

VENDETTA AND ABUSE OF POWER

*Quest for Justice
in The Land Below The Wind*

POLITICAL VINDICTIVENESS AND
PERSONAL VILIFICATION AGAINST
SYED KECHIK IN SABAH
(1975-2013)

FORMER ZARA
PROJECT LAND - 1968
(2,453 acres)

TANJUNG
LIPAT

COASTAL HIGHWAY
RENAMED JALAN TUN FUAD
STEPHENS

KOTA KINABALU CITY

KOTA KINABALU
INTERNATIONAL
AIRPORT

SHAARI ISA

'This book is for those who want to look at a better Malaysia and those interested in the history of this beloved nation - they will want to know what is in this book' - the author.

VENDETTA AND ABUSE OF POWER

Vendetta and Abuse of Power is a chronicle on injustices suffered by a towering figure in Malaysia's early nation-building history, Allahyarham Tan Sri Dato' Seri Syed Kechik bin Syed Mohamed Albukhary. It is also an analysis of the results of litigations spread over a 34-year quest for justice firstly by him, and later by his younger brother, Syed Salem Albukhary.

Syed Kechik was asked to go to Sabah by the federal government to bolster the federation's territorial integrity of Malaysia as we know it today. He was the centre's point person sent to reign in break-away belligerences among the two large Borneo partner-states of Sabah and Sarawak during the earlier years of the Malaysian federation following the separation of Singapore in 1965.

In Sabah – an east Malaysian state he called his adopted home - he introduced wide ranging socio-economic reforms to reengineer social needs and energise the state's economy. Today, every Malaysian in Sabah, young and old, can still enjoy the countless benefits from his enduring legacy.

Despite such significant contributions, Syed Kechik became the target of a vengeful political ploy. His opponents branded him as an outsider ravaging Sabah's timber resources. He was accused of manipulating the then Sabah's de facto ruler, AY Tun Datu Haji Mustapha bin Datu Harun for personal enrichment. The new political party's battle-cry to have him expelled from Sabah during 1975-1976 was surreptitiously led by the then Head of State, Tun Fuad Stephens, and openly spear-headed by Datuk Harris Salleh in this Party's Manifesto.

A barrage of slanders and efforts on character-assassinations were levelled against Syed Kechik. He was vilified as Sabah's No. 1 public enemy. The new Berjaya Party-led state government quickly removed him from his job as the first and only Honorary Director of Sabah Foundation which he was instrumental in establishing to provide primarily better education facilities for students in Sabah and to promote Malaysian consciousness amongst the people. He was relieved of all official positions. They attempted to strip him of his immigration status as a permanent resident of the State of Sabah as well as his state *Datukship* award.



2/10

VENDETTA AND ABUSE OF POWER

Quest for Justice in The Land Below The Wind

**Political Vindictiveness And Personal Vilification
Against Syed Kechik In Sabah
(1975-2013)**



VENDETTA AND ABUSE OF POWER

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(1975-2013)

Shaari Isa

Those elected to public office who acted *ultra vires* or in *mala fide* of their powers with intent to harm fellow citizens are in flagrant violation of their Oaths of Office and the Constitution. When such persons in the cloak of their elected positions act in derogation of the intent of the Constitution and intentionally erode the fundamental rights and liberties of the people they swear to protect, they will destroy this nation we love and cherish.



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'When men disobey the precepts of ALLAH, divine government is rejected and human governance unavoidably defaults towards the musings of *IBLIS*, the preeminent Master of deception. A creature that truly enjoys his work!'

The Hand of Iblis – An Anatomy of Evil
Omar Zaid, M.D.

'You never need think you can overturn any old falsehood without a terrible squirming and scattering of the horrid little population that dwells under it.'

Oliver Wendell Holmes,
famed U.S. Supreme Court Justice

'A lie will go round the world while truth is putting its boots on.'

Charles Spurgeon,
British Clergyman



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Research for this book involved many interviews and the analysis of hundreds of documents, personal files, newspaper reports, books, etc. I have devoted a considerable amount of time with Syed Salem Albukhary and Benjamin Hwa Yong. Benjamin Yong spent many years working for Allahyarham Tan Sri Dato' Seri Syed Kechik bin Syed Mohamed Albukhary and later with Syed Salem Albukhary. He is a co-director of Zara Sdn. Bhd. as well as Syarikat Banita Sdn. Bhd. He was privy to all the matters that took place at the material times. He did much research and ground work on matters not commonly known to others and which, I hope, will help to correct the many public misconceptions and misperceptions of people and events of yesteryears. The final presentation of this book is entirely mine.

Shaari Isa



1. **ALLAHYARHAM TUN MOHD. FUAD STEPHENS (Donald A. Stephens)**
Chief Minister of Sabah (1963 - 1964) / (April - June 1976)
United National Kadazan Organization (UNKO) / BERJAYA- BN
2. **DATUK HARRIS BIN MOHD SALLEH (now TAN SRI)**
Chief Minister of Sabah (1976 - 1985)
BERJAYA - BN
3. **DATUK SERI JOSEPH PAIRIN KITINGAN (now TAN SRI)**
Chief Minister of Sabah (1985 - March 1994)
PBS - BN / OPPOSITION STATE GOVERNMENT
4. **TAN SRI SAKARAN BIN DANDAI (now TUN)**
Chief Minister of Sabah (March 1994 - December 1994)
UMNO - BN
5. **DATUK MOHD. SALLEH BIN TUN MOHD. SAID KERUAK**
Chief Minister of Sabah (December 1994 - May 1996)
UMNO - BN
6. **DATUK YONG TECK LEE**
Chief Minister of Sabah (May 1996 - May 1998)
SAPP - BN
7. **TAN SRI DATUK SERI PANGLIMA BERNARD GILUK DOMPOK**
Chief Minister of Sabah (May 1998 - 13 March 1999)
PDS - BN
8. **DATUK SERI PANGLIMA OSU BIN HAJI SUKAM**
Chief Minister of Sabah (14 March 1999 - March 2001)
UMNO - BN
9. **TAN SRI DATUK CHONG KAH KIAT**
Chief Minister of Sabah (17 March 2001 - 26 March 2003)
LDP - BN
10. **DATUK SERI HAJI MUSA BIN HAJI AMAN**
Chief Minister of Sabah (27 March 2003 - Present)
UMNO - BN

SUCCESSION OF GOVERNMENT

Malaysia, as well as the states within its Federation, practises the Westminster form of government. Under this system, the government (be it Federal or State), as a body, is a successive entity irrespective of which political party the succeeding government represents. Succession in this context squarely places the incoming elected party in a position whereby it shall, upon assuming the role of government, take up the rights, responsibilities, liabilities and duties of all its predecessors in accordance with the law of the land.

Intimations of the compulsory acquisition of the former Zara Project Land were made by Allahyarham Tun Mohd. Fuad Stephens before and during election time (1975/1976), followed quickly by the compulsive action of his successor, the then Yang Amat Berhormat Datuk Harris Bin Mohd. Salleh in October 1976. Harris's immediate successor, through his sixth successor did nothing during their respective tenures. They all abused their power by forbearance from the exercise of the duty required of them by law to complete and legitimise in the interest of justice the compulsory acquisition of the Zara Project Land without undue delay.

For leaders to exercise their powers outside the provisions of the constitution and laws constitutes an abuse of power and corruption of the worst kind. Gratification acquired through the forbearance from the exercise of any right or any official power or duty when required by law and in accordance with the law is equally corruption of the worst kind and an abuse of power.



SUCCESSION OF GOVERNMENT

The seventh successor to Harris - the then Yang Amat Berhormat Datuk Chong Kah Kiat (later Tan Sri) - called a meeting on February 10, 2003 which he said was requested by the then Yang Amat Berhormat Prime Minister Dato' Seri Dr. Mahathir Mohamad (now Yang Amat Berbahagia Tun) to discuss Zara Sdn Bhd's predicaments that were made known to the Prime Minister by the directors of Zara Sdn Bhd. He had brought to the meeting, his successor-to-be, the then State Minister of Finance – Yang Berhormat Datuk Seri Musa Bin Haji Aman. According to the directors of Zara Sdn Bhd present at that meeting, what little transpired then and coupled with the body language of these two august gentlemen, the matter of the former Zara Project Land was not in any way going to be seriously determined by them at that particular meeting or in the foreseeable future. Their disinterest in justice and the blatant lack of will to solve the then twenty-seven-year-old injustice was abundantly clear. However, Chong Kah Kiat's action of having Musa Aman at this meeting appeared to suggest that he was passing the buck to his appointed successor who as the former Director of Sabah Foundation (1995-1999) was partly instrumental in reviving the comatosed Civil Suits Nos. 351 and 352 of 1979 against Syed Kechik, Zara Sdn Bhd, and Syarikat Banita Sdn Bhd after a record delay of eighteen years during which time vital witnesses had died or become incapacitated, rendering the cause of justice impossible. Musa Aman's journey of personal resentment towards Syed Kechik began to openly emanate from late 1996 during the revival of these two Suits



SUCCESSION OF GOVERNMENT

which appeared to have been carried out on his recommendation with the tacit acquiescence of the respective Chief Ministers (numbering five through nine) cum Chairmen of the Board of Trustees of the Sabah Foundation. Since March 2003, he, as the Chief Minister/Minister of Finance and Chairman of the Board of Trustees of the Sabah Foundation, has played a direct role in the decisions of the State Government.

This politically-motivated vengeance against Syed Kechik, ill-conceived by the Berjaya Party Government in 1976, continued through 2013 during UMNO Sabah's administration, capping a thirty-seven-year period of injustice and abuse of power, vendetta and morbid fascination with evil and hatred. ❑

Foreword

Once in a while humanity is presented a captivating personal record, of an international magnitude forged in pain and distress. The people who suffered gathered up their herculean strength and as Xiang Yu of the Chinese classics said, such people had the strength to lift mountains and the spirit to take on the world. Their spirit overcame their fears. Their struggles continued in the quest for honour and victory and rightly, they were rewarded.

Vendetta and Abuse of Power is such a story.

It is more like an epic if the movie directors wish to capture the beguiling intricacies on the silver screens of the destiny of Man – in this case the destiny of two brothers and their conflict with a powerful state authority and its apparatus. Vendetta here means a prolonged series of retaliatory, vengeful and hostile acts.

James Madison, the fourth United States President (1751-1836) warned that “the essence of government is power, and power, lodged as it must be in human hands, will ever be liable to abuse”. Geoff Metcalf¹ wrote that “abuse of power under the colour of authority is the most heinous, reprehensible act a person in authority can display”.

In undertaking life’s journey, as a thinking creature, some of the questions often asked of oneself are – “What is my destiny? What do virtues and ethics have to do with my place in the universe? And why should I be a moral creature?” The ancient Greek philosophers believed that “knowing yourself” required effort. For that reason they prized it highly enough to position it in the category of knowledge called “wisdom”.

Those Greek philosophers, identified and examined the following traits of human character – self-discipline, compassion, empathy, responsibility, friendship, work, courage, perseverance, honesty, loyalty and faith.

¹Geoff Metcalf is an author, writer, and columnist. He was a nationally syndicated radio talk show host based in Washington, D. C. He is the Editor of CalNews.com. Metcalf is a former Green Beret.

Moral and religious education – the training of heart and mind towards good (*ma'ruf*) and against evil (*munkar*) – involves many things. It involves rules and precepts – the *dos* and *don'ts* of life with others – as well as explicit instruction, exhortation, and training. Such education must affirm the central importance of moral character. It has been said that there is nothing more influential, more determinant, in a child's life than practising morality within the family, with examples provided by the adults, and extending outside.

In this book, at different stages, the reader will observe the test of these virtues, the cultivation and practice of which so many powerful people find hard to swallow. Those who believe in the power of God (and for Muslims the power of Allah) realise that justice or *adil* must be the ultimate tower protecting society and the nation in all its glory.

The essential nature of justice is found in the Holy Quran at *Surah 4 Verse 135*:

“O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it is against yourselves, or (your) parents, or (your) close kindred. Whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (than ye are). So follow not passion, lest ye lapse (from truth) and if ye lapse or fall away, then lo! Allah is ever informed of what ye do.”

This book is also a meticulous and brilliant analysis of litigation in which a party had to endure trials and tribulations during its journey in the quest for justice while attempting to perpetuate its honour and good name. These trials and tribulations included having the trial conducted by a biased judge, and a panel of three eminent appellate judges which completely departed from its own ruling on a most decisive point and additionally, a panel of three of the most learned judges of the apex court who in turn failed to examine the adduced evidence on which the panel of appellate judges had made their flawed decision. I hope the better faculties of law and respected scholars will similarly examine other cases and judgments and so help the disadvantaged and the community to attain their due standard of fairness from courts and the government.

Oftentimes the “government”² or the “state” may try, in their interest, to be just and fair in their dealings with the citizenry. But not surprisingly, some

² Ibn Khaldun (1332-1406) defined “government” as “an institution which prevents injustice other than such as it commits itself”.

individuals in the government hierarchy neglect the standards of human conduct and the dignity of their positions either because they enjoy corruption and some form of gratification or they lack proper education. Either way, those responsible for the selection of state and governmental leaders cannot permit such weaknesses to continue, much less to exist.

When the ‘Court of Last Resort’ avails itself of or becomes subservient to another avenue of last resort, intrigue and failure emanate from the justice system. Courts, as many eminent judges and legal luminaries have often warned, must be independent and robust in their impartiality and neutrality. But judges must work hard and get to the bottom of each case, examine each matter and the implications, pit every statement against facts and the principles of law. Then and only then can the judges arrive at sound decisions.

Courts must continue to be kept free of and sanitized from politicians and any other outside influences or third parties. When a matter is being heard, there must be no interaction with political personalities and imperatives. The highest ideal of justice is that courts are unfettered.

Was it not our very own (AY)³ Tun Mohamed Suffian who, right here in Malaysia, reminded the world that *“the two essentials of the Rule of Law are the independence of the Bar and the independence of the Judiciary”!*

We must commend Tuan Syed Salem Albukhary and his longtime colleague, Mr. Benjamin Hwa Yong, for their painstaking efforts to research and expose hard facts and data for the author.

The book has the hallmark of Dr. Shaari Isa’s skill in writing and systematic compilation. His calm voice of reason, his attention to the finest details, and unlimited patience make this spell-binding book a simple read, and in that simplicity, lie his brilliance and articulation. Professor Salleh Buang Esquire, himself a wellknown writer and lawyer has written a very fitting Introduction and, I am given to understand, has also given the book a read-over.

I agreed to write this foreword because I love Sabah and wish to see the

³Allah Yarham

state and the people prosper and progress. I first landed in Kota Kinabalu one evening in the early 1970s by a TUDM Hercules (*Tentera Udara Di-Raja Malaysia* – Royal Malaysian Air Force). My group was invited to lunch at Tuan Syed Kechik's (then not yet a Datuk or Tan Sri) home on Signal Hill. We were briefed and he showed, at that early stage, his dynamic enthusiasm for how we could assist with the development of Youth Clubs in the Malaysian Borneo States for the benefit of their young people. About twenty years later in 1990, I was privileged to serve as a High Court Judge of Borneo, based in Kota Kinabalu, until 1993. My wife and I have good and pleasant memories of my stint in *The Land Below The Wind*.

Judges, legal practitioners and academics, every educated citizen both in and outside Malaysia as well as historians, will want to buy and read this book of history, of legal gyrations, twists and turns and of how politics, if not tamed, can go against good governance and even the tenets of religion.

Dato' Syed Ahmad Idid
Kuala Lumpur
April 2013

* * * * *

Note: Dato' Syed Ahmad Idid is the former Justice of the High Court of Malaya and Borneo. From 1990 through 1993 he served as a High Court Judge of Borneo, based at Kota Kinabalu. In 2004, he was appointed the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRC). He is a renowned author and writer of many books and articles on law, banking and arbitration. He has addressed international conferences in various parts of the world and has also participated in the United Nations Commission on International Trade Law (UNCITRAL) meetings in Vienna and at the UN Headquarters in New York on revamping the international arbitration rules.

At this time, Dato' Syed Ahmad Idid is a Guest Writer at the International Islamic University of Malaysia (IIUM).

Foreword

“Do not seek for the truth by means of men; find first the truth and then you will recognize those who follow it.”

-Sayyidina ‘Alī b. Abī Tālib-

Virtually all religious traditions have at one time or another attempted to understand and deal with the issue of justice; but none more so than the Islamic tradition, and the voluminous works reserved explicitly for the elaboration and explication attributed to this fundamental issue bear testament to this fact. By and large, an overwhelming majority of Muslim scholars from the classical period to these contemporary times have in one form or another dealt with this very issue. Indeed, this fact is a virtue of the religion of Islam itself. The two primary sources of Islam, the Qur’ān and the Sunnah, are saturated with countless moral exhortations referring to justice, intending to educate the Muslims as to how to conduct their affairs in a just manner in this world in preparation for the next. In doing so, the foregoing primary sources have established a worldview which was to be interpreted according to the faculties of reason afforded mankind. Certainly, in formulating and subsequently developing the concept of justice, the Muslim scholars relied upon the exhortations of the aforementioned two primary sources, although some philosophers, al-Kindī, al-Fārābī, Ibn Sīnā, Ibn Rushd, Ibn Miskawayh, and Nasīr al-Dīn al-Tūsī, became preoccupied with particular notions of justice conceived by the Greek masters of philosophy, Plato and Aristotle.

Drawing influence from the Greek and neo-Platonic philosophers, the Muslim philosophers constructed a concept of justice derived through reason and aided by the aforementioned primary sources. Their concept may be described as natural, owing to the very nature of man, eternal and immutable by virtue of the primary source of knowledge concerning justice; one may therefore perceive harmony between their concept, and that of divine justice. What this simply means is that for the Muslim philosopher, their concept of justice arrived at through reasonable intellect was not antithetical to

revealed knowledge concerning the same, by virtue of the fact that reason provides the rationale for divine justice. We may demonstrate their argument using the following syllogism. God created man. Man is defined as being a rational animal. It is that attribute of rationality which separates man from all other creatures. If God created man, and man was afforded the faculty of reason, then justice derived from reason was inspired by God.

Plato declared justice to be 'the sum of all virtues'. Likewise, the Muslim philosophers considered justice to be the most comprehensive of all virtues synonymous with wisdom, temperance, fortitude, and courage. Justice is intimate if not synonymous with truth, the right and good; its antithesis therefore is synonymous with injustice, tyranny, falsehood, and evil. Justice can thus be attributed to all things; human action can indeed be measured in terms of justice.

The purpose of justice, according to the Muslim scholars, is to guide man towards happiness in this world and the next. As such, justice is not limited merely to the juridical or ethical. Indeed, justice also encompasses the political domain. We may demonstrate this by once again making reference to the Muslim scholars who conceptualized justice according to three stages of progression beginning with ethics (*akhlāq*), proceeding through economics (*tadbīr al-manzil*), and culminating in politics (*siyāsah*). In doing so, they demonstrated the profound relationship between individual justice as exemplified by ethics, familial justice as exemplified by economics, and finally social justice as exemplified by politics. One may now clearly see that in order for man to live in his nature (*fitrah*), or for man to establish harmony in his family, and for man to serve society, he must be just. For example, when a man is just to himself he will conduct his affairs wisely and in moderation. Similarly, if the relationship among the members of his family rests on justice, then there will be peace and happiness. By the same token, when a society is governed by a just political order, it manifests its own perfection and will be content. And if truth and righteousness are justly apportioned, if dignity, wealth, opportunity, security and the like are afforded regardless of race, creed, political allegiance or social standing and distributed in a just manner, then there will be peace, harmony, dignity, and happiness in society.

Most if not all of the theologians and Sufis appear to agree with the

definition of justice put forth by the philosophers, which means ‘to put a thing in its proper place’. The meaning of justice is also synonymous with the word wisdom (*hikmah*). According to Ibn al-‘Arabi, justice means to apportion to each thing its due, to behave according to what is correct and proper, and that which is proper is wisdom. It is clear therefore, that wisdom is the foundation of justice.

As far as their application is concerned, both justice and wisdom share intimate, profound, inseparable purpose and meaning. Justice is expected to result from wisdom. Justice itself cannot therefore be adequately comprehended, let alone be manifest if wisdom is absent; and in order to achieve wisdom, one must have knowledge. Therefore, ultimately, the seat upon which everything else rests, is knowledge.

This clearly means knowledge concerning the proper places of things both in relation to themselves and in relation to other things. How then does one identify this knowledge concerning the proper places of things? Once again it may be stressed that knowledge concerning the proper places of things is manifested through action. If man’s actions lead to ignorance, error, and divergence, injustice has been dealt. Conversely if they lead to truth, resolve, and repose, justice has been served.

Syed Kechik did not survive the more than three decades it took for the judicial system to put things in their proper places. Justice delayed is justice denied. The unfolding events detailed in this book, *Vendetta and Abuse of Power*, illustrate to what extent justice was delayed, and in one of the two lawsuits, justice was completely denied. In that event, Syed Kechik suffered injustice caused by a complete absence of prudence and discretion.

The several applications to the judicial system made by his younger brother Syed Salem Albukhary, although based on incontrovertible adduced evidence to remedy this injustice, were summarily dismissed by the learned judges of the Federal Court – thus resulting in a travesty of justice.

SYED ALI TAWFIK AL-ATTAS

April 2013

Note: *Datuk Dr. Syed Ali Tawfik al-Attas was formerly Director-General of the Institute of Islamic Understanding Malaysia (IKIM).*

Preface

The classical Malay drama *Hang Tuah* portrays the interplay between the power of the state versus that of the individual. The drama ends with a duel in which the villain who represents the rights of the individual (*Hang Jebat*) is vanquished by the hero (*Hang Tuah*) who represents the supremacy of the state. The death of *Hang Jebat* is meant to remind the people of Melaka that there is no such thing as individual rights.

That was the situation in the old days in all societies worldwide. So for centuries the power of the state represented by *Hang Tuah* reigned supreme. But the days of the power of the state have long gone. However, attempts at reviving the supremacy of the state were not quite dead. Fired by the Germanic philosophy of Georg Wilhelm Friedrich Hegel, Hitler tried to bring back the supremacy of the state through Hegel's concept of the Fatherland. But it crumbled into dust with the ruins of Germany at the end of the Second World War. The world now believes in the words enshrined by Abraham Lincoln that government of the people, for the people and by the people, shall not perish from the earth.

I have for a long time been fascinated by the depth of the theme of the story of *Hang Tuah*, which revolves around the question of rights and justice. Equally fascinating to us all is that this question of human rights and justice has been in the minds of our ancestors since the fourteenth century. We do not know exactly which side the author of *Hang Tuah* was on. However, we should all realize that in the world of individual power and rights that we live in now, *Hang Tuah* is no longer the hero. *Hang Tuah* is a story about injustice, not about justice. In the renowned Nuremberg trials after the Second World War, twenty-four Nazi war criminals were indicted for crimes against humanity. They were the people who believed in the supremacy of the state and its rights.

This book, *Vendetta and Abuse of Power*, carries a similar theme. It is about injustice perpetrated by naïve leaders whose behaviour seemed to be

consistent with the outdated concept of the supremacy of the state with little respect for the rights of the individual. Similar to *Hang Tuah*, this book's narrative is also about a fight between an individual and a state, only in different arenas with different modes, one physical, the other verbal and mental. Both are deadly.

I had been toying with the idea of writing something on a theme similar to that of *Hang Tuah* when Syed Salem Albukhary invited me to write about his elder brother Tan Sri Dato' Seri Syed Kechik bin Syed Mohamed Albukhary. I thought it was indeed an honour to be invited to write about such a wellknown personality. Even then, I wondered at first whether I was competent enough to write the story involving so many complex testimonies and so many court cases covering such a long period of time, as I am not a lawyer by profession but a teacher and an accountant. Syed Salem's unshakable faith in me was most flattering and he assured me that regarding the legal matters I would have people to help me along. So I decided to accept.

Actually I knew little about Tan Sri Syed Kechik. I happened to meet him only once way back in the early 1980s on a plane from Kuala Lumpur to Alor Star when I was the Bursar at Universiti Utara Malaysia. We were complete strangers sitting beside each other. I felt rather awkward then because he was so simply dressed, in a short-sleeved shirt, simple trousers and a pair of sandals and I in a full suit! We talked for a short while. Much of the time he was sitting quite still, his face towards the window. Judging from the low tone of his voice and his forced and bitter smile, I guessed that his mind was clouded with uneasy thoughts. Much later, from his younger brother Syed Salem, I came to know more about the injustices he faced.

Now I cannot help recalling that perhaps as he was sitting there looking at the emptiness outside, he might have been wondering how much longer justice was going to elude him. He was perhaps also wondering whether he had done anything so seriously wrong to have deserved such evil treatment. It must have indeed been painful for him to know that it was the very people whom he came to help by putting their political and administrative house in order, who turned against him. His detractors must have seen with envy how one after another of his ideas had contributed towards the positive

changes in the political shape of Sabah followed by the social and economic developments. It must have been odd and unacceptable to their minds that he whom they regarded as a foreigner was at the centre stage of the development of Sabah. They were soon to show their resentment. With the power that they were to gain from the excesses of Tun Mustapha, and jealous at the successes of Syed Kechik's ideas that had such far reaching impact on the state, they began, as soon as they formed the government, the act of vengeance beginning with the forced appropriation of the ambitious and visionary Zara Project Land. They took the land that belonged to Zara Sdn Bhd, a private company in which he was a shareholder without the normal lawful practice of paying expeditious compensation. The seizure came to symbolize the stench emanating from the Berjaya government's vengeance, the impunity with which it secured its own satisfaction and its utter disregard for the rule of law. Among other things, they even viciously tried to banish him from the state. It was an unconscionable act on one hand, and vileness on the other. To add insult to injury, they also cancelled the Special Timber Licenses lawfully granted by Tun Mustapha to Syed Kechik's nominee company Syarikat Banita Sdn Bhd and caused him to be sued for millions of ringgit for alleged breaches of fiduciary duty to the Sabah Foundation and its subsidiary company, Seranum Sdn Bhd.

I sat next to him quietly with no idea that years later I was to write about him. He was never to know either that the man who was sitting in the plane beside him would years later be his biographer.

The legal matters mentioned above are those related to the struggle for justice. The man who took up arms against the injustice of the state was his younger brother Syed Salem. While he is not a professional lawyer, he was, and is, nevertheless well-versed with the workings and administration of law. Thus equipped with raw guts and determination and born with deep belief in human rights and natural justice, he fought on from one court case to another for more than thirty years. In the meantime, Syed Kechik, the innocent victim was slowly slipping away into mental and physical old age and beaten by dark and deep feelings of disappointment. He passed away not knowing whether the justice that they sought had ever been obtained. This is quite similar to *Hang Jebat*, who catching at the point of death, the last glimpse of his close friend, for whose rights

he rebelled, with the bloody kris in his hand, simply thought that the individual's rights and justice for which he fought were never to be.

Syed Kechik, at the moment of death, could have had glimpses of the artificial smiles of people who so envied him and who had been so successful in destroying him. But he could have also seen his brother's reassuring and comforting face. He could have likewise seen the momentary views of the flashing images of Tunku Abdul Rahman and Tun Razak at the moment he was told by them to go to Sabah, and hearing Tun Razak's concerned but sanguine voice when he later, as the Deputy Prime Minister and Director of Operations, inspiringly expressed his vision for a successful Malaysian federation thus -

“We have since managed with the passage of time and the goodwill and confidence of the people to surmount this temporary incursion of violence into an otherwise peaceful existence. Let us continue to strive for this peaceful life through racial harmony, subduing personal animosities and ambitions to the general and national cause. Just as a family cannot withstand the trials of life unless there is co-operation from all its members, so too a young and multi-racial nation like ours cannot withstand the trials and difficulties of political, social and economic evolution without a sincere desire and will from everyone, to work for, its healthy growth.”¹

After more than three long decades of struggles, Syed Salem at last won the court case; and the State government did pay to Zara Sdn. Bhd. the long overdue compensation for its land as decided by the court. The claims against Syed Kechik for breaches of fiduciary duties were also substantially defeated and would have been totally defeated if the Court of Appeal had not deliberately ignored its own previous ruling (see Chapter 10). But the pain, the anguish, the disappointment, the broken hope and despair at the sudden death of the Zara Project, the fights and the struggles in courts, the feeling of desolation at being called *orang luar* and the long wait for the compensation, can never be measured or compensated. They lie buried deep in the broken heart and the shattered bones of Syed Kechik. The good that he did is entombed in a cruel effort to destroy him through the vicious and immoral words and actions of his political opponents.

¹ Speech by Tun Abdul Razak bin Hussein, Director of Operations and President of the United Nations Association of Malaysia over Radio/TV Malaysia on United Nations Day, 24th October 1969

On principle, one should not accuse a person of wrongdoing until one has absolute proof of evidence. The accusation against Syed Kechik is cruel and wicked since evidence have shown that it is untrue – the accusers themselves should rightly be accused of spreading false information with intent to scandalize him and tarnish his good name.

This is an incredulously true story of vendetta and abuse of power committed openly and in broad daylight, devoid of any conscience. The most shameful thing to us Malaysians is that it was committed by our state leaders whom we trust and believe are educated and responsible people who should have better known the meaning of justice and fair play. More incredible and shameful still is the fact that the abuse of power was played like the Shakespeare comedy, *As You Like It*, in front of federal leaders.

I organized the book much as I did for the plot of a novel. The story indeed fits that of a novel involving characters mostly high powered individuals in the states of Sabah and Sarawak and the federal capital. I began to write much as I had done for a novel with which I am quite familiar. Syed Salem assisted me with boxes of books, documents and other materials some of which were incomprehensible to my non-legal mind. So the missing parts had to be added by Syed Salem and his longtime loyal colleague Benjamin Hwa Yong (Ben) who had been involved in the case from the very beginning. I also had the honour to see Tun Salleh Abbas, introduced to me by Syed Salem, to help me to understand the Karambunai peninsular land and litigation matters. Lastly the manuscript was submitted to Professor Salleh Buang, a well-known and respected lawyer, author, lecturer in law and an acknowledged authority on Land and Defamation Laws in Malaysia, for his legal advice and criticism.

It took me just over a year to complete the book. Far from being stressful, it was an enjoyable time with the plot already quite clear in my mind unfolding bit by bit. And so in the words of Omar Kahyyam, my moving fingers simply wrote and having written moved on. Prodding me on from behind was my wife Wan Zaliha with her untiring support and encouragement. I must also express my thanks to my son, Bob and grandson Harrith for helping me with the computer work and to Tun Salleh Abbas, Professor Salleh Buang and Benjamin Yong for their invaluable contributions.

Last but not least, I would like to express my deep gratitude to Syed Salem for giving me the opportunity and for the trust and faith placed upon me to write about his brother. In the course of writing this book, I have come to know him even better. I realize that to him the two highest achievements of the human mind are the concepts of “loyalty” and “duty”.

Shaari Isa
Sri Hartamas
Kuala Lumpur
June 2013

Introduction

This book by Dr Shaari Isa on the life and times of Allahyarham Tan Sri Dato' Seri Syed Kechik bin Syed Mohamed Albukhary and his younger sibling Syed Salem Albukhary whilst they were in Sabah (formerly known as British North Borneo, well known as 'The Land Below The Wind' – currently called Sabah) is a chronicle of shame, of abuse of power and an inexplicable vendetta by a state apparatus against an individual and his perspicacious private entrepreneurial undertakings, not yet a business empire, but if allowed to mature, would have drawn grudging envy and enmity from its competitors and rivals.

It is a reminder of the delicately poised perennial relationship between the state of Sabah (which, with the Federation of Malaya, Singapore and Sarawak, formed Malaysia in 1963) and the federal government, whose seat was originally Kuala Lumpur and then moved to Putrajaya.

It is also an awful indictment of a defaulting state and its most senior officials, acting in concert with a succession of elected heads of government over a period of more than three decades. Leaders who arrogantly and stubbornly refused to deal with the matter in accordance with the rule of law and finally defied a court judgment to pay compensation as provided by state law and the federal and state constitutions for private land compulsorily acquired for public purposes. Furthermore, certain areas were later unmeritoriously allocated to private corporations and utilized for profit-making mega development projects.

These events are reminders of the difference between state law (in the present case, the draconian Land Acquisition Ordinance (Sabah, Cap.69)), and the parallel federal law (Land Acquisition Act 1960 (Act 486)). The latter being much more just but which does not apply to Sabah. They emphasise the defects and inadequacies of the former and the lack of any willingness on the part of the state authority to amend the severe law to be on par with the federal law, in order that property owners in Sabah can enjoy equal rights with those given to the other citizens of this beloved nation.

This book reveals a painful account of judicial misconduct, a tale of impropriety on the part of a senior member of the Sabah judiciary, who clearly acted beyond the bounds of natural justice, judicial ethics, fairness and impartiality. In fact, this judicial officer, Ian Chin Hon Chong, formerly an aspiring but failed Berjaya Party politician, had no business to be sitting on the Bench presiding over the two principal lawsuits described in the book. Now undeservedly enjoying early retirement, he confessed in his recently self-published book¹ that he was living in “fear under Mustapha Harun” – “afraid of being detained” as were his father and elder brother, when Malaysia was under emergency rule following the 13th May 1969 racial riots. This admission alone is sufficient to disqualify his hearing of these two lawsuits – yet he went ahead, obviously, determined to be a judge in his own cause.

At one point, towards the end of his twenty-year judicial career, Chin even went so far as to be baselessly confrontational with our illustrious former Prime Minister, Tun Dr. Mahathir Mohamad. You will find all these events described in more graphic detail in this book.

This book is a portrait of perseverance and resilience, of indomitable spirit wrestling against the entire state apparatus for a very long period, of a quest for elusive justice, never doubting that victory would prevail in the end. In simple terms, this book symbolizes a badge of courage in the face of unending and bone-crushing adversity.

It is also the record of a young man who sacrificed his youth (and the promise of an undisturbed, pleasant and rewarding life in foreign lands), to spend the greater part of those years in the service of his elder brother in order that the latter’s Malaysian government missions in the two Borneo states (which he was entrusted with the duty to perform by the then Prime Minister of Malaysia, Tunku Abdul Rahman Putra Alhaj and his Deputy Tun Haji Abdul Razak bin Hussein) could be successfully accomplished.

The book is a potent lesson of sibling loyalty, which many of us can only find in movies, but seldom (if ever) in real life. But to my mind, perhaps more important than any and all of the above, this book is about a long

¹Ian Chin, *Justice Encounters - An Autobiography*, 2013, Sawn Printing Sdn Bhd, Selangor Darul Ehsan, Malaysia, pp. 33-34.

and arduous struggle to restore and preserve family honour. In the Muslim world, honour or *maruah* (Arabic *marua*) has always been regarded as the most priceless asset, far exceeding material wealth. You will find scattered amongst the pages of this exciting book various accusations and blisteringly personal demeaning statements hurled by many powerful people against the two brothers. A lesser person would be crushed and permanently immobilized, devoid of any strength or will to counter such attacks from a mighty institution. The mistake of so many people named in this explosive book is that they underestimated the resolve and fighting spirit of Syed Salem, who tirelessly continued his quest for justice long after his elder brother's ill-health and demise.

I did not have the pleasure and privilege of knowing the elder brother despite the fact that we are both of Lincoln's Inn, one of England's famous Inns of Court. But I know his younger brother, Syed Salem personally, having met him in Alor Star about a decade ago, when he was still deeply mired in the fight against the Sabah state apparatus.

I can still remember those tranquil late afternoons as I sat with him in the library of his home in Alor Star discussing various options and strategies to end his duel against the state government on fair and favourable terms in accordance with the rule of law. Never for a moment did I doubt that Syed Salem would finally win. I am a born optimist, and a long time ago I was taught this lesson – “*If you do the right thing, Allah will find you the way*”. The ‘way’ finally came to Syed Salem when the highest court in the land, in another judicial review, ruled in July 2008 that *mandamus* would lie against the Sabah Minister of Finance. Following this decision, Zara Sdn. Bhd. succeeded in its Application for Judicial Review in the High Court in Sabah and Sarawak at Kota Kinabalu, when on 29th June 2009, Dato’ Abdul Rahman Bin Sebli, J.C. granted the Order of Mandamus to coerce the Sabah Finance Minister to perform a statutory duty which the state authority had stubbornly and arrogantly refused to carry out for more than three decades.

Recent events have shown the potency and eternal truth of the lesson that was earlier taught to me, and when Syed Salem told me one evening

that his quest for that transient justice had finally ended, albeit under strong resistance from the Sabah government, and that ultimately full payment of the adjudged compensation was received by Zara Sdn Bhd from the state of Sabah just as the court had ordered, my congratulatory handshake was accompanied by the obligatory word “*Alhamdulillah*”.

Readers will definitely enjoy this book as I enjoyed reading it even whilst it was in the draft stage. Dr Shaari, a well-known and esteemed writer, is to be congratulated for his penmanship, because the writing of this tale has not been an easy undertaking, and the problem is further aggravated by the complex narrative of so many civil suits and countersuits involving the government of the State of Sabah, the Sabah Foundation and its wholly-owned companies (the brainchild of Syed Kechik, established by the Sabah Legislature in 1966) and the two private limited companies, Zara Sdn Bhd and Syarikat Banita Sdn Bhd in which Syed Kechik had interests.

I am told that apart from Syed Salem’s guidance, Dr Shaari was competently led by the erudite Benjamin Hwa Yong (Ben) of Kota Kinabalu, a close associate of Syed Salem over the last thirty-eight years. He contributed to the form and direction of this book. Ben did extensive research for most of the materials. I had the pleasure of meeting him on several occasions in the months preceding the publication of this book. He played a major role in assisting the author. To these two good people, I offer my sincere congratulations for helping to produce a fascinatingly memorable book.

Finally to the readers of this book, my message is this. As you go through this book and read the conclusions of the judicial combat that took place throughout these years as summarized in these pages, think hard about the quality of justice that comes down from the courts.

Prof. Salleh Buang
Alor Star Kedah
April 2013

* * * * *

Note: Prof. Salleh Buang (LLM (London)) was called to the Bar at Lincoln's Inn in 1970. He formerly served as a Federal Counsel at the Attorney-General's Chambers under Dato' (now Tun) Mohd Salleh Abas (1970-1975). He later left for private practice and then academia. A prolific writer and author of many books, including law books, he is also an acknowledged authority on Land and Defamation Laws. He regularly conducts seminars, courses and workshops for the corporate sector and members of the Islamic Judiciary. In his spare time, he teaches postgraduate students of Universiti Teknologi Malaysia.



INTRODUCTORY OVERVIEW

This is a story that could be one of the episodes in *Ripley's Believe It or Not*. It is a story worth telling that must be told. It is a story that seems unlikely to happen in our times yet it happened. It reads much like fiction yet it is a true account of real events. It is incredible that such glaring injustice can so easily be clouded by the prejudicial call against *orang luar* (outsider) (*orang Melayu dari Malaya* (a Malay from Malaya)). It is amazing how such injustice has slipped the attention of responsible people in the country for such a long time. It is hard to believe that rational authorities have accepted the smooth words of lobbyists rather than the written facts and figures. It is hard to believe that justice, so highly held in Islam is swept aside by those Muslims in power who hypocritically propagate the importance of righteousness.

This is the story of a Malaysian from the northern state of Kedah who came to serve in Sabah. He did not come to Sabah on his own but was instructed to go there by the leaders of the then young Malaysia to help with the state's political administration. More importantly, he was on a mission of pivotal national importance and urgency as will be explained later. This is different from the legendary Yap Ah Loy or Tan Sri Lim Goh Tong who left China on their own to seek fortune in this country. Former Prime Minister Tun Dr. Mahathir Mohamad recently said that the Chinese knew that Malaysia was a land of opportunity for them, as illustrated by the classic story of Tan Sri Lim Goh Tong who came to Malaysia as a labourer at the age of twenty and built possibly the country's biggest business empire¹. Unlike Tan Sri Dato' Seri Syed Kechik bin Syed Mohamed Albukhary, Yap Ah Loy and Tan Sri Lim Goh Tong came as complete foreigners. With opportunities, hard work and entrepreneurial skills they made fortunes for themselves and in doing so also contributed immensely to the economic development of the country. Yap Ah Loy has long been a historical figure for his contribution to the development

¹*New Sunday Times*, 24th April 2011

The applicant is not alone because there are others who have variously obtained judgments, decisions or awards against the Government of the State of Sabah which remain barren to this day. I do not propose to speculate on how much longer the Government of the State of Sabah can continue to defy the law and play the ostrich before it undermines the basis of its very existence.

JUSTICE LINTON ALBERT / High Court Judge
In Petrojasa case, April 27, 2006

UMNO leaders should be the first to display exemplary behaviour by adopting and practicing a culture of respect and abiding the law.

TUN DATO' SERI ABDULLAH HAJI AHMAD BADAWI / Former Prime Minister, Malaysia
November 16, 2006

It is rather unfortunate that 50 years after independence, with the Prime Minister prompting transparency and accountability, Islam Hadari and his call for upholding the rule of law (already enshrined in our Rukunegara), we still have laws today that say there is one set of rules for the common people and another set of rules for the people in power.

PROFESSOR SALLEH BUANG / Lawyer, author and acknowledged authority on Land Laws in Malaysia
In his commentary on an Awful Indictment of a State Government
Smart Growth, Pacifica Publications, 2008

All witnesses who testified to TM's [Tun Mustapha's] character and their impressions of him painted him to be a dominant and forceful person who had complete control over people who worked for him. He was used to having his own ways and if he wanted something done, it had to be done first with expected results. The learned trial Judge [Ian Chin Hon Chong] however rejected the evidence of these witnesses and in particular he did not believe SSA [Syed Salem Albukhary] to be a credible witness. We are of the view the evidence of these witnesses who are known to TM should not be totally disbelieved. We find the learned Judge's attack on the credibility of SSA as unwarranted and does not stand up to examination having regard to the extremely prejudiced view he held about SSA's conduct as is apparent in his Judgment.

DATO' ZULKEFLI BIN AHMAD MAKINUDIN / Federal Court Judge
Unanimous written Judgement in Zara Appeal, March 25, 2008

Chin joined Party Berjaya and lost twice [in Parliamentary and State elections respectively]. One of the objectives listed in Party Berjaya's manifesto was to expel Syed Kechik [DSK] the late Tan Sri Dato' Seri Syed Kechik bin Syed Mohamed] from Sabah. (Syed Kechik akan dikeluarkan dari Sabah). As a party member he must know Berjaya's hatred for Syed Kechik. This alone should have resulted in him excusing himself from hearing the case.

In the meanwhile the cases (DSK, Zara and Banita) went to the Federal Court and a judgement was made on March 25, 2008 and this is what the Federal Court has to say of Chin J's High Court judgement in the Zara and Banita suits.

"Without justification, the learned judge wrongly held that DSK made these decisions. We find that the learned Judge's findings were based on unjustified inferences, speculations, his own preconceived impressions and prejudice..." and;

"We find the learned Judge's attack on the credibility of SSA (Syed Salem Al-Bukhary, the younger brother of DSK - who represented his incapacitated brother) as unwarranted and does not stand up to examination having regard to the extremely prejudiced view he held about SSA's conduct as apparent in his judgment."

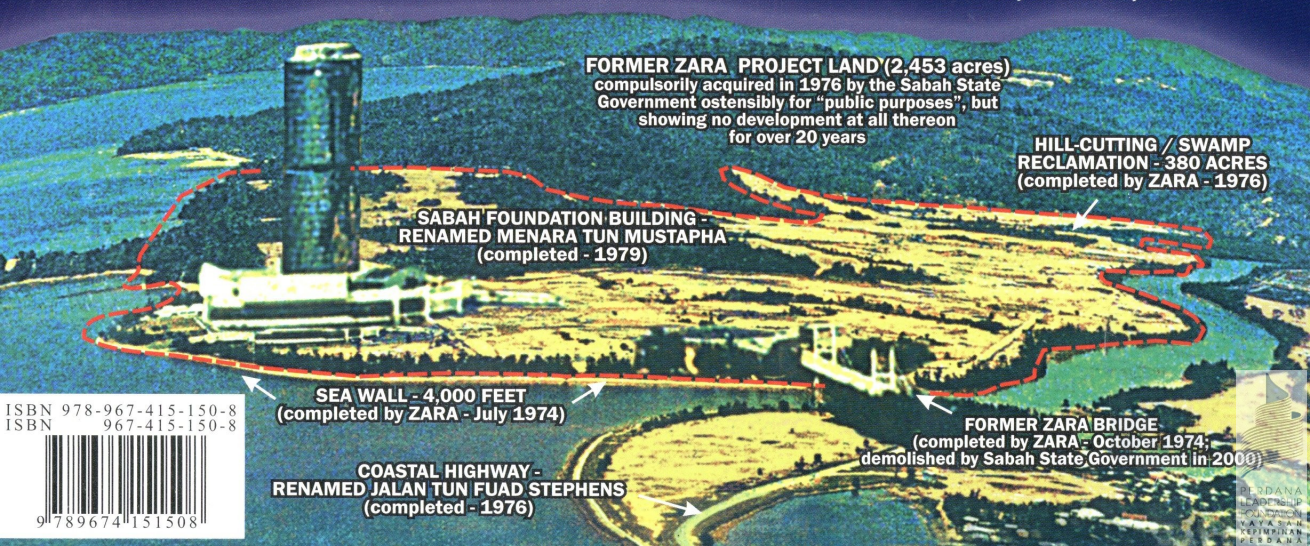
TUN DR. MAHATHIR MOHAMAD / Former Prime Minister, Malaysia
June 29, 2008 (Che Det News on former Sabah High Court Judge Ian Chin)

From the above, the position in law is that, there is a duty on the part of Government to pay the amount stated in the Certificate issued under s. 33(3) of the GPA to the Respondent. It is not a matter of discretion for the Government whether to pay or not to pay. As a statutory duty it is of course binding on the State Government. And it is incumbent upon the Court to give effect to such statutory duty and if necessary through the coercive force of the order of mandamus.

DATO' ARIFIN BIN ZAKARIA / Federal Court Judge, Malaysia
In Petrojasa case, July 02, 2008

In other words, mandamus may issue for the purpose of enforcing the right of a person who has been deprived of his property not in accordance with law. Here, the Respondent has obtained a judgment. There is a judgment debt owed to him. Payment has not been made. Upon obtaining the certificate, it becomes a statutory duty of the State Government of Sabah to make payment. By not paying, clearly the State Government of Sabah has deprived the Respondent of its property contrary to law.

TUN DATO' SERI ABDUL HAMID BIN HAJI MOHAMED / Chief Justice Malaysia
In Petrojasa case, July 02, 2008



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