sense. However given the propensity of this perspective to collapse into an overly determining structural analysis requires a complementary understanding of the restricted agency that those subjected to The Camp can access. This can be achieved by conceptualising irregular migration as a strategic action by those whose choices have been severely constrained.

**Re-imagining ‘The Camp’**

In his 2005 *State of Exception* Agamben offers Nazi concentration camps as the prototype for spaces where bare life is produced, yet the Camp is not necessarily a physical reality. While the concept has been widely applied to the study of physical spaces of detention, most often distinguished by their high walls and razor wire, the Camp can also be understood in more abstract ways – as a metaphor of political power and the processes that normalise exceptionality. The Camp becomes the symbol of exception, the embodied experience of those considered outside of the law, reduced to bare life. In this sense an individual does not need to be *detained* to inhabit The Camp, first and foremost it represents a status one embodies once it takes on a degree of permanence. Through this perspective it is possible to ‘re-imagine’ The Camp, or at the very least, expand its utility. By expanding the orthodox notion of The Camp beyond its current usage we can examine how entire groups can be categorised as non-citizens and therefore classified outside of the
political order while still being subject to its control – which, according to Agamben is the ‘preliminary condition for any definition of the relation that binds and, at the same time, abandons the living being to law’ (2005:1).

This thesis proposes that within Indonesia asylum seekers, whether detained or not, are one such group. As demonstrated in Chapter Five, the transit experience produces the effect of bare life without the necessity of physical detention. Participants in this study demonstrated this in numerous ways. While the power exerted over those living in the community may be less visible than it is over those who fall directly under the detention regime, both groups remain subject to the same impulses of control that have previously been considered a central aspect of The Camp – a shift from temporary to permanent exclusion from the usual judicial order. Their control is simply mediated in different ways. As a result of this it is argued that if ‘the camp is the permanent state of exception’ (Agamben, 1998:175) then it is possible to conceptualise transit countries themselves as a contemporary representation of The Camp.

In this sense, asylum seekers in transit locations could be considered to be inhabitants of The Camp as it is in transit that their exceptional status becomes the norm. They are placed both physically and legally beyond the normative protection of their human rights. This perspective pushes the analysis further than it has been traditionally applied as the spatial arrangement in this sense is the transit country itself. This perspective can inform our broader understanding of irregular migration on an international scale. By extending this notion of The Camp – to the boundaries of the nation-state itself – it will be argued that Indonesia as a transit site could be considered an exceptional space within the international system.

**Indonesia as The Camp: An International Perspective**

By expanding the traditional understanding of The Camp to apply to transit locations more broadly we can gain critical insight into how power is differentiated in the international system and how forced migrants are exposed to, and react against, this power when they are stripped of political status through their
relegation to the state of exception, illuminating the relationship between states and individuals.

Agamben argues that ‘the voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones’ (2005:2). He sees the state of exception as the dominant paradigm of contemporary politics. It is only through the examination of the exception that we can understand the norm and politics itself.

The state of exception ‘has become the rule, it not only appears increasingly as a technique of government rather than an exceptional measure, but it also lets its own nature as the constitutive paradigm of the juridical order come to light’ (2005:6-7). For Agamben it is only through the state of exception that the norm can exist, it is this exceptionality that the entire political order hinges on. This same reasoning will be applied to the analysis of forced migration and the international protection system to demonstrate how transit countries have become the embodiment of The Camp on an international scale.

Powerful nation-states who have acceded the Refugee Convention are able to organise and control (and thereby limit) their migration intake through the use of extraterritorial places and powers based on the construction of an emergency – the arrival of spontaneous asylum seekers in their territory which allows for the expansion of powers into new realms. The construction of non-arrival regimes outlined in Chapters Two and Three create buffer zones around the periphery, limiting the ability of forced migrants to reach the contracting state. Instead forced migrants become contained in the buffer – unable to go back, move forward or stay where they are permanently. The invisibility of these non-arrival regimes means that powerful states of the Global North are able to preach full commitment to the Refugee Convention, an act of statecraft signalling good global citizenship, while using neighbouring countries with legally ambiguous frameworks for the reception and protection of forced migrants as an intermediary to minimise any actual
responsibility. These transit countries come to represent the exceptional spaces where individuals’ rights are no longer recognised and illiberal practices can occur without reprisal often through the complicit actions, or tacit approval, of developed states whose purposes they serve. It is these spaces that sustain and uphold the international protection system as it currently operates. Therefore it is argued that Indonesia can be viewed not as anomalous, but rather as paradigmatic of exceptional spaces through which we can understand the broader state of international migration.

The notion that our current understanding of exclusionary spaces can be expanded is not without precedent. Mountz (2011:18) has advanced this position the furthest thus far with her analysis of islands as part of a broader enforcement archipelago of detention. While predominantly focused on the physical detention of forced migrants on these islands, Mountz’s analysis provides a roadmap for how this position can be expanded further still:

Islands emerge as spatially significant sites of exclusion in the geographical landscape where migrants try to access asylum processes and where nation-states invested in significant resources in enforcement to manage entry … Islands prove a key component of a broader enforcement archipelago designed to control migrants deemed out of place, reducing their chances to reach sovereign territory.

The use of islands to delineate responsibility and fracture the rights of forced migrants is clearly not new. However, there is a distinct difference in a sovereign state excising part of its territory to purposefully limit the rule of law by carving out an exceptional state within its own jurisdiction, as opposed to more subtle incursions into neighbouring regions with a similar agenda in mind. Yet from the literature charted in Chapters Two and Three, coupled with the findings from this research conducted in Indonesia, it appears that this is exactly what powerful states of the Global North are doing through the use of non-arrival regimes. States are
driving forced migrants into anomic spaces where their rights are truncated as a strategy to promote a border security agenda.

One way that this application departs from the traditional understanding of Agamben is that in these transit locations asylum seekers are not exposed to de facto power of the sovereign but rather are subject to the control of a number of competing regimes whilst falling under the protection of none – or so it seems from participants’ life narratives. Forced migrants are caught between the constitutional law of the host state, the extraterritorial incursions of neighbouring states advancing non-arrival mechanisms, international law and, often, ill-defined human rights instruments. Despite the multiplicity of power acting on the asylum seeker it is argued that the fundamental logic of Agamben’s work exists in these liminal spaces. According to Mountz & Briskman (2012:3):

> At the unaccountable border, nation states can exercise their power with impunity and brutality. In these sites of exclusion, liberty is denied and normative state rights minimised. Identity is discounted and the demonised, criminalised asylum seeker is uncritically perceived by those far away from the island in the nation’s heartland as a threat to the nation, creating panic and fear.

Arguably it is the multiplicities of power operating in this space that contribute towards the ambiguous legal status of forced migrants contained within. This appears to contribute towards the status quo where forced migrants are at the mercy of competing regimes of power while considered the responsibility of none.

While this proposition may seem to undermine Indonesian sovereignty it is less disruptive to the Westphalian traditional than it may first appear. This is because this state wide camp does not apply to all people residing in Indonesia equally. The same way that different people may experience borders differently, people residing in Indonesia may experience executive power differently based on their classification under the law. For the average Indonesian citizen or somebody lawfully abiding in Indonesia the traditional power structure remains clear and
unchanged. It is only for a particular group—classified as non-citizens—that this indistinction occurs in Indonesia. This is due to the fact that Indonesia denies responsibility for forced migrants despite being in their territory. This situation is then further complicated by the multiplicity of powers who are acting to fill this void, not necessarily with the same outcome in mind. For example, Australian customs officials, NGO workers, private security contractors and international human rights representatives, each of whom have assumed some control over forced migrants in Indonesia without assuming any responsibility. This competing array of interests is not unique to Indonesia but rather reflects dynamics witnessed in borderzones around the world, for example as Dines (2015:436) notes in regards to the Italian island of Lampedusa ‘first, it needs to be reiterated that the transformation of Lampedusa into a border zone is not the work of a single sovereign state power but the upshot of a complex assemblage of governmental (Italian, European and third country) and non-governmental actors engaged in migration management.

As long as forced migrants reside in Indonesia they are denied the checks and balances central to any liberal democracy to guard against arbitrary abuse as they are divested of their capacity to participate in the political sphere as a citizen. Thus they inhabit the camp in the Agamben tradition throughout the Indonesian state, as wherever they go, they are classified as the exception to the rule of law and are beyond the care of the state without any recourse. It precisely due to the fact that forced migrants dwell in these zones of indistinction that multiple actors are able to exercise control without ever being held responsible for the outcomes. It is this logic that is at the heart of Agamben’s notion of the camp as people are paradoxical removed from the law while simultaneously exposed to its power in its most acute sense. Asylum seekers residing in transit spaces lacking appropriate protection are the embodiment of this logic.
Limitations to this Framework

This perspective is considered a useful analytical tool to further develop contemporary knowledge on forced migration, experiences in transit, and the connection to irregular migration. One of its greatest strengths is based on its capacity to draw together multiple lines of enquiry and highlight the global structures that direct forced migrants into transit locations. Without absolving Indonesia of its questionable treatment of forced migrants it allows for a critique of state practices that contribute to this situation through their commitment to non-arrival regimes designed to exclude asylum seekers and limit their rights. However there are limitations to this approach that require consideration. It has been suggested that Agamben’s analysis defaults to a universal, undifferentiated body, ignoring ‘the gendered and racialized dimensions’ of exclusionary practices (Mountz, 2011b:382). Critics have also derided his emphasis on structural aspects of power that remove all possibility for resistance to occur (Ross, 2012; Levy, 2010; Owens, 2010; Bigo, 2007). This emphasis can be seen in Agamben’s writing, for example when talking of The Camp:

Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute biopolitical space ever to have been realised, in which power confronts nothing but pure life, without any mediation (1998:171).

Owens notes that ‘Agamben’s “figure of the refugee” falls short. This construction takes the reduction of refugees to the level of “bare life” too far’ (2010:135). The notion that people are left without recourse appears to sit uncomfortably with a number of scholars who suggest this categorisation could be doing more harm to those whom it claims to speak on behalf of. According to Levy:

Agamben and his more enthusiastic followers lack any proportionality when they distastefully lump together varieties of refugee camps, Auschwitz, and even gated communities. Refugees are not cannon fodder for radical metaphysical arguments, and should not be equated to (a historically
inaccurate) mass of passive, half-dead inmates of Auschwitz's work camps...
refugees are neither victims nor Homo Sacer, they are struggling for their rights. (Levy, 2010:101)

Levy raises important concerns regarding the totalising impulses in applying notions of The Camp in a universal manner without reference to context or without recognition of the varying degrees of management and control that operate within these ambiguous spaces. It is clear that these regimes do operate on a spectrum (Levy, 2010:101), which should always be at the forefront of any consideration. However despite Levy’s concerns that an injustice is being committed through the application of this concept to the lives of forced migrants, given the experiences of participants in this study it appears reasonable to conclude that in transit individuals are held in a state of exception in an ‘ambiguous, uncertain, borderline fringe, at the intersection of the legal and the political’ (Agamben, 2005:1). Despite this, by focusing upon the extreme incarnations of The Camp, Auschwitz, Levy inadvertently risks silencing or ignoring people whose experience does not equate with the most extreme example but who have suffered from a dehumanising process nonetheless by their exceptional status.

Furthermore it should be noted that the application of this perspective to broader areas of indistinction is not an attempt to homogenise transit spaces with concentration camps or even all other transit locations. Its usefulness lies not in signalling who is the most oppressed, or who is the most disenfranchised, this perspective is useful as it shines light upon processes and relations that allow for this positioning to occur in the first place. This framework provides a useful tool in understanding irregular migration in Indonesia as it highlights the lack of legal protection people are granted there based on their exceptionality, and therefore draws attention to the systemic failure to provide for people who are classified outside of the political order.

It is also argued that this perspective runs the risk of neglecting to consider the important evolution of state practices in regards to migration and border control
that has occurred over the past thirty years. As Vaughan-Williams notes ‘states are increasingly ephemeral and/or impalpable: electronic, non-visible, and located in zones that defy straightforwardly territorial logic’ (Vaughan-Williams in Jerrems, 2011:2). While it may be tempting to maintain focus on sites where the physical characteristics of power appear most obvious, it is important to recognise that states have developed complex and fluid mechanisms of control that are capable of directing life without the need for physical detainment to occur. As a result this thesis argues that a similar logic should be applied to the understanding of transit locations, which allows for the exploration of the more invisible practices of control to be examined. As this research has found, asylum seekers caught in this state experience a range of controls all of which contribute to the limitation of their freedoms, create legal immobility and rupture their ability to direct their own life free from coercive structures, placing them in an anomic state detached politically and socially from aspects considered fundamental to a full life.

**Maintaining Resistance to Bare Life**

One of the central critiques of Agamben’s notion of the bare life is the lack of recognition that power is always contested, as Bigo notes ‘Agamben ignores the resistance of the weak and their capacities to continue to be humane and to subvert the illusory dream of total control’ (2007:12). In relation to migration, Levy (2010:101) suggests that ‘by treating refugees or forced migrants as passive, hapless victims, academics and policy-makers would be misled and would misinterpret the active role played by both’. In both accounts the reduction of individuals to the bare life in its purest sense is never fully actualised. It is in this contestation that the existential ethics of Beauvoir may be useful in bridging the divide. The bare life – one stripped of political life reduced to the mere biological life – holds many parallels with the state of immanence as defined by Beauvoir outlined in Chapter Four. Yet unlike Agamben, Beauvoir recognises the human potential to transcend this state, to reassert oneself and overcome the ascribed conditions of
existence, even if only on a strategic level. Asylum seekers may be hidden away in transit locations, denied proper recognition of their personhood, but they cannot be eradicated.

For participants in this study, while their transit experience did severely constrain their ability to act with full autonomy they nonetheless retained their ability to resist their exclusion. As Johnson (2013) suggests, irregular migration could be considered a political negotiation of status, power, agency and resistance. While almost all hallmarks of personhood are denied to individuals in this state it appeared that being placed beyond the care or consideration of the political order contributed significantly towards individuals’ motivations to act outside of this order themselves. The popular position was that since the state did not provide for them they were forced to provide for themselves. In this situation the quest for transcendence is clear as it is defined by Beauvoir:

> Every subject plays his part as such specifically through exploits or projects that serve as a mode of transcendence; he achieves liberty only through a continual reaching out towards other liberties. There is no justification for present existence other than its expansion into an indefinitely open future. Every time transcendence falls back into immanence, stagnation, there is a degradation of existence into the ‘en-soi’ – the brutish life of subjection to given conditions – and of liberty into constraint and contingency. (Beauvoir, 1997:28-29)

Through strategic action participants were able to challenge their assignment to bare life by seeking to be reattached to their fundamental rights. In this sense irregular migration can be viewed as a political act that is performed to contest immanence and assert personhood in the face of powerful mechanisms designed to deny this.

The blending of Agamben’s political philosophy with Beauvoir’s account of freedom and transcendence offers a framework for understanding the interaction between state power and individuals that appears central to the exploration of irregular
migration. While Agamben may overemphasise the extent that bare life is all consuming its usefulness as a concept should not be discarded. The existential perspective on the human capacity to resist dehumanising processes helps temper this perspective, providing a more balanced portrayal of life in transit – one that is constrained but not abandoned. This thesis argues that this perspective provides a useful framework for advancing our understanding of the broader processes that shape the lives of forced migrants in transit in Indonesia, helping to locate the issue of irregular migration in its broadest context while simultaneously demonstrating the role of agency in reaction to larger structures. This perspective sits comfortably alongside contemporaneous research on irregular migration and state practices of exclusion, for example Johnson’s work on forced migrants in Spain:

Irregular migrants and asylum seekers are actively denied the capacity to legitimately engage in political acts or speech, to be recognised and heard, and as such, are rendered as bare life ... however, exceptionality and exclusion do not mean that migrants do not act, or speak. Indeed, persistent contestations of the sovereign power and the exceptionality of ‘the Camp’ are perceptible throughout their everyday strategies and activities. (Johnson, 2013:84)

How participants in this study came to be in Indonesia in the first place is evidence of people’s capacities to overcome exclusionary practices. The actions that participants engaged in thereafter are further evidence that individuals find ways of resisting and surviving despite a lack of options.

Thus far this chapter has attempted to re-imagine Agamben’s concept of The Camp in order to provide a conceptual analysis of Indonesia as a transit location and departure point of irregular migration to Australia. Two aspects of analysis are considered. Firstly, asylum seekers in Indonesia are held in a state of exception in regards to the judicial order of Indonesia itself – their status as non-citizens condemns them to this. Yet it is also proposed that Indonesia, as a transit location, operates as an exceptional state within the international migration system. The
Camp in this sense reaches well beyond those interred in immigration detention whether onshore or in island prisons. It has been argued that this exceptionality has not come about through chance but rather as a result of the Global North’s border security paradigm that seeks to minimise its own responsibility to asylum seekers through efforts to exclude them from the national space. These blackspots where human rights are ignored or not recognised can be seen as The Camp of the international system – the exceptional spaces that uphold the system. As a consequence of this it appears that rather than working to address the lack of legal framework or protection in these non-spaces, developed states of the Global North are considered, by this thesis, complicit in this scenario as they thrive as a result of them. Powerful states of the Global North direct policies to funnel and contain migrants in these areas with the knowledge that the lack of rights migrants possess in these spaces facilitates their own agenda. Forced migrants become trapped in these liminal spaces contained indefinitely although no physical walls or fences may be visible. The final section of the chapter will now consider the long-term consequences of exclusionary migration policies and its effect on the system of international protection.

**Spread of Non-Arrival Regimes: The End of Asylum**

As powerful states adopt increasingly protective positions, neighbouring states are forced to follow suit or risk being overburdened with an inequitable responsibility for asylum seekers left in their region.

like the US and Mexico or Italy and Libya, Indonesia’s and Australia’s migration regimes function as the human equivalent of an integrated eco-system, changes in one have downstream and upstream effects for irregular migration. (Missbach & Sinanu, 2011:81)

In this sense non-arrival regimes can be seen as self-perpetuating as the creation of one barrier can provide the impetus for the creation of the next down the migration
line. In this sense peripheral states come under increased pressure to adopt defensive migration strategies similar to powerful receiving states that continue to push borders outward, undermining asylum seekers’ ability to seek protection outside of their country of origin. One example of this domino effect can be seen when Australia announced that it would no longer consider protection applications from Iranians who arrived in Australia irregularly. This announcement had an immediate effect in Indonesia with the Justice Minister Amir Syamsuddin passing a ministerial decree to prohibit Iranians from obtaining a visa on arrival in Indonesia (ABC News, 2013). This decision seems likely to have been prompted by fears that Indonesia would be left with the responsibility of supporting a large number of Iranians caught in transit based on Australia’s policy shift. Indonesia’s move to implement prior authorisation for Iranians looking to travel there is likely to have its own unintended consequences, with Iranians intent on coming to Indonesia moving in clandestine ways rather than through regulated pathways as a result.

This type of reactive migration barrier is exemplary of how non-arrival regimes are perpetuated, usually beginning with powerful developed states and emanating backwards along popular migration routes in a similar vein to that witnessed across Eastern Europe in the 1990s. As Brouwer & Kumin propose:

Some refugees may reach asylum in a country neighbouring their own or within their region of origin, but those opportunities may also dwindle, as countries of first asylum see the industrialized states actively erecting barriers to prevent asylum seekers from reaching their territories. (2003:7)

While the IOM stated that intercepting asylum seekers before they reach their territories is one of the most effective measures states have to enforce their domestic migration laws, Brouwer & Kumin argue that ‘the blandness of this observation masks the seriousness of the assault on the institution of asylum posed by interception practices’ (2003:6). The consequence of this pattern is the erosion of the international protection system through the gradual spread of policies designed to exclude asylum seekers from spaces where their rights can be
mobilised. Thus this trend, starting in the Global North and spreading through parts of the Global South can be seen as contributing to the growth of immobility whereby forced migrants struggle to move beyond their region of origin. The broader consequence of this situation is that non-arrival regimes are undermining the system of protection established through the Refugee Convention. Hyndman & Mountz chart this development, arguing that the move away from international human rights to a state-centric approach to asylum is having significant impact:

The externalization of asylum represents a shift from the legal domain where international instruments to protect refugees are still very much intact to the political domain where migrant flows are managed, preferably in regions of origin. Like human security, the externalisation of asylum becomes a bundle of political, securitized practices that reconstitute asylum as part of state-centric international relations discourse, not legal discourse. The protection of refugees is invoked not by law but through ad hoc decisions of governments made through offshore processing centres, bilateral readmissions agreements, and other tools of the transnational state that aim to prevent asylum seekers from ever landing on the territory of a signatory to the 1951 refugee convention. (Hyndman & Mountz, 2008:252)

This state-centric response to asylum seeking does little to address the global problem of displacement, but rather only serves to intensify the issue or foist it upon another country or region. This should not be understood as an unintended consequence but rather a core aim of non-arrival regimes. In this Australia’s obsession with ‘stopping the boats’ can be viewed in its broadest context – a symptom of a global attack on the institution of asylum rather than a solution to the issue of displacement. This perspective is echoed in the literature, for example the following quote by Munro:

By removing the people smuggler from the equation their human cargo will be caught in transit. The smugglers will have failed to service their market effectively and the buyers of their service will look elsewhere for newer,
more vulnerable routes, away from Indonesia, and away from Australia.
(2011:49)

While championing the advancement of Australia’s own non-arrival regime Munro’s statement demonstrates the tacit acknowledgement that ‘stopping the boats’ does nothing to address the underlying causes of irregular migration, it merely seeks to push this humanitarian crisis on to other states or regions.

A further implication of this approach, wherein the Global North moves away from the internationally established system of asylum, is the subtle erosion of the human rights of those who now experience this entrenched displacement and immobility as demonstrated by participants in Chapters Four and Five. Through the externalisation of border control, states have constructed a regime that demarcates their legal responsibility for asylum seekers from little more than a perceived moral imperative to assist those excluded by the implementation of their deterritorialised powers. According to Basaran ‘two legal borders are of importance here: the legal borders of policing and the legal border of rights. It is precisely their separation that opens up possibilities for creating border zones within liberal states’ (2008:341). This highlights a paradox within modern states’ practices whereby states exercise control over people beyond their jurisdiction while simultaneously claiming no legal responsibility for them. As Francis notes:

States are attracted to pre-entry measures because of their capacity to control the arrival of asylum seekers without (it is erroneously assumed) engaging international legal obligations. Paradoxically, exporting the border as far away as possible does not entail the relinquishment of state control over asylum. The denationalisation phenomenon that lies at the heart of restrictive asylum policies maintains state control while seeking to deny state responsibility. (emphasis in original, Francis, 2009:380)

The nexus of security, sovereign power and law exercised through spaces of exception or exclusion has garnered significant interest in the literature more broadly (Ross, 2012; Basaran, 2008; Reid- Henry, 2007; Butler, 2004; Agamben,
1998); while the application of this paradigm to issues of asylum is an emerging focal point for scholars interested in the corollary of borders, extra-territorialisation of asylum and human rights (Johnson, 2013; Taylor, 210, 2008; Francis, 2009; Hyndman & Mountz, 2008; Weber, 2007; Rajaram & Grundy-Warr, 2004). As Brouwer & Kumin conclude:

Existing interception measures rarely include adequate procedures to distinguish those who need protection from those who do not. Unless current practices are either abandoned by states – which seem unlikely – or are reformed to conform to human rights law and refugee protection norms, access to asylum will progressively be choked off. (Brouwer & Kumin, 2003:7)

These studies have largely focused upon the legal realm, particularly on how states have interpreted the ‘non-refoulement’ obligation as it applies to extraterritorial interceptions. However it is worth examining the moral dimensions of these regimes and their consequences as well. The findings in Chapters Four and Five reveal that participants viewed irregular migration as a way of reasserting their humanity in the face of state practices designed specifically to detach them from their rights. While this may seem recalcitrant in light of other options, by drawing together the complementary political philosophies of Agamben, whose work on *Homo Sacer* (1998) is an apt portrayal of state practice of exclusion in this instance with the existential ethics of Beauvoir (1997), the importance of overcoming this inertia is laid bare. Participants were seizing upon opportunities available to them in a desperate effort to restore meaning and purpose to their life and overcome their sense of hopelessness in light of the end of asylum.

The shrinking of asylum spaces, or more accurately, the shrinking of access to spaces of asylum, is contributing towards a situation where people facing persecution are unable to flee across international borders with any kind of authorisation. This has contributed to the use of people smuggling agents to escape these areas. Once propelled on this pathway of irregular migration people find
themselves in increasingly volatile situations. Classified as non-citizens and excluded from the protection of the law and purposefully separated from their human rights, people are embracing irregular migration as a way to overcome their forced immobility.

The identification of this pattern in the Asia Pacific, with what appears to be a high degree of uniformity to other parts of the Global North (despite clear geopolitical differences), holds clear implications for future research. This appears all the more significant given the events unfolding in the final weeks of this thesis. Indonesia, Malaysia and Thailand’s adoption of boat ‘push back’ policies has resulted in thousands of forced migrants being abandoned at sea with no country willing to admit them or take responsibility for them. This situation can be seen as the embodiment of how non-arrival regimes spread and actively contribute to the destruction of international protection spaces through efforts to shift responsibility for forced migrants onto other states.

**Conclusion**

In Chapter One this thesis drew on esteemed migration theorist Aristide Zolberg’s articulation that:

> If we wish to understand the overall role of industrial capitalist countries in the determination of international migrations, it is necessary to account for the walls they have erected as well as for the small doors they have provided. (1989:405)

This statement appears as true today for irregular migration as it was almost thirty years ago for the study of regular migration. To understand the complex role that developed nation states play in directing forced migration flows we must account for the significant barriers that they have created in order to limit contact with asylum seekers, as well as for the small opportunities that have been provided for
international protection through initiatives such as third country resettlement programs.

This thesis has attempted to examine these ‘walls and doors’ by investigating the nexus of the international protection system through the firsthand experience of forced migrants attempting to navigate it. This was achieved through a case study on thirty Hazara asylum seekers transiting through Indonesia. What was revealed through this study was a variety of pressures that limited forced migrants’ ability to direct their own migration and seek protection as they encounter a world of barriers and exclusion.

The non-arrival regimes of the Global North destroy forced migrants’ ability to escape persecution in their homeland through regulated channels, forcing people instead into irregular pathways supported by people smugglers. This scenario fosters a situation where asylum seekers are funnelled into transit locations due to more porous borders and more negotiable border security. However, once in these transit locations asylum seekers find that they are once more immobilised legally. This contributes towards a situation whereby asylum seekers become wedged, they cannot move forward (legally), they cannot stay where they are (permanently) and they cannot return home (safely). This scenario is further complicated by inadequate or non-existent reception policies in place to respond to the issue of forced displacement in these transit countries, leaving many forced migrants feeling exceptionally vulnerable during this time. This study has demonstrated that the small doorways which represent the official humanitarian pathway are inadequate to the task of protecting and resettling people who have been displaced. As a result people in transit feel they have only one real option available to them in order to find safety. In this paradigm the distance between regular and irregular migration becomes significantly reduced in the mind of the migrant as their choices are often severely limited by structural constraints that both transit countries and powerful states of the Global North are complicit in maintaining.
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Fund for Human Security',  


Appendix A: Ethics Approval

Dear Julie and Sally

SUHREC Project 2011/165 Navigating Asylum: Journeys from Indonesia to Australia
Dr Julie Kimber, FLSS; Ms Sally Clark, Assoc Prof Michael Leach
Approved Duration: 01/12/2011 To 01/12/2014 [Adjusted]

I am pleased to advise that, as submitted to date, the project has approval now to proceed on 1 December 2011 in line with standard on-going ethics clearance conditions here outlined.

- All human research activity undertaken under Swinburne auspices must conform to Swinburne and external regulatory standards, including the National Statement on Ethical Conduct in Human Research and with respect to secure data use, retention and disposal.

- The named Swinburne Chief Investigator/Supervisor remains responsible for any personnel appointed to or associated with the project being made aware of ethics clearance conditions, including research and consent procedures or instruments approved. Any change in chief investigator/supervisor requires timely notification and SUHREC endorsement.

- The above project has been approved as submitted for ethical review by or on behalf of SUHREC. Amendments to approved procedures or instruments ordinarily require prior ethical appraisal/ clearance. SUHREC must be notified immediately or as soon as possible thereafter of (a) any serious or unexpected adverse effects on participants and any redress measures; (b) proposed changes in protocols; and (c) unforeseen events which might affect continued ethical acceptability of the project.

- At a minimum, an annual report on the progress of the project is required as well as at the conclusion (or abandonment) of the project.

- A duly authorised external or internal audit of the project may be undertaken at any time.

Please contact the Research Ethics Office if you have any queries about on-going ethics clearance, citing the SUHREC project number. Please retain a copy of this clearance email as part of project record-keeping.
Best wishes for the project.

Yours sincerely

Keith Wilkins
Secretary, SUHREC
Appendix B: Participant Recruitment Letter

Navigating Asylum: Journey’s from Indonesia to Australia

My name is Sally Clark; I am a PhD candidate at Swinburne University of Technology in Melbourne. As part of my doctoral studies I am currently conducting research that explores the irregular movement of asylum seekers and refugees from Indonesia to Australia. The focus of this Inquiry is to discover why asylum seekers and Convention Refugees abandon the UNHCR resettlement program in Indonesia and choose, instead, to make the difficult and uncertain journey to Australia by boat.

I hope that though this study a greater understanding of the difficulties individuals face in trying to navigate the international protection system becomes apparent. I am passionately committed to achieving genuine social change and hope that this research can contribute understanding and compassion to the current asylum debate in Australia. I believe that advocacy based research plays a vital role in contributing towards a sustainable social movement as it helps promote knowledge and brings to light the true struggle asylum seekers and refugees face in navigating the international protection apparatus. As was recently shown by the TV series ‘Go Back To Where You Came From’, personal accounts of hope and survival can have profound effect upon individuals who witness them, opening up new ways of viewing the world and in many cases reaching people who in the past have held deeply negative views based upon ignorance and misinformation. I hope that this research can help promote the experiences of asylum seekers to the broader public and contribute to a shifting discourse on boat arrivals in Australia.

What participation will involve

This research is focused upon the Hazara people and their quest for safety. I am interested in speaking with Hazara men and women about their experience of forced migration and subsequent journey to Australia. The aim of this research is to explore the international protection system against how people have actually experienced it.

Participation in this study will involve a 30-60 minute interview at a location convenient to the participant. Participation is voluntary; participants are free to withdraw at any stage. Pseudonyms will be used to protect the identity of all participants and ensure anonymity.

During the interview participants will be invited to share their migration story. Topics covered will include: reasons for initial migration, experiences en route, dealings with UNHCR and other migration organisations, time spent in transit
countries, particularly Indonesia, and final migration to Australia and any other issues participates feel is relevant to their migration experience.

If you are interested in taking part in this study, please contact me so we may make a time to meet,

Kind regards,

Sally Clark
Appendix C: Consent Information Statement

Project Title

Navigating Asylum: Journeys from Indonesia to Australia.

Investigators

Dr. Julie Kimber, Lecturer in Politics & Public Policy, Swinburne University (supervisor)
Associate Professor Michael Leach, Senior Lecturer in Politics & Public Policy, Swinburne University (supervisor)
Ms Sally Clark, PhD candidate, Swinburne University of Technology (doctoral candidate)

Introduction to Project and Invitation to Participate

This study explores why people give up on the United Nations refugee resettlement program in Indonesia and choose, instead, the difficult and uncertain journey to Australia. It asks participants to share their stories so that we may understand the difficulties people face in attempting to gain asylum.

This research will explore the international protection system against the background of how people have actually experienced it. In this way we might be able to highlight any flaws in the system and make policy recommendations to the Australian government to improve the current arrangements.

If you are interested in taking part in this study and open to speaking about your personal experience of seeking asylum through the United Nations High Commission for Refugees (UNHCR) in Indonesia and your subsequent journey to Australia please contact the researcher.

Project and researcher interests

This project is being conducted as part of PhD studies at Swinburne University of Technology.

What participation will involve
Participation in the project involves being interviewed about your experiences of life in Indonesia, your dealings with UNHCR and the International Organisation for Migration (IOM), your journey to Australia and any other aspect of your story which you feel is relevant to your migration experience. If you are interested in taking part in the study please contact the researcher to organise a convenient time and location to be interviewed.

Participant rights and interests

Participation in this study is voluntary, and you are free to withdraw your participation at any stage of the research. All participants will be asked to sign a consent form to this effect. All material collated during the study will be securely retained within the University.

Research output

This research will be published as a PhD thesis. It will also be published in book and journal form. If you would like to view and comment on the research prior to publication please let the researcher know at the time of interview. It is also worth noting that you will remain anonymous in any published work that is the result of this study.
Swinburne University of Technology

Project Title: Navigating Asylum: Journeys from Indonesia to Australia.

Principal Investigator(s): Dr. Julie Kimber (supervisor), Associate Professor Micheal Leach (supervisor), Sally Clark (PhD candidate)

1. I consent to participate in the project named above. I have been provided a copy of the project consent information statement to which this consent form relates and any questions I have asked have been answered to my satisfaction.

2. In relation to this project, please circle your response to the following:
   I agree to be interviewed by the researcher Yes No
   I agree to allow the interview to be recorded by electronic device Yes No
   I agree to make myself available for further information if required Yes No

3. I acknowledge that:
   (a) My participation is voluntary and that I am free to withdraw from the project at any time without explanation;
   (b) The Swinburne project is for the purpose of research and not for profit;
   (c) any identifiable information about me which is gathered in the course of and as the result of my participating in this project will be (i) collected and retained for the purpose of this project and (ii) accessed and analysed by the researcher(s) for the purpose of conducting this project;

   Yes No

1. I would like the researcher to contact me with a draft prior to publication
   Yes No

By signing this document I agree to participate in this project.
Name of Participant: ......................................................................................................

Signature & Date: .......................................................................................................

Concerns/complaints about the project – who to contact:

This project has been approved by or on behalf of Swinburne’s Human Research Ethics Committee (SUHREC) in line with the National Statement on Ethical Conduct in Human Research. If you have any concerns or complaints about the conduct of this project, you can contact:

Research Ethics Officer, Swinburne Research (H68),

Swinburne University of Technology, P O Box 218, HAWTHORN VIC 3122.

Tel (03) 9214 5218 or +61 3 9214 5218 or resethics@swin.edu.au