

Malaysia

Self-rule

Institutional depth and policy scope

Malaysia is a constitutional monarchy composed of two distinct geographic regions: Semenanjung (Peninsular or West) Malaysia, sharing borders with Thailand to the north and Singapore to the south, and East Malaysia, sharing the island of Borneo with the four Indonesian provinces of Kalimantan and with Brunei-Darussalam. The country has a population of just over 28 million (2010 US State Department). According to its constitution Malaysia is a federation with three governance layers: national, state (C 1957, Art. 1), and city/municipality/district (Local Government Act 1976). The constituent tier of the federation consists of thirteen *negeri* (states) and three federal territories. Two *negeri* have a special status: Sabah and Sarawak, which form East Malaysia.¹ Sabah and Sarawak negotiated, with Singapore, membership in the Federation of Malaysia in 1963, but Singapore left the federation two years later. The three federal territories—the cities of Kuala Lumpur, Labuan, and Putrajaya—fall under direct federal control. They were carved out from the *negeri* of Selangor, Sabah, and Selangor, respectively (C 1957, Art. 1, Sec. 4).

¹ The words *negeri* and *menteri* refer to a single state or minister, but in this profile we use these terms to refer to both the plural and singular forms.

The second tier consists of the eleven cities, 39 municipalities and 97 districts. These governments are primarily responsible for “urban planning, basic facilities and infrastructure” as well as “maintaining the peace, urban beautification and encouraging the local economy.” The three types have by and large the same policy portfolio. The laws formalizing the authority of these governments differ across the peninsular *negeri* on the one hand and Sabah and Sarawak on the other, but the extent of authority is similar. The laws came into effect at different times. The 1976 Local Government Act regulates lower-level intermediate government for the eleven *negeri* of peninsular Malaysia.² Local Government Ordinances of 1948 and 1961 regulate the same governments in Sabah and Sarawak.

Malaysia became independent from Great Britain in 1957. Initially the country consisted of the eleven *negeri* that had been cobbled together by the British into the Federation of Malaya in 1948. In July 1963, through the Malaysia Act, Britain relinquished control of “North Borneo” (renamed Sabah), Sarawak, and Singapore. These joined the Federation of Malaya, which was now renamed the Federation of Malaysia. The constitution was amended to reflect the greater autonomy granted to Sabah, Sarawak, and Singapore, which had been necessary to entice the three entities to join the federation (Harper 1999; Reid 2010*b*). Two years later Singapore left to become an independent country. The 1957 constitution has been amended numerous times since then.

Malaysia was democratic and pluralistic in its first decade, though de facto dominated by a single party, the alliance of *Barisan Nasional* (Harper 1999). In August 1969, race riots

² Before 1976 these governments were regulated by the provisional laws of 1959 and 1973.

triggered a short but sharp period of military rule (1969-71), and Malaysia has been a limited democracy since in terms of the fairness and competitiveness of elections, government control of the media and the degree of political and legal control exercised by the ruling coalition (Reid 2010b). The federal government and most state governments have been controlled by the same (and subsequently enlarged) coalition that was supported by the British to rule the Federation at the advent of independence (Lange 2009). The national ruling coalition has consistently used its powers to amend the federal constitution and pass laws to tilt the electoral system and process in its favor (Lim 2002; Puthuchearry and Norani Osman 2005). In the 2018 general elections, the opposition coalition won power for the first time since the adoption of parliamentary elections, winning a majority of seats in the national lower legislative chamber and in 10 of 12 *negeri* legislative assembly elections.

The federal structure of Malaysia provides *negeri* with constitutionally entrenched legislative and administrative competences. The *negeri* have individual constitutions but their political and electoral structures, as well as their geographic boundaries, are set by the federal constitution and federal law. *Negeri* can legislate, but in cases of inconsistency between *negeri* law and federal law, federal law prevails (C 1957, Art. 75; see also Watts 2008). The federal parliament has also the power to amend *negeri* constitutions if they do not contain the essential provisions or have provisions that are inconsistent with them (Art. 71, Sec. 4). *Negeri* autonomy is most extensive on Islamic affairs, where federal laws must be passed separately by *negeri* legislative assemblies as *negeri* laws before coming into force (C 1957, Art. 76). Hence *negeri* are not invulnerable to central government intervention, even though this depends on

consent by the *negeri* in the higher chamber. Therefore, *negeri* score 2 on institutional depth from 1957 to the present.

During the short period of emergency rule (1969-71) power was consolidated in the hands of a newly created national operations council (Bass 1970; 1971). The state of emergency appeared to have little effect on the relationship between the federal and *negeri* governments (Kok Wah Loh 2010).³

The *negeri* of Sabah and Sarawak have governments that function similarly to the rest of the Malaysian *negeri*, but fewer laws are subordinate to federal law, such as in issues of Islamic affairs, land and local government, development, and immigration. Moreover, the constitutional position of Sabah and Sarawak is stronger than that of other *negeri* because some provisions of special interest to these *negeri* can only be amended if the *ketua menteri* (chief minister) of the region concurs (C 1963, Art. 161E, Sec. 2). Hence Sabah and Sarawak score 3 on institutional depth from 1963 to the present. Singapore scores the same for the period 1963-4.

The cities, municipalities, and districts have limited autonomy, though they are significant vehicles for policy provision. They act on behalf of two masters: the federal government and the *negeri* government.^β On behalf of the federal government, they coordinate

³ Most decisions revolved around economic development and race relations (Milne 1970). The military rulers worked on restoring the confidence of the Chinese members of the Barisan Nasional who had withdrawn from the ruling coalition following the race riots (Bass 1971; Kok Wah Loh 2010).

urban planning and development projects (Commonwealth Local Government Forum 2011), and as such they fall under the jurisdiction of the ministry of housing and local government. In addition, they execute a variety of policy tasks within their area on behalf of the *negeri*. The Local Government Act (1976) sets out the policy tasks and their authority relations with federal and *negeri* authorities. All cities, municipalities, and districts score 1 on institutional depth from 1957 (1963 for those in Sabah and Sarawak).

The Malaysian constitution enumerates three lists of competences (C 1957, 9th Schedule). Exclusive federal competences consist of external affairs; domestic security; criminal and justice proceedings; citizenship; government administration (including national and state elections); finance, trade, commerce and industry; shipping, fishing and water rights; communications and transportation; federal works and power (utilities); education and health/medicine; and labor and social security (C 1957, 9th Schedule, List 1). The exclusive *negeri* competences consist of Islamic affairs; land use, agriculture, and forestry; and local government administration and services (burial services, markets and fairs, licensing of theaters and cinema) (C 1957, 9th Schedule, List 2). Concurrent competences consist of social welfare and protection of women and children; scholarships; national parks; veterinary and other animal services and protections; city planning, public health and sanitation (except in federal territories which fall under the national list); and drainage, irrigation, and erosion (C 1957, 9th Schedule, List 3).

The core of *negeri* policy scope lies in religious-cultural policies (specifically Islamic affairs), but they have also some broad competences in land (agricultural) and local policy delivery. *Negeri* governments have no authoritative competence over police or own

institutional set-up, though they have residual powers (C 1957, Art. 77). With the exception of Islamic affairs, *negeri* competences are not fully protected against federal encroachment. For one, the federal parliament may legislate on exclusive *negeri* competences if it deems this necessary for the purposes of implementing an international treaty or for the creation of uniform *negeri* laws. On some matters, such as land (e.g. the registration of land titles and compulsory acquisition of land) or local government (C 1957, Art. 76), the federal parliament can act unilaterally (C 1957, Art. 76). On other matters, a federal law requires consent of the *negeri* legislature. Furthermore, the federal executive (formally, the king acting on the advice of the prime minister) may proclaim a development plan for an area (C 1957, Art. 92), which it may do following a simple (non-binding) consultation of the government of the affected *negeri* and the national land or finance council.⁴ In all, the distribution of policy competences is comparatively top-heavy for a federation (Watts 2008). To reflect the level of co-determination with the federal government on a range of policy issues the *negeri* score 2 on policy scope from 1957 to the present.

The autonomous *negeri* of Sabah and Sarawak have additional exclusive legislative competences in native customs and laws (including marriage, divorce, guardianship, and

⁴ After the race riots of the late 1960s *negeri* powers have tended to be interpreted restrictively in the name of a “national ideology” which seeks a better balance between the local identities of the non-ethnic Malays (Chinese and Indians) and the Malay-centric ruling coalition (Milne 1970). Also, the nation-wide new economic policy which was developed in the 1970s has constrained *negeri* autonomy with respect to economic development (Kok Wah Loh 2010).

inheritance); ports and harbors that do not fall under national jurisdiction; and libraries, museums and historical sites not regulated by national jurisdiction (C 1957, 9th Schedule, List IIA). They also have additional concurrent competences in personal law (including marriage, divorce, guardianship, and inheritance); production, distribution and supply of water power; and agricultural and forestry research and pest control (C 1957, 9th Schedule, List IIIA). Sabah and Sarawak are exempt from federal laws that ensure uniformity among *negeri* laws on land and local government issues, included in the *negeri* list, and also from development plans that are proclaimed by the king under Article 92.

In addition, Sabah and Sarawak have wide powers to control immigration into and residence in their respective territories under the Immigration Act of 1963. This was part of the agreement to entice them to join the Federation. These powers cannot be changed without their consent (C 1957, Art. 161E; Reid 2010*b*). Sabah and Sarawak score 4 on policy scope from 1963 to the present. Singapore, with greater autonomy on financial and legal matters (Reid 2010*b*), scores 3 on policy scope for 1963-5.

The central functions of city, municipal, and district council functions concern urban planning and development, in particular maintenance and regulation of public places, roads, bridges, tunnels, markets and buildings (Local Government Act 1976; UNESCAP 2014; Commonwealth Local Government Forum 2011). As primarily deconcentrated units, they have no self-governing authority.

Fiscal autonomy

The subnational units are highly reliant on the central government for revenues (Fjeldstad 2001: 8-9). Resource-sharing and redistributive policies are designed by the federal government. *Negeri* have no authority to generate major revenues independently (C 1957, Art. 96). Though *negeri* control spending (C 1957, Art. 100; C 1957, 10th Schedule, Part 3), the federal government sets the base and rate of all major and minor taxes except for property assessment rates, through which *negeri* can set assessed values for the purpose of levying a property tax (UNESCAP 2014).^α Since this is the only tax for which *negeri* control the base and (indirectly) the rate (Local Government Act 1976, Sec. XV, Art. 127 and 130), *negeri* score 2 on fiscal autonomy from 1957 to the present. Government block grants to *negeri* finance subnational government spending, but the amount is determined by the national government (C 1957, Art. 108). All in all, there is limited fiscal autonomy for *negeri* (Kok Wah Loh 2010).

The special *negeri* of Sabah and Sarawak have broadly similar fiscal powers, with some greater control over locally-generated revenues from timber and natural resources (C 1957, 10th Schedule, Part 5). Sabah and Sarawak can also set an additional rate on the sales tax on top of the federal sale tax (C 1957, Art. 95B, Sec. 3; C 1957, 10th Schedule, Part 5). Thus Sabah and Sarawak score 3 on fiscal autonomy from 1963 to the present. Singapore scores 3 on fiscal autonomy from 1963-4.

City, municipal, and district councils can set the rates of the *negeri*-controlled property tax; the rate is subject to approval by the *negeri* authorities (e.g. Local Government Act 1976, Part 15; for Sabah and Sarawak, Local Government Ordinance 1961, Art. 72-4). Local authorities

receive a significant portion of their operating budget from this taxation. Cities, municipalities, and districts in the Peninsular *negeri* score 1 on fiscal autonomy from 1957-2010; those in Sabah and Sarawak score 1 on fiscal autonomy from 1963.

Borrowing autonomy

Negeri may borrow for up to five years from sources other than the central government but subject to central government approval of the loan and terms and conditions specified or approved by the central government (C 1957, Art. 111; Setapa & Lin 2003). *Negeri* thus score 1 on borrowing from 1957 to the present.

Sabah and Sarawak may borrow under broader provisions than other *negeri*, i.e. no five-year limit on borrowing, but both still require Malaysian central bank approval of the loan(s) and thus receive the same score as regular *negeri* (C 1957, Art. 112b), from 1963. Singapore scores 1 from 1963-4.

Cities, municipalities, and districts can borrow for a pre-approved narrow range of purposes – primarily property acquisition in order to fund development/building projects – and loans are subject to approval from the *negeri* government (Local Government Act 1976, Art. 41). Prior to the 1976 act cities and municipalities could not borrow. In Sabah and Sarawak, the local government laws (e.g. Local Government Ordinance 1961, Art. 58) allowed borrowing from the time they entered the federation. Thus cities, municipalities, and districts in peninsular Malaysia score 0 from 1957-75, 1 from 1976; those in Sabah and Sarawak score 1 from 1963.

Representation

Each *negeri* has a directly-elected *negeri* legislative assembly. The executive is headed by a largely symbolic *sultan* (sultan), *raja* (monarch), *yang di-pertuan besar* (ruler) or *yang di-pertua negeri* (governor). The *negeri* legislative assembly chooses an executive council that functions primarily as a *negeri*-level cabinet and has a *menteri besar* (great minister) or *ketua menteri* (chief minister) with executive power. The *menteri besar* or *ketua menteri* is selected by the party winning the largest number seats in the *negeri* assembly (C 1957, 8th Schedule, Part 1, Sec. 8.2). *Negeri* score 4 on representation since 1957. Representation in Sabah, Sarawak, and Singapore is identical.

City, municipal, and district governments are led by a *majlis* (council) and a council mayor (for cities) or a council president (for municipalities and districts). According to a system inherited from the British local councils were initially directly elected and mayors and presidents were elected by and from the council (Local Authorities Elections Ordinance 1950). In 1965 direct elections were suspended in peninsular Malaysia (Emergency (Suspension of Local Government Elections) Regulations 1965; Emergency (Suspension of Local Government Elections) Amendments Regulations 1965; UNESCAP 2014), and councils and their executives became appointed by the *negeri* government (Local Government Ordinance 1961, Art. 6; Local Government Act 1976, Art. 10). In Sabah and Sarawak, the change came in 1963 (e.g. Local Government Ordinance 1961, Art. 6, Sec. 1e). Thus cities, municipalities, and districts score 2 on

assembly and 2 on executive for 1957-64, and 0 and 0 thereafter (or since 1963 for Sabah and Sarawak). The three federal territories have no elected assemblies or executives.

Shared rule

Law making

The Malaysian parliament is composed of two chambers: an upper chamber called the *dewan negara* (country council) and a lower chamber called the *dewan rakyat* (people's council). The upper chamber consists of 70 seats, with 44 appointed by the central government and 26 selected by the *negeri* assemblies (two from each *negeri*). Each member is selected for a three-year fixed term with a two-term limit (C 1957, Art. 45). The king appoints two senators for the federal territory of Kuala Lumpur, and one respectively for the federal territories of Labuan and Putrajaya on the advice of the prime minister, and the remaining 40 are selected irrespective of their *negeri*. The lower chamber consists of 222 seats directly elected to five-year fixed terms in single-member districts with seats allocated to each *negeri* based on population.

The senate is a relatively weak body. The lower chamber plays the leading role. The upper chamber cannot introduce or originate money bills (C 1957, Art. 67) and can only delay legislation in case of disagreement with the lower chamber (C 1957, Art. 68).

The ratio of *negeri*-elected representatives in the upper chamber has changed over time. Prior to 1964 *negeri*-appointed members dominated, but since then, king-appointed members dominate.^β With the change in the ratio of federally appointed to *negeri*-elected

members of the upper chamber, *negeri* become a minority in a relatively weak body and score 1 on law making. During 1969-71 the parliament was suspended following race riots in Kuala Lumpur, and so law making was zero.

The special *negeri* of Sabah and Sarawak have the same multilateral shared law making capacity as the rest of the Malaysian *negeri*, but no additional bilateral shared rule. The absence of bilateral shared rule is balanced by the fact that the constitution emphasizes self-rule for Sabah and Sarawak in key areas including citizenship, the special high court, religion, language and parliamentary seat allocation (C 1957, Art. 161E(2)). Sabah, Sarawak, and for its short membership of Malaysia, also Singapore, have the same score as the other *negeri*.

The federal territories of Kuala Lumpur, Labuan and Putrajaya, and the cities/municipalities/districts do not share authority in law making.

Executive control

Numerous national councils exist to coordinate national and *negeri* policy. Two of these produce legally-binding bills: the national land council (C 1957, Art. 91) and the national council on local government, established through a constitutional amendment in 1986 (C 1957, Art. 95A). Each of these councils is convened by the corresponding federal government minister along with a single representative sent from each *negeri* government. They each include up to ten federal government representatives; the number of federal government representatives cannot outnumber the number of *negeri* representatives (C 1957, Art. 95A). These councils create policies in the areas of local government development, agricultural benchmarks and land

use. The plans and programs put forth by these councils are legally binding, but since numerous other national councils do not produce legally binding agreements, we score 1 on multilateral executive control from 1957 to present.

Sabah and Sarawak participate in these meetings on equal footing, but are not bound by decisions by the two councils with the authority to conclude binding agreements, the national land council and the national council on local government (C 1957, Art. 95E). They can participate, but solely in a consultative capacity. Thus Sabah and Sarawak, and Singapore for its brief existence as a *negeri*, score 1 on multilateral and 0 on bilateral executive control.

Federal territories and cities/municipalities/districts receive guidelines on local development and planning from the ministry of housing and local government.

Fiscal control

The central government is required to consult *negeri* (including Sabah and Sarawak) on the distribution of tax revenues in the national finance council (C 1957, Art. 108). The council consists of the prime minister, other ministers as designated by the prime minister, and one representative of each *negeri*. The council meets at least once per year or more frequently as determined by the prime minister. The results of these meetings are not binding (C 1957, Art. 92; C 1957, Tenth schedule, Part I). *Negeri* score 1 on multilateral fiscal control.

The special *negeri* of Sabah and Sarawak receive, in addition to the revenue allocated above, block grants from the central government. The level is set by the federal government

after (non-binding) consultation of the national finance council in which they participate in equal footing with the standard *negeri*.

Federal territories and cities/municipalities/districts score zero.

Borrowing control

The central government is required to consult the national finance council on borrowing and debt management by the *negeri*.⁵ The constitution (Art. 108, Sec. 4) stipulates that “It shall be the duty of the Federal Government to consult the National Finance Council in respect of: . . . (c) the annual loan requirements of the Federation and the States and the exercise by the Federation and the States of their borrowing powers; (d) the making of loans to any of the States.” This consultation is non-binding. Federal territories and cities/municipalities/districts have no borrowing control.

⁵ For a report on the role of the national finance council in discussing borrowing and debt management: “National Finance Council too lackadaisical and feeble in dealing with the huge RM 6 billion unpaid loan arrears owed by states to Federal Government,” Lim Kit Siang.

<http://www.limkitsiang.com/archive/1999/dec99/lks0063.htm>.

Constitutional reform

Constitutional amendments require a two-thirds majority in each chamber of the parliament (C 1957, Art. 159). Thus, from 1957-63, when *negeri* representatives occupied the majority of the seats in the upper chamber, it was sufficient for six out of eleven *negeri* to unite to veto constitutional amendments.

However, over the years, the number of federally appointed senators has increased sharply so that, by 2018, *negeri* representatives now only take 26 of the 70 seats (37 percent). *Negeri* must form a near-unanimous front—24 out of 26—to block constitutional reform.

In addition to the upper chamber, the Malaysian government system has a *majlis raja-raja* (conference of rulers) consisting of each *negeri*'s sultan, *raja*, *yang di-pertuan besar* or *yang di-pertua negeri* (C 1957, Art. 38). Ostensibly created to protect the power and status of the rulers and to observe traditional power lineage, this body has limited effect on the governance of Malaysia except to choose the prime minister and his deputy in five-year cycles, a largely symbolic task.

The one exception is that its consent is required for certain constitutional amendments, and the article of the constitution that enumerates these aspects cannot, itself, be altered without consent of the rulers (Art. 159, Sec. 5). These provisions concern mainly the position and privileges of the rulers themselves and the politically sensitive subjects of citizenship, language, and the special rights of Malays and natives in Sabah and Sarawak. The conference of rulers thus provides an additional safeguard for these regions against central interference through constitutional reform. However, there is no requirement that the rulers and governors

represent their respective *negeri*, and since most rulers and governors are appointed by the king, we do not conceive them as representing their region.^β

Sabah and Sarawak co-decide constitutional change affecting the region's position in the federation with respect to their legislative authority, powers over judicial administration, religion, language, immigration, and residence within the region (C 1957, Art. 161E). Hence Sabah and Sarawak (and Singapore during its brief existence as a Malaysian *negeri*) have full bilateral constitutional shared rule in addition to full multilateral shared rule.

Federal territories and cities/municipalities/districts cannot initiate, amend, or block constitutional reform.

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Self-rule in Malaysia

			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
Negeri	I	1957-2018	2	2	2	1	2	2	11
Cities and municipalities	II	1957-1964	1	0	1	0	2	2	6
	II	1965-1975	1	0	1	0	0	0	2
	II	1976-2018	1	0	1	1	0	0	3
Sabah	I	1963-2018	3	4	3	1	2	2	15
Sarawak	I	1963-2018	3	4	3	1	2	2	15
Singapore	I	1963-1965	3	4	3	1	2	2	15
Kuala Lumpur	II	1974-2018	1	0	0	0	0	0	1
Labuan	II	1984-2018	1	0	0	0	0	0	1
Putrajaya	II	2001-2018	1	0	0	0	0	0	1
Cities and municipalities in Sabah and Sarawak	II	1963-2018	1	0	1	1	0	0	3

