

£MALAYSIA

@Administrative Detention Of Sabahans

I. Administrative detention of political opponents in the State of Sabah

Seven persons from the state of Sabah are now being held by Malaysian authorities under the Internal Security Act of 1960 (ISA) without charge or trial for alleged involvement in a plot "to take Sabah out of the Federation of Malaysia."

Four of the prisoners were arrested in 1990, namely: Albinus Yudah, a former police constable; Wencelous Damit Undikai, a former police sergeant; Abdul Rahman Ahmad, a former Assistant Superintendent of Police and Benedict Topin, former Chairman of Sabah Air. (For background information on their arrests, see Malaysia: New Internal Security Act Detainees, AI INDEX: ASA 28/04/90, issued in September 1990.)

Those arrested in 1991 include: Vincent Chung, a businessman; Dr Jeffrey Kitingan, former Executive director of Sabah Foundation; Ariffin Haji Hamid; and Dr Maximus Ongkili, former deputy chief executive of the Institute of Development Studies in Sabah. Maximus Ongkili was released in March 1991 after 59 days imprisonment without charge or trial. All of the detainees were known supporters of the *Parti Bersatu Sabah* (PBS), United Sabah Party, a legal political party which currently forms the state government.

In March 1991, Inspector-General of Police Tan Sri Mohamed Haniff Omar said that the authorities were still questioning the Sabah detainees about the alleged plot to take Sabah out of the Malaysian federation. He said that the alleged plotters acted under the banner of a group called *Pertubuhan Pembebasan Rakyat Sabah* (Sabah People's Liberation Organization) and that the police are continuing to investigate this alleged plot. He said the investigation is not easy because of the involvement of a "foreign power". Earlier, Prime Minister Mahathir Mohamad, who is concurrently Home Minister announced that the alleged plot to secede Sabah from Malaysia is being assisted by a "foreign power". He did not name the country he referred to.

The federal authorities have not presented any evidence to substantiate its public accusation that the seven ISA detainees were engaged in a plot "to take Sabah out of the Federation of Malaysia". None of them have been charged or tried.

Amnesty International believes that the seven may have been detained solely for their non-violent and lawful work within the Sabah-based political party, the PBS, and as a

consequence of political conflicts between the PBS and the federal government. The detainees may be held indefinitely without charge or trial under the Internal Security Act, in violation of their right to defend themselves against the accusations made before a court of law in accordance with internationally accepted legal procedures. The government has made allegations in public against the seven while not allowing the accused the right to defend themselves in a fair and public trial.

The Internal Security Act has been regularly applied in the past to detain non-violent critics and opponents of the government. Although most long-term prisoners have been released in recent years, some prisoners of conscience in the past were held under the Act for fifteen years or more without having had an opportunity to contest the basis for their detention.

While acknowledging that it is holding the seven prisoners from Sabah in Kamunting Detention Center in Taiping, Perak state, the Malaysian Government has refused to provide Amnesty International with further details of their arrest and detention.

1. Vincent CHUNG

Vincent Chung, 48, was arrested on 16 January 1991 at the Karamunsing police station in Kota Kinabalu, after being summoned to the station for questioning. On the next day, several police officers raided his office at the 16th floor of the Sabah Foundation headquarters building in Likas Bay and removed several files. He was arrested for alleged involvement in a "plot to secede Sabah from the Federation of Malaysia". He is held under Section 8 of the ISA which allows for a two-year detention without trial, renewable indefinitely.

Vincent Chung is the administration and personnel manager of Innoprise Foundation, a holding company of the Sabah Foundation. He has a wife and two daughters.

2. Dr Jeffrey KITINGAN

Dr Jeffrey Kitingan, 43, was arrested on 13 May 1991 in Sabah also for alleged involvement in a plot to take the state of Sabah out of the Federation of Malaysia. He is likewise held under Section 8 of the ISA which allows for a two-year detention without trial, renewable indefinitely.

He is also facing charges of corruption in relation to alleged log shipments by companies owned by the Sabah Foundation, of which he is the director, and of failure to declare US\$14.5 million in assets.

Jeffrey Kitingan held senior positions in several Sabah institutions. He was Executive Director of Sabah Foundation, a statutory body of the Sabah state government and Executive Chairman of the Institute of Development Studies (IDS), a "think tank" of the Sabah state government.

Jeffrey Kitingan is a younger brother of Datuk Joseph Pairin Kitingan who is the current Chief Minister of the State of Sabah. Jeffrey Kitingan's wife is able to visit him at least once a week.

3. Ariffin Haji HAMID

Ariffin Haji Hamid, 38, was arrested under the Internal Security Act on 1 July 1991 also for alleged "involvement in activities detrimental to national security and participation in the Sabah plot." Amnesty International has no further information about him.

4. Benedict TOPIN

Benedict Topin was arrested by the Malaysian Special Branch at the grounds of the Kadazan Dusun Cultural Association in Kota Kinabalu, Sabah on 25 May 1990. At the time of his arrest Benedict Topin, aged 36, was the Executive Secretary of the Kadazan Dusun Cultural Association and Chairman of Sabah Air. He belongs to the Kadazan ethnic group in Sabah and is a Catholic as are most Kadazans in Sabah.

It was reported that Benedict Topin has been getting medical treatment for a urinary tract infection as well as for gout. His wife is able to visit him only once in every three months due to financial difficulties in meeting airfare expenses between Sabah and Kuala Lumpur. He is now allowed to write at least four times a week. He is reported to keep himself busy by assisting the Kadazan Cultural Association of Sabah in checking entries for a Kadazan dictionary project.

5. Albinus YUDAH

Albinus Yudah, 41, born in Tambunan, Sabah, was also arrested on 25 May 1990 while on his way to the Borneo Rest House in Kota Kinabalu where he worked as the

Chief of Security. He is a member of the Kadazan ethnic group and a Catholic. he worked in the police force of Malaysia from 1969 to 1985 as a police constable. Later he worked as a security man with the Tanjung Aru Beach Hotel and with the Sabah Forest Industries and as a tourism promoter at the Tambunan Village Resort Centre (TVRC) until April 1990.

Albinus Yudah is reported to have been admitted to the Ipoh General Hospital in Perak state in May 1991 for a large swelling on the side of his neck. He was operated on to remove tissue for tests. His wife saw him at the hospital and said that he was handcuffed to his bed all the time in a public ward at the hospital and placed under guard by two policemen. The doctors said that further tests must be done to determine whether he has cancer. In June and July he was admitted to the Taiping General Hospital in Perak state. His wife was able to visit him about once a month until May when financial difficulties prevented her from continuing to do so regularly.

6. Abdul Rahman AHMAD

Assistant Superintendent of Police Abdul Rahman Ahmad, 51, was attached to the Special Branch of the Sabah police headquarters in Kepyayan near Kota Kinabalu, Sabah, when arrested on 7 June 1990.

The family of Abdul Rahman Ahmad has not been able to visit him since January 1991 due to lack of financial resources for airfare expenses between Sabah and Kuala Lumpur.

7. Wencelous Damit UNDIKAI

Wencelous Damit Undikai was arrested on 18 May 1990. He is accused by the police authorities of being the head of the "plotters" intelligence section. He is 54 years old and an ex-police detective sergeant from Kota Kinabalu, Sabah.

II. The political context

The Federation of Malaysia was formed in 1963 and incorporated the territories of Malaya, Sarawak, Sabah (formerly North Borneo) and Singapore. The latter left the Federation and became an independent state in 1965.

Malaysia is governed by an 11-party coalition, the *Barisan Nasional* which is dominated by the UMNO, headed by Prime Minister Mahathir Mohamad. Since the mid-1980s the Sabah state legislature has been controlled by the PBS, making it the only state in Malaysia to be led by a political party not dominated by ethnic Malays, most of whom are Muslims. The PBS withdrew from the *Barisan Nasional* in October 1990.

The PBS won control of the Sabah state government for the first time in 1985, when it defeated the United Sabah National Organization (USNO). The PBS draws its support primarily from ethnic Kadazans, mainly Christians, who form the largest single ethnic grouping in the state. The PBS won subsequent elections in May 1986 and October 1990.

Since the mid-1980s relations between the Sabah state government and the federal government have been strained. The PBS has sought greater autonomy in state administration, more consultation on local issues and a larger share of Sabah's oil and timber revenues. It has also rejected UMNO's attempts to establish a special power-sharing arrangement between Malays and non-Malays within the state, claiming that its membership is already multi-racial. Those opposed to the PBS have accused it of favouring ethnic Kadazans over members of the Malay and Chinese communities.

In December 1990, the Prime Minister warned that the federal government would not hesitate to take action against anyone breaking the law. He also accused the Institute for Development Studies (IDS), headed by Dr Jeffrey Kitingan, of fanning hatred towards Malaysia among the people of Sabah.

In January 1991, Sabah Chief Minister Joseph Pairin Kitingan accused the federal government of harrassing the PBS because of its withdrawal from the ruling *Barisan Nasional* coalition. In May 1991, he claimed that federal leaders had been "unfair towards Sabah, especially in terms of allocations. This was one reason why the state government asked for higher oil royalties which could go a long way in developing Sabah." He also stated that the federal government's reluctance to listen to Sabah's claims was one of the main reasons why PBS pulled out of the *Barisan Nasional*. He urged the federal authorities to release the Sabahans detained under the ISA, including his brother Dr Jeffrey Kitingan, and said that they should be brought to court if there was any evidence of their involvement in the alleged secession plot.

In April 1991, State Police Commissioner Datuk Samsuri Arshad claimed that the police had obtained several copies of seditious pamphlets believed to have been distributed in Sabah allegedly to incite ill-feelings among Sabahans against the federal

leadership. In the same month, Syed Hamid Albar, a minister in the Prime Minister's department in Kuala Lumpur, accused the Sabah government of discriminating against Muslims and in favour of Christians, particularly in the appointment of political posts and award of scholarships.

The Sabah Chief Minister was himself arrested in January 1991 and later released after posting bail of M\$1.2 million. He was charged with three counts of corruption involving the award of logging contracts.

In August 1991, Prime Minister Mahathir Mohamad speaking after a meeting of the UMNO Supreme Council in Kuala Lumpur, said that a referendum to allow the people of Sabah to decide whether to remain in Malaysia is unconstitutional. He said the law did not allow any state to secede from the Federation of Malaysia. The Prime Minister's statement was in response to a suggestion by a PBS member of parliament that a referendum be held in Sabah to determine whether the people wanted to remain in the federation.

In September 1991, Sabah Chief Minister Joseph Pairin Kitingan stated that his party the *Parti Bersatu Sabah*, would work closely with the *Barisan Nasional* but said that "where it concerns Sabah's rights and interests we will maintain our stand." He denied that the PBS was involved in a plot to secede Sabah from Malaysia. He also called for the abolition of the ISA which he described as "too dangerous a weapon to be in the hands of any person or authority and had obviously been abused."

III. The Internal Security Act 1960

There are three separate sets of laws in operation in Malaysia which allow the government to detain suspects without trial. The Internal Security Act (ISA), introduced in 1960, invests the Malaysian executive with wide-ranging powers of arrest and preventive detention for persons deemed to be a threat to national security. It has frequently been used in the past to detain individuals on account of their alleged or real non-violent political activities or beliefs. The Emergency (Public Order and Prevention of Crime) Ordinance of 1969 gives the executive the power to detain suspects on account of their allegedly having committed, or having intended to commit, criminal offences. The third and most recent law allowing preventive detention is the Dangerous Drugs (Special Preventive Measures) Act, 1985. This is intended for use in the apprehension of suspected drug traffickers.

Under Section 8 of the ISA, the Minister of Home Affairs has the power to detain anyone whose activities are deemed "prejudicial to the security of Malaysia". Under Section 73 of the Act, police officers have the power to arrest any person, without warrant, and detain them for up to 60 days for investigation if grounds for detention under Section 8 are believed to exist, or if they believe that the person "has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia". The authorities have no legal obligation to inform those held in custody of the allegations against them until the end of the investigation period.

If the Minister of Home Affairs is satisfied that grounds for continued detention have been established, he has the authority to issue a two-year detention order, renewable indefinitely. The detention order must be issued before the 60-day investigation period has concluded. All ISA detainees have the right to appear before a government appointed Advisory Board, and to appeal against the allegations against them. The Board makes recommendations to the Yang di-Pertuan Agong (King), but these are not binding on the government or the Minister of Home Affairs. In addition, detainees formerly had the right to challenge the legality of their detention through *habeas corpus* applications. In June 1989, an amendment to the ISA barred the judicial review of all actions and decisions by the King or the Home Minister in the exercise of their discretionary power under the ISA, and restricted *habeas corpus* hearings to examination of possible procedural irregularities in their detention.

The powers invested in the police to arrest and detain individuals under Section 73 of the ISA for up to 60 days without a warrant for the purposes of investigation, and without informing the detainee at the time of arrest of the reasons for doing so contravene internationally accepted guarantees against arbitrary arrests, as reflected in Article 9(1) and 9(2) of the ICCPR which states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. Anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest, and shall be promptly informed of any charges against him."

Both Section 73 and Section 8 of the ISA, of which the latter allows detention without trial for a period of two years renewable indefinitely, violates Article 9(4) of the ICCPR which states that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

In the present case, the opportunities open to the Sabah detainees to seek redress from the courts and to seek an independent appeal or review of their case is extremely limited.

IV. Summary of concerns

Administrative detention is the practice of some countries, including Malaysia, of detaining persons by the decision of an administrative authority rather than as a result of a judicial process. Any system of administrative or preventive detention which invests an executive authority with the power to detain individuals without charge or trial risks being used to circumvent the due process of law and the authority of the courts. In such situations, individuals may be arbitrarily detained for purposes of harassment or intimidation, as a means of facilitating oppressive and illegal interrogation, or to silence non-violent critics and political opponents of the government exercising their basic human rights such as the rights to freedom of expression and belief and to freedom of association. These dangers are especially present where the system of

administrative detention fails to provide detainees with any opportunity for effective remedy of violation of their fundamental right through a form of judicial appeal.

Amnesty International is concerned that the seven detainees from the State of Sabah held under the ISA without charge or trial may be prisoners of conscience held solely for the non-violent exercise of their rights to free expression and freedom of association. It recommends to the Government of Malaysia that they be released immediately and unconditionally if they are not to be formally charged with a recognizable criminal offence and promptly tried in public in a court of law according to established international standards for fair trial.

Amnesty International also urges the Government of Malaysia to take steps to accede to the International Covenant on Civil and Political Rights (ICCPR) including its optional protocol; to the International Covenant on Economic, Social and Cultural Rights; and to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in order to demonstrate its stated commitment to uphold internationally recognized human rights principles.

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OCTOBER 1991

SUMMARY

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Amnesty International is concerned that seven supporters of the *Parti Bersatu Sabah* (PBS), United Sabah Party, arrested in 1990 and in January, May and July 1991, are being detained without charge or trial under the Internal Security Act of 1960 (ISA).

The arrests have occurred in the context of increasing tension between federal authorities and the PBS-dominated government of the Malaysian State of Sabah (formerly North Borneo). The detainees have been publicly accused of involvement in a plot to take Sabah out of the Federation of Malaysia. Amnesty International considers them to be political prisoners who should be formally charged in court and brought to trial or be released immediately and unconditionally. This paper provides the background to the recent arrests in Sabah. (See also Malaysia: New Internal Security Act Detainees, AI Index: ASA 28/04/90, issued in September 1990, for more information on the 1990 arrests.)

KEYWORDS: ADMINISTRATIVE DETENTION1 / POLITICAL ACTIVISTS1 / BUSINESS PEOPLE / POLICE AS VICTIMS / PRIVATE SECURITY GUARDS AS VICTIMS / ACADEMICS / ETHNIC GROUPS / RELIGIOUS GROUPS / ILL-HEALTH / MEDICAL TREATMENT OF VICTIMS / RESTRAINTS / EMERGENCY LEGISLATION / POLITICAL BACKGROUND /

This report summarizes an eight-page document (2988 words), *Malaysia: Administrative Detention Of Sabahans* (AI Index: ASA 28/09/91), issued by Amnesty International in October 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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MALAYSIA
ADMINISTRATIVE DETENTION OF SABAHANS

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. In addition please undertake as many of the following recommended actions as possible.

1. Groups working on the cases of the Sabah Internal Security Act (ISA) detainees should read the attached external paper.

DISTRIBUTION BY THE IS

This document has been sent direct by the IS to: All sections, Malaysia country coordinators, SEAMRAN coordinators and groups working on Malaysia prisoner cases.

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