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MALAYSIA: DETAINEES IN SABAH

INTRODUCTION

Since May 1990, seven people from the eastern Malaysian state of Sabah have been arrested and detained under the 1960 Internal Security Act (ISA), accused of participating in a plot "to take Sabah out of the Malaysian Federation." One of the seven was released after 60 days; the other six remain in detention. Asia Watch believes they were arrested for the peaceful expression of their political views and association with a political party that had run afoul of Malaysian Prime Minister Mahathir.

The seven detainees -- Benedict Topin, Albinus Yudah, Damit Undikai, Abdul Rahman Ahmad, Vincent Chung, Jeffrey Kitingan and the now released Maximus Ongkili -- were all connected directly or indirectly with the United Sabah Party (*Parti Bersatu Sabah* or PBS), a political party dominated by Kadazans, a largely Christian ethnic group. The party, which has long advocated greater autonomy for Sabah, was part of the ruling National Front (*Barisan Nasional*) coalition until just prior to national elections in October 1990 when in what Mahathir called a "stab in the back", it defected to the opposition. Even before that surprise move, however, PBS had been on a collision course with Kuala Lumpur, demanding readjustment of federal-state relations, a greater share of Sabah's revenue, more administrative autonomy and the expulsion of illegal Filipino and Indonesian immigrants. Immigrants now constitute almost half of Sabah's 1.3 million population.

BACKGROUND

Sabah, together with Sarawak, is one of two Malaysian states on the island of Borneo. The Borneo states have a different ethnic, cultural and historical background than peninsular Malaysia. Muslim Malays comprise some 57 percent of the population of peninsular Malaysia with Chinese constituting an additional 32 percent. Sabah has more than 25 indigenous ethnic groups, most of them non-Muslim Malays like the Christian Kadazans who dominate the PBS. The Chinese constitute about 14 percent of the population.

During discussions in the early 1960s about the formation of a Malaysian federation, which would join together the Federated Malay states, the two British colonies of Northern Borneo (Sabah) and Sarawak, and Singapore, the

Borneo states were adamant about being treated as equal partners with the core of the Federation, the Federated Malay states. Then Chairman of the Sarawak United People's Party, Donald Fuad Stephens, told representatives of the federated states:

...please do not pursue the idea of making Brunei the 12th State, Sarawak the 13th State and North Borneo [Sabah] the 14th State of the Federation. We are frankly not interested.¹

For its part, Sabah drew up a memorandum, "Twenty Points," upon which its participation in the union was contingent. They included stipulations about the nature of state-federal relations; a guarantee of an eventual change of state administrative personnel from Malays to Bornean citizens (referred to as *Borneoization*); and the preservation of Sabah's distinct cultural identity. Some of the twenty points were incorporated into what became the Malaysian constitution; others were accepted orally but had no legal status. One of the seven detainees, Jeffrey Kitingan, has been particularly vocal about the Malaysian government's violation of the spirit of the original twenty points.

The Malaysian federation officially came into being on September 16, 1963 as a union of four equal partners: Sabah, Sarawak, Singapore and the eleven federated Malaysian states. In 1965, Singapore left the union, resulting in a dramatic change in Malaysia's ethnic and religious makeup. Singapore's non-Muslim Chinese population had provided a balance to the large number of Muslim Malays on peninsular Malaysia. The removal of this balance rendered ethnic Malays the dominant ethnic group and Islam the dominant religion.

Frequent Parliamentary amendments to the constitution, requiring a two-thirds majority vote,² have slowly weakened the Borneo states' position within the federation and have strengthened the position of the Muslim Malays through the strongest political party within the *Barisan Nasional*, the United Malays National Organization or UMNO, now headed by Prime Minister Mahathir.³ Examples include the passage of bills that made the official language of Malaysia Malay and Islam the official religion.

One amendment altered Sabah's status in the federation altogether. Originally, the section of the constitution that defined Malaysia grouped the eleven states of Malay as one unit, and the two Borneo states separately. Sabah was one of three components of Malaysia. The wording was changed in 1976 to a listing of all the states without distinction. Sabah had become one of thirteen.

The history of the PBS goes back to 1985 when the party won control from the incumbent *Berjaya* party in 1985. The *Berjaya* party had been comprised of Muslim Malays sympathetic to the aims of the federal government. This transfer of state power marked the beginning of a struggle between the Malay-dominated federal government and the Sabah state government, dominated by indigenous, largely non-Muslim ethnic groups.

In July 1990, the PBS party was reelected to Sabah's state government on a platform calling for greater autonomy and a reverting to the role outlined for Sabah in the Twenty Points. Specifically, PBS called for a dramatic redistribution of the revenue earned by exploiting Sabah's resources, mainly offshore oil. (At present, five percent of the

¹ Quoted in "Thorny Issues in Federal-State Relations: The Case for Sabah and Sarawak" by Dr. Jeffrey Kitingan, in *Reflections on the Malaysian Constitution*, Persatuan Aliran Kesedaran Negara; Penang, Malaysia; 1987; p. 151.

² The National Front alliance has maintained a two-thirds parliamentary majority in every election since formation.

³ "Mahathir had routinely deployed his two-thirds Barison majority to ratify his personal policy preferences and alter the constitution." William Case, "Comparative Malaysian Leadership," p. 463, *Asian Survey*, Volume XXXI, number 5, May 1991.

profit goes to Sabah and 95 percent to the federal government; PBS proposed to make the split 50-50.) Today, it wants more administrative autonomy for Sabah; more appointments of Sabahans to the federal cabinet and civil service; an independent television station; an independent university; repeal of the ISA; and the expulsion of tens of thousands of illegal Filipino and Indonesian immigrants (generally Muslims, who, despite being merely temporary residents in the Federation of Malaysia, have been granted the right to vote).⁴

Generally poor relations between Kuala Lumpur and Kota Kinabalu worsened in October 1990 when, four days before the national election, the PBS party suddenly withdrew from the *Barisan Nasional* and joined the opposition alliance party, *Semangat '46* (Spirit of '46)⁵. While the timing of the defection seemed abrupt, the split may not have been entirely unanticipated. According to Sabah's Deputy Chief Minister Bernard Dompok, relations between PBS and the National Front had never been cordial since the day PBS came to power in Sabah in 1985. "We were really being tolerated in the coalition and [the Front was] waiting for us to pull out."⁶

The defection led to no significant electoral loss for the National Front which retained its two-thirds majority. Mahathir, however, was determined on political retaliation. On the day after the PBS defection, he announced that UMNO would form branches in Sabah to compete for state power.⁷

THE ARRESTS

The first four arrests occurred between May 18 and June 7, 1990, just before the Sabah state elections in July.

Damit Undikai, 54, was arrested on May 18, 1990, by Special Branch police forces for allegedly being the head of those plotting to remove Sabah from the federation.⁸ A retired Special Branch officer himself, Undikai was a member of the PBS. He was arrested at Centrepoint Building in Kota Kinabalu, Sabah's capital.

Undikai is married and has five children. After the initial 60-day interrogation period, his detention was extended two years. He is now being held in the Kamunting Preventive Detention Camp, in Taiping, Perak, some 280 kilometers north of Kuala Lumpur, as are the other five detainees. All are under two-year detention orders.

Benedict Topin, 37, was arrested on May 25, 1990. He was charged under Section 73 of the ISA for plotting "to take Sabah out of Malaysia." The Malaysian police claimed they were monitoring his activities since 1987. Topin is a member of the PBS party, and Executive Secretary of the Kadazan Cultural Association (KCA).⁹

⁴ "Sabah, Federal Relations Seen at 'Lowest Ebb'" by A. Letchumanan, in Hong Kong AFP January 8, 1991, quoted in *Federal Bureau Information Service (FBIS)*, January 8, 1991, p. 39.

⁵ UMNO was founded in 1946, while Malaysia was still under British rule. Semangat '46 leaders claim that in power they will return the party to its original intentions. From Case, p. 471, note number 21.

⁶ *FBIS* January 8, 1991.

⁷ *Ibid.*

⁸ Amnesty International, "Malaysia: New Internal Security Act Detainees;" September 1990.

⁹ Sabah Chief Minister Joseph Pairin Kitingan is president of the KCA by virtue of the fact that he was named *Huguan Siow*, or Supreme Chief of all Kadazans, for his work as a lawyer on behalf of Kadazans.

After his arrest, Topin was moved to Kuala Lumpur. His family was notified but not allowed access to him until June 12, 1990, 19 days after the arrest, and then for only 20 minutes.

Albinus Yudah, 41, was arrested on May 25, 1990 en route to the Borneo Rest House where he worked as chief of security.

A father of eight, Yudah worked from 1969-85 as a police constable and was later a security guard at the Tanjung Aru Beach Hotel and with the Sabah Forest Industries. He also worked as a tourism promoter at the Tambunan Village Resort Center (TVRC) until August 1990. He is an active member of both the PBS and the KCA.

Abdul Rahman Ahmad, 51, was arrested on July 7, 1990 in his office at Sabah Police Headquarters. Prior to his arrest, Ahmad was the Assistant Superintendent of Police, attached to the Special Branch. He is under a two-year detention order and is in the Kamunting Detention Center.

Vincent Chung, former Yayasan Sabah manager for administration and personnel, was arrested on January 19, 1991.

Jeffrey Kitingan, 43, the younger brother of Sabah Chief Minister Joseph Pairin Kitingan, was arrested on May 13, 1991. On July 17, 1991, Deputy Home Minister Datuk Megat Junid Megat Ayab announced to the press that his detention orders were extended another two years by a letter signed by Home Minister Mahathir.

Director of Sabah's Institute for Development Studies (IDS), Kitingan had been an outspoken proponent of increased state administrative autonomy. He called for "a greater role for Sabah and Sarawak in building a Malaysian nation...Right now we are on the periphery."¹⁰ Kitingan is also director of the Sabah Foundation, the organization entrusted with developing Sabah's natural resources and investing its timber earnings in education, rural health services and other social welfare projects.

Kitingan had been arrested in early 1990 and charged on seven counts of corruption for various offenses related to the export of timber. He was released on bail. Prime Minister Mahathir said at the time that some leading Sabah political figures were trying to incite anti-Malaysia feelings in order to accrue more power and wealth for themselves. Corruption charges were also brought against Chief Minister Joseph Pairin in January 1991. Kitingan termed the charges "political persecution."¹¹

RELEASED

Maximus Johnity Ongkili, deputy chief director of the Institute of Development Studies, was arrested on January 3, 1991 while dining with three Sabah politicians in a restaurant in Kuala Lumpur. He was in the city accompanying Chief Minister Joseph Pairin, who was attending a session of Parliament.

Police reportedly wanted to investigate Ongkili's role in the IDS. He was suspected of engaging in activities detrimental to the country's security. On March 2, 1991, he was released unconditionally and returned to Kota Kinabalu.¹²

¹⁰ Quoted in "Double Blow," by Suhaini Aznam in *Far Eastern Economic Review (FEER)*, May 23, 1991, p. 11.

¹¹ *Ibid.*

¹² "Sabah Institute Executive Director Released," Kuala Lumpur Domestic Service in Malay, 3/3/91, quoted in *FBIS*, 3/4/91, p. 22.

Ongkili is strongly connected to Pairin, having been his press consultant during the state elections in July 1990 and in the national elections three months later. In addition to managing the daily affairs of the running of the IDS, he is a senior researcher. He is also the nephew of Pairin and Jeffrey Kitingan.

THE INTERNAL SECURITY ACT (ISA)

The ISA enables any police officer to arrest without warrant anyone considered likely to pose a threat to security of Malaysia. Those arrested can be detained for 60 days without charge or review, and the Minister of Home Affairs has the authority to extend the detention orders for up to two years, renewable indefinitely. Prime Minister Mahathir is also Home Affairs Minister.¹³

The ISA, adopted in 1960, was intended to be used in the context of an armed insurgency by the Communist Party of Malaya. According to Tunku Abdul Rahman, Prime Minister at the time of Malaysia's formation,

[The] ISA introduced in 1960 was designed and meant to be used solely against the communists. My cabinet colleagues and I gave a solemn promise to Parliament and the nation that the immense powers given to the government under the ISA would never be used to stifle legitimate opposition and silence lawful dissent.¹⁴

Under Mahathir, however, it has been used precisely for these purposes. Between October and December 1987, 106 opposition politicians, social activists, dramatists, environmentalists and others were arrested and detained under the ISA. Known as Operation Lallang, (*lallang* means "weed" in Malay), the crackdown targeted non-violent critics of the federal government.

In January 1991 Deputy Home Minister Datuk Megat Junid Megat Ayub told the House of Representatives that there were 142 detainees then under the ISA. Reasons for detention included Communist activities, religious extremism, and suspected participation in "Operation Talkak," the term used to refer to the alleged plot to secede Sabah from Malaysia.

The right of ISA detainees to be fairly charged and tried is restricted not only by the provisions in the ISA for indefinitely renewable detention without trial. It is also restricted by a June 1989 amendment passed by the Malaysian parliament removing the jurisdiction of courts to hear *habeas corpus* petitions from ISA detainees. According to a City Bar association report, "Prime Minister Mahathir has acknowledged that the bill was intended to strength the hand of the executive personnel, lest they become too "wary" of detaining people under the ISA."¹⁵

CONCLUSION

Asia Watch believes the arrest of the seven men was in violation of the internationally recognized right not to be subjected to arbitrary arrest and the right to freedom of expression. It is concerned that they were arrested because of

¹³ For a detailed analysis of the ISA, see Beatrice S. Frank *et.al.*, *The Decline in the Rule of Law in Singapore and Malaysia*, Association of the Bar of the City of New York: New York, 1990.

¹⁴ *Ibid.*, p. 35

¹⁵ *Ibid.*, p.37

their association with the PBS party and/or their demands for greater autonomy for Malaysia. Asia Watch calls on the Malaysian government to release the remaining six detainees immediately and unconditionally. It also calls on the Malaysian government and parliament to review the ISA and its amendments with a view toward repeal. Given its broad wording, the extraordinary powers given the executive branch and the restrictions on the civil rights of those detained under the ISA, it will in its present form continue to be the source of human rights abuses.

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