



Western

Australia

AMENDED RECORD OF INVESTIGATION INTO DEATH

Ref No: 27/16

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the suspected deaths of **Mohammad HASSAN, Mohammad NOOR & Mr SABIBULLAH (SABIB ULLAH)** with an Inquest held at Perth Coroners Court, Court 51, Central Law Courts, 501 Hay Street, Perth, on 22 August 2016 find the suspected deaths of **Mohammad HASSAN, Mohammad NOOR & Mr SABIBULLAH** have been established beyond all reasonable doubt, that their identities were **Mohammad HASSAN, Mohammad NOOR & Mr SABIBULLAH** and that the deaths occurred between 24-29 January 2013 in the Indian Ocean in the vicinity of Christmas Island as a result of Immersion in the following circumstances:-*

Counsel Appearing:

Sergeant L Housiaux assisted the Deputy State Coroner

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INTRODUCTION

On 23 January 2013 a suspected illegal entrant vessel (SIEV) was within sight of Christmas Island when its engines failed and water started to enter the hull. The people on the boat were unable to restart the engine and the bilge pumps would not operate.

On 24 January 2013 the captain of the SIEV and three of the passengers built a raft from items on the boat and set off for Christmas Island in an attempt to obtain help for the drifting SIEV. The raft was observable from the SIEV for between 1-2 hours, apparently moving in the direction of Christmas Island, which remained visible. That night the people left on the drifting SIEV observed clouds and wind in the area of Christmas Island.

In the early hours of 25 January 2013 HMAS Larrakia found the drifting SIEV, 17 nautical miles (nm) north-west of Flying Fish Cove, Christmas Island, within the Australian Contiguous Zone (ACZ). The ACZ is an area of water contiguous to the territorial sea and extends for 24nm from the territorial sea base line.

The boat was allocated the number 580 and became SIEV580. The people on SIEV580 were transferred to HMAS Larrakia because it was deemed to be unsafe. Once it was understood the captain and three passengers were missing on a raft, search and rescue operations was initiated

through the Australian Maritime Safety Authority (AMSA) Joint Rescue Coordination Centre (JRCC).

On 30 January 2013 residents of Christmas Island visited Lily Beach for recreational purposes and located the captain from SIEV580 in a debilitated state in the carpark. They provided him with food and water and contacted the local doctor and police.

The captain explained the raft had disintegrated in rough seas on their first night (24 January 2013) and that all four men had been thrown into the water. He believed he had drifted and swum for four days using a piece of drift wood before managing to get to Christmas Island, where he wandered for days until locating a car in the carpark at Lily Beach. He had not seen the other three men since the raft disintegrated.

Pursuant to section 19 (1) of the *Coroners Act 1996 (WA)* (the Act), a coroner has jurisdiction to investigate a death if it appears that the death is, or maybe, a reportable death (as defined in section 3 of the Act). A death is defined in section 3 of the Act to include a “suspected death”.

Pursuant to section 23 (1) of the Act, where a person is missing and the State Coroner has reasonable cause to suspect that the person has died and that the death was a reportable death, the State Coroner may direct that the

suspected death of the person be investigated. Pursuant to subsection (2), where the State Coroner has given such a Direction, a coroner must hold an inquest into the circumstances of the suspected death of the person, and if the coroner finds that the death of the person has been established beyond all reasonable doubt, into how the death occurred and the cause of the death.

By Commonwealth Statute the Act applies to Christmas Island and coronial jurisdiction follows the same boundaries as Maritime jurisdiction. This means the WA State Coroner has jurisdiction to investigate a suspected death in the ACZ. Accordingly the State Coroner can direct an investigation of the death of persons missing in the ACZ extending around Christmas Island. In these circumstances the suspected deaths of persons missing in the ACZ of Christmas Island fall within the jurisdiction of the State Coroner of WA.

Under Maritime Law the responsibility for search and rescue efforts in the ACZ fall within the Australian Maritime Search and Rescue Region (SRR).

The suspected deaths of the three missing passengers from SIEV580 were reported to the State Coroner by the police and the circumstances rendered them reportable deaths under State legislation.

In the circumstances of this case it was necessary the inquest focused on establishing whether the deaths of the three men were proved to my satisfaction, beyond a reasonable doubt. In addition, there was some difficulty with identification in the circumstances of the case of suspected irregular entrants (SIE) seeking asylum and refugee status.

The documentary evidence in this case was the outcome of an investigation conducted by the Australian Federal Police (AFP) located on Christmas Island, and an investigation instigated by the AFP into the circumstances of SIEV580 and the three missing men. The author of that report, Detective Sergeant Jason Kennedy, gave oral evidence in support of his brief of evidence which was comprehensive and extensive.¹ Additional enquiries were conducted by Sergeant Housiaux of the WA State Coroner's Office pertaining to the identities of the three missing men.

IDENTITIES

On transfer of the persons adrift on SIEV580, two HMAS Larrakia numbers identifying them as Potential Irregular Immigrants (PII) with SIEV580, were provided to each person. On 24 January 2013 there were 15 persons transferred from SIEV580 to HMAS Larrakia. Of those 15, two were crew and 13 identified themselves as passengers.

¹ Ex 1, tab 2 and attachments

Of the 13 passengers, two (PII01 & PII09) identified themselves as the brother-in-law and younger brother of Mohammad Hassan. PII09 was in possession of Mohammad Hassan's United Nation High Commission for Refugees (UNHCR) Asylum Seeker Certificate (ASC) in the name of Mohammad Hassan. Mohammad Hassan's UNHCR ASC gave his country of origin as Myanmar, his date of birth as 1 January 1992 with an occupation as a farmer.² This was confirmed by his brother and brother-in-law.

There was a family unit on SIEV580 comprising a father (PII05), his pregnant wife (PII04), their 12 year old son (PII03), the brother of the father (PII06) and an unrelated 14 year old boy (PII12).

All the other passengers appeared to be single males giving their country of birth as Myanmar. A few of those identified themselves as Rohingya.

Two of the persons who spoke Rohingya appeared to have travelled some of their journey with Mohammad Noor. Those passengers were able to identify Mohammad Noor from photographs, although his UNHCR ASC was not located on SIEV580 and appears to have been taken with him on to the raft in a belt bag.

² Ex 1, tab 3

A UNHCR ASC for Mr Sabibullah was located and gave his date of birth as 1 January 1993, his nationality as being from Myanmar, and his date of entry to Indonesia as 28 December 2012.³

Enquiries with the UNHCR Regional Representative in Canberra confirmed there is great difficulty in establishing identities of refugees beyond UNHCR Certification. The identities given may not be accurate and the date of birth information may be different depending on culture and status. There is no global database of persons registered with UNHCR although enquiries can be made of specific UNHCR officers where the office of registration is known. Copies of files can then be provided.

Information was received that without a registration certificate for Mohammad Noor it was unlikely his identity could be established beyond the knowledge of the passengers and confirmation of his photograph as being one of the people on the raft as his identity.

In addition, depending on their country of language and origin, the ways in which the number and the relevant names were written differed, for example a number of the passengers referred to Mr Sabibullah as Sabib Ullah. His date of birth as 1 January 1993 was established from his certificate, without knowledge as to whether that was a

³ Ex 1, tab 5

genuine identification. Refugee certification relied on the information provided at registration, and persons concerned about being traced, or repercussions for their families of origin, frequently gave an assumed identity.

The Canberra Office was able to confirm a copy of the UNHCR Indonesian records for Mr Sabibullah and a redacted copy of the UNHCR Malaysian records for Mohammad Hassan. Neither of those officers were able to identify Mohammad Noor as it is a very common name for people from Myanmar seeking refugee status.

Although the brother and brother-in-law of Mohammad Hassan were able to provide family contact details, these have not been revealed due to concern for repercussions towards villages or families of origin. Both the brother and brother-in-law gave their state of origin as Burma, their citizenship as stateless and their preferred language as Burmese/Myanmar.

The AFP has been able to notify the family of Mohammad Hassan of the fact he was missing at sea and presumed dead. This was due to the information provided by his younger brother and brother-in-law.⁴

Accordingly, I have adopted the names provided by the UNHCR for missing person Mohammad Hassan, and

⁴ Ex 1, tab 2

missing person Mr Sabibullah. I have also adopted the identity of Mohammad Noor from the other passengers on SIEV580 as the only identity with which I can provide him on the state of information available at this time.⁵

It is of great regret to me I will be unable to provide information as to their deaths to their loved ones, but accepting that Myanmar has 800,000 displaced persons it is unlikely the UNHCR will be in a position to advise families, unless families make enquiries of that organisation.

The two crew members on SIEV580 were young Indonesians (PII14 & PII15), and on recovery of the captain of SIEV580 from Christmas Island, he was given the number of PII16.⁶

I note from the various interviews held with persons on SIEV580 by the AFP there were some discrepancies on the numbers of passengers on SIEV580. All confirmed the passengers were of Burmese origin, and the three crew, including the captain, were Indonesian. I cannot account for the different numbers of passengers stated other than some difficulties in translation. A number of the passengers had been travelling under refugee status for a considerable amount of time and there is likely to have been some confusion over numbering.

⁵ Ex 1, tabs 3, 4 & 5

⁶ Ex 1, tab 8

I am satisfied that with the addition of those missing on the raft, there were 16 passengers and three crew who left Indonesia on SIEV580.

The captain and three passengers left SIEV580 on a raft on the morning of 24 January 2013. Those missing on the raft were Mohammad Hassan, Mohammad Noor and Mr Sabibullah, with the recovery of the captain on 30 January 2013 on Christmas Island.

EVENTS LEADING TO THE MAKING OF THE RAFT

While there are one or two discrepancies between the accounts of passengers on SIEV580, I have generally accepted that of Mohammad Hassan's brother-in-law (PII01), as being the most representative account of events⁷ from the perspective of the passengers on SIEV580.

Mr Mohammad Bilal was born on 22 April 1985 in Myanmar and was given boat identification PII01 on transfer from SIEV580 to HMAS Larrakia. Mr Bilal identified his older brother-in-law as Mohammad Hassan from the UNHCR ASC carried by his younger brother-in-law, Mohammad Saddam Hussain. He confirmed, along with his younger brother-in-law, that Mohammad Hassan had been one of those to leave on the raft. He stated he had travelled with his brothers-in-law from Myanmar to Malaysia where he changed boats and they all travelled to Indonesia.

⁷ Ex 1, tab 14

The evidence suggests the captain of SIEV580 (Roy Jordi) and the two young Indonesian crew members left Java in Indonesia overnight on 19-20 January 2013 in SIEV580.⁸ They were taking 16 passengers to Christmas Island with the intention those passengers would seek asylum in Australia. SIEV580 was in a poor state of repair and unseaworthy and took on approximately 40 litres of water per hour which was removed by the bilge pump whilst it was operational.

The captain had a fisherman's compass and a Garmin GPS device which he left on SIEV580 for those remaining on board.

Sometime early in the morning of 23 January 2013, which appears to have been the fourth day after leaving Indonesia, and when they had expected to arrive at Christmas Island, SIEV580 was roughly 31nm north of Christmas Island. The mountains on Christmas Island were **visible** from SIEV580 when the belt from the engine became unusable and the captain stopped the engine to replace the belt. He was then unable to restart the engine.

Mr Balil appeared to have a good understanding of mechanics and was able to draw a detailed picture of SIEV580. He explained it had a diesel engine with a

⁸ Ex 1, tab 10

Chinese brand pump which was non-operational. The engine operated the bilge pump using a series of belts and it was the fact a belt had come off the engine which caused the difficulties on 23 January 2013.

Mr Bilal believed the matter could have been resolved if there had not been continual attempts to restart the engine. This caused it to flood. He tried to argue with the captain over his continued restarting of the engine, unsuccessfully. The result was the engine was completely unstartable and the bilge pump was then not operating and water accumulated within the hull. This was removed by hand bailing. It took three people to bail water continuously to prevent SIEV580 from sinking.

SIEV580 drifted overnight. In the morning the mountains of Christmas Island were still visible and appeared to be closer. There was some discussion between the captain, his crew and some of the passengers as to whether a group would be able to reach Christmas Island and so save those remaining on SIEV580.

It appears no one on SIEV580 understood how treacherous the coastline off Christmas Island can be.⁹

While originally the captain wished the crew to leave with him, there was discussion and it was eventually decided

⁹ t 22.8.16, p17 & 18

three of the more mature men would leave with the captain on a raft which the four men then built. The captain, Mr Hassan, Mr Noor and Mr Sabibullah constructed a makeshift raft out of bamboo poles, rope and inner tyre tubes. While there is consistency in the interviews that five inflated tubes were used, tied to the bamboo poles, as the raft, there are different comments from the passengers as to whether each individual man also had an inner tube tyre as a floatation device around his waist. The inner tube tyres had been on board in a deflated state to act as life jackets, there being no life jackets on SIEV580.

The intention was the four men would paddle with paddles made from wooden planks on board, to Christmas Island and return with help for SIEV580.

After completion of the raft at about 9am on 24 January 2013 the captain and the three men launched the raft and, despite pleading from a number of passengers and indeed some of the crew, swam to the raft and left to seek help. Despite allegations made later by the captain there was some difficulty at that point, I am satisfied from the evidence of the remaining crew and passengers, the men were all volunteers and undertook the task altruistically, in an attempt to save those remaining behind on SIEV580.

It is clear all four men leaving SIEV580 were competent swimmers as they reached the raft and set off paddling effectively.

The raft was observed paddling towards Christmas Island for between 1 & 2 hours before the ocean obscured them from view. Christmas Island mountains were visible at all times.

The remaining passengers and crew stated the weather was fine on 24 January 2013 and remained fine as far as they were concerned until the following day, although they could see that by late afternoon the whole of Christmas Island was “*very cloudy*” and that night “*the seas were big and it was windy*”. I note from the meteorological report for Christmas Island there was no rain overnight in the vicinity of Christmas Island between 24 & 25 January 2013 but have no information as to the winds.¹⁰

Those remaining on SIEV580 had food and water, although there were some complaints the noodles and rice could not be cooked because of the difficulty with heating water. There was reference to the captain having cooked rice before he left which was left for those on SIEV580. There were no complaints of a lack of food for those remaining. It was reported that those on the raft had taken water and noodles with them.

¹⁰ Ex 1, tab 46

Those remaining on SIEV580 were located by HMAS Larrakia in the early hours of 25 January 2013, north of Christmas Island. HMAS Larrakia was then alerted to the fact of the raft leaving SIEV580 to get help. After transferring the passengers and remaining crew from SIEV580 onto HMAS Larrakia, a search was commenced. Later on 25 January 2013, at approximately 4 pm the passengers were transferred from HMAS Larrakia to HMAS Leeuwin and HMAS Larrakia continued the search.¹¹

THE SEARCH

The search of the area continued over a period of 6 days and used both vessels and aircraft. Advice was obtained from a survival expert as to the expected survival time for those on the raft. Due to the temperatures it was estimated they could survive for 3-5 days without rain, and 6 days with rain. Considerable rain was recorded in the vicinity of Christmas Island on 28 January 2013.

Although various drift models are in operation for search and rescue operations it was decided the two most likely were not useful for the circumstances at that time. Downloading of the GPS device left by the captain on SIEV580 indicated **the** drift path for SIEV580 before recovery by HMAS Larrakia. The hull of SIEV580 was used to assist with drift expectation and part of the search

¹¹ Ex 1, tab 25

located two inner tubes on 29 January 2013 and another two the following day.¹²

No sign of the raft or the four men was found during the search other than a floating water bottle and the inner tyre tubes.

Location of the Captain of SIEV580

On 29 January 2013 a commercial dive operator, Teruki Hamanaka¹³ went camping with his wife and two daughters at Lily Beach on Christmas Island. They intended to camp overnight.

The following morning they woke up and went for a swim before Mr Hamanaka's wife went to their car in the car park to obtain a towel.

Mr Hamanaka's wife, Lynette Gaff,¹⁴ is a teacher on Christmas Island and reported that when she went to the car she located an unknown male sitting in the shade of the car, on the driver's side, who seemed to be semi-conscious. He asked for water in English and said he was Indonesian although he could speak some English. He looked very battered and worn with blistered skin on his face, arms, hands and lips. Ms Gaff provided the man with water and he said he had been swimming for 4 days and had come

¹² Ex 1, tab 34

¹³ Ex 1, tab 41

¹⁴ Ex 1, tab 42

ashore during the night and passed out on the ground. He had walked towards coconut trees until he found the carpark and the car at the Lily Beach carpark. He was covered in sores where he said he had been bitten by small fish and explained there had been four people who left from a big boat on a raft to get help because the boat was stranded.

Ms Gaff went to get her husband, Mr Hamanaka, and between them they gave him food and called the local doctor because they could not get a signal for the police. The doctor from Christmas Island Hospital sent Sergeant Jason Kennedy to Lily Beach and he spoke with the man and established the fact he was the captain of SIEV580.

The captain reported the raft had disintegrated on their first night after leaving SIEV580 and they had not reached Christmas Island at that time. He reported the sea as very rough which caused the raft to disintegrate. He had no floatation device until he managed to grab a piece of driftwood and then appears to have been at the mercy of the seas for a considerable amount of time. He did not see the other three men. It is not precisely clear where the captain came ashore some time later but it is clear from the description of those finding him he had been in the water for some time.

As a result of the information from the captain and the fact he said the raft had disintegrated on the first night they had left SIEV580 it was determined it was unlikely the other three men had survived. It was understood they were lost at sea if a thorough search of Christmas Island failed to reveal any sign of them.

On 30 January 2013 JRCC directed a land search of Christmas Island be undertaken by the AFP. The AFP and other emergency personnel searched all areas of coast accessible on the island from the sea and a police boat and HMAS Bathurst navigated the island three times in an attempt to decide whether any person had managed to access the island. 95% of the island is steep cliff and cannot be accessed from the water at all.

The search was suspended by the AFP Christmas Island on Friday 1 February 2013 as it was deemed highly unlikely the three missing persons successfully arrived on Christmas Island alive, following advice from the Co-ordinator and Manager of the Search and Rescue Operations.¹⁵

The captain was later prosecuted for being involved in people smuggling, and the **Administrator** of Christmas Island wished to award Mr Hassan, Mr Noor and Mr Sabibullah a commendation for bravery for their attempts to save the remaining passengers on SIEV580 by

¹⁵ Ex 1, tab 34 & 35

undertaking a treacherous journey to Christmas Island in an attempt to obtain help.

CONCLUSION AS TO THE DEATH OF THE THREE DECEASED MEN

I am satisfied Mohammad Hassan, Mohammad Noor and Mr Sabibullah were three stateless persons, originating from Myanmar, who were given refugee status by the UNHCR, although the documentation for Mr Noor cannot be located. At different times they travelled from Myanmar to Malaysia and/or Indonesia and on 19 January 2013 boarded SIEV580 in Java with the hope of reaching Christmas Island and seeking asylum.

The journey was supposed to take three days, however, the morning of 23 January 2013 only brought SIEV580 to within sight of the mountains on Christmas Island.

SIEV580 was an old, unseaworthy vessel with a decrepit engine. It broke down on 23 January 2013 and could not be restarted, although it appears some of the passengers did have mechanical knowledge.

SIEV580 drifted overnight and required constant bailing to prevent the flow of water into the hull at a rate which would eventually sink SIEV580. The captain was concerned for all those on the boat and when a suggestion was made they

should build a raft and seek help, some of the men with the captain, put the idea into practise.

I find there was no ill will surrounding the construction and leaving of the raft, although it is clear a number of the passengers and the two young crew were fearful for those leaving on the raft and attempted to persuade them to stay. The captain appears to have been convinced obtaining help was the only option and he set off with the three passengers, Mr Hassan, Mr Noor and Mr Sabibullah on the raft.

I am satisfied those remaining behind were able to maintain bailing on SIEV580 until they were located in the early hours of 25 January 2013 by HMAS Larrakia, still in sight of Christmas Island, while drifting.

The evidence supports the environment on approaching Christmas Island overnight on 24-25 January 2013 was extremely rough and as a result the raft was battered to pieces in the water. This was traumatic. It is not clear how conscious the captain remained while drifting in the water before he managed to obtain a piece of driftwood. I suspect it was during the initial battering Mr Hassan, Mr Noor and Mr Sabibullah lost their lives. Certainly if they were pushed towards Christmas Island, against the rocks, their survival would have been very unlikely.

While it is not clear from the captain's account exactly how long he was in the water and on land, I am satisfied the three missing men were capable of swimming and would have swum if they were in a position to do so.

I am further satisfied the access to Christmas Island is extremely treacherous and it is unlikely that, once in the water if conscious, they would have survived for very long if they were in the vicinity of the rocks.

Cause and Manner of Death

While I am unable to determine whether Mr Hassan, Mr Noor and Mr Sabibullah were injured and unconscious, I am satisfied that whatever state they were in they were unable to breathe effectively and as a result drowned. There has been no trace of the three men on the surrounds of Christmas Island and there is no evidence any of them survived and reached the island.

I am satisfied beyond all reasonable doubt as to the deaths of Mohammad Hassan, Mohammad Noor and Mr Sabibullah.

I find their deaths occurred sometime between the evening of 24 January 2013 and 28 January 2013, most probably overnight on the 24-25 January 2013. I find all three men died in the ocean off Christmas Island.

I find the death of Mr Mohammad Hassan occurred by way of Misadventure.

I find the death of Mr Mohammad Noor occurred by way of Misadventure.

I find the death of Mr Sabibullah occurred by way of Misadventure.

E F Vicker
Deputy State Coroner
20 December 2016