

PERSPECTIVE

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Power Distribution and Decentralisation in New Malaysia

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EXECUTIVE SUMMARY

- Malaysia's former opposition had long called for a redistribution of power across the country's three tiers of government. Several promises in Pakatan Harapan's manifesto specifically address that objective through reform of the Prime Minister's Department, reviving federalism (empowering states), and strengthening the local level of government.
- Having unexpectedly secured power, PH faces competing demands to rapidly deliver results and to undergo the complex process of restructuring Malaysia's ossified institutions, while simultaneously projecting stability and competence to a diverse electorate, elements of which remain resistant to fundamental change.
- Malaysia's predisposition towards strong and centralized leadership, in conjunction with Mahathir's predilection to decisive and sometimes unilateral decision-making, has led PH to prioritize rapid results. In doing so, it has delivered meaningful economic and policy reform, but has left the general concentration of power relatively unchanged in practical terms.
- The high degree of procedural complexity involved in decentralizing power, together with concerns around the potential for such reforms to aggravate racial and religious tensions, have further hindered deep institutional restructuring.

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INTRODUCTION

Of the reasons for the Barisan Nasional's unprecedented defeat in 2018, the personal unpopularity of Najib Razak is among the most important: the widespread perception that he flagrantly abused power, enriching himself and his family in the process, drove pivotal voters towards Pakatan Harapan.¹ Najib's excesses, most apparent in the 1MDB scandal, were enabled by the decades-long concentration of power in the federal level generally, and in the Prime Minister's Department (PMD) in particular.

Recognizing this, Pakatan Harapan followed its predecessors in calling for the greater distribution of power across institutions and tiers of government, as articulated in its pre-election manifesto (Pakatan Harapan 2018): Promise #12 addressed reform of the PMD, while Promise #24 sought to "Revive the true spirit of federalism" by (re-)empowering the states, and Promise #25 sought to "Strengthen the role and powers of the local authorities."

One year into Malaysia's first post-UMNO government, some movement of power away from the PMD has been initiated, but in practice it remains heavily concentrated in the hands of Mahathir and the PMD. The general balance of power between the federal and state levels remains largely as before. Local elections, which are to strengthen the local tier, have not been reinstated. In short, despite meaningful reforms in other areas, the distribution of power under PH remains generally unchanged, leaving those hoping for a rapid restructuring of Malaysia's institutions disappointed.

What explains this outcome? Given the unprecedented nature of Malaysia's transition, PH has faced competing demands to deliver rapid results to an anxious electorate *and* to restructure many of Malaysia's ossified institutions, all while projecting stability and competence. With Mahathir remaining a dominant political force, the new government has prioritized the former set of demands. Several factors reinforce this orientation: the Malaysian electorate shows a predisposition towards strong, central leadership. Furthermore, the procedural complexity of institutional restructuring, together with a perception that it may aggravate racial and religious tensions, has led PH to adopt a cautious approach.

POWER CONCENTRATION IN UMNO'S MALAYSIA

As per the 1957 Federal Constitution, Malaysia has a federal structure with power divided between federal and state tiers of government. A local tier is also described. Centripetal forces, present since the Merdeka-era, have strongly empowered the federal tier at the expense of the states (Loh 2009; Hutchinson 2014). This occurred both formally through institutional changes and informally through UMNO's dominance of politics, which left "the BN state governments behav[ing] more like branches than partners of the federal government" (Wong and Chin 2011, p. 208). This rendered Malaysia a "centralized unitary system with federal features" (Loh 2009, p. 195).

The local tier of government played an instrumental role in the establishment of democracy prior to Malaya's independence. Yet the "third vote" for local government representation was suspended in 1965 and removed entirely through the 1976 Local Government Act, following which local councils have been constituted through state appointees. This has left the local tier operating largely as an extension of the state tier. Attempts in Penang and Selangor to re-introduce local elections in the years prior to GE14 were blocked by federal court decisions.²

Much of the power usurped from the state and local tiers has amassed in the PMD, which was the driver—particularly during Mahathir's first stint as Prime Minister—and primary beneficiary of power concentration (Ostwald 2017). Through strategic modification of institutions and procedures, leverage over personnel at lower tiers of government, and the creation of alternative institutions that bypass potentially obstinate offices, the PMD exercised a remarkable degree of control over Malaysia's economic and political development. An anecdote underscores the magnitude of this dominance: in 2012, the PMD's budget was approximately *ten times* larger than the entire state budget of Selangor, Malaysia's most populous and economically powerful state (Yeoh 2011).

POWER (RE)DISTRIBUTION IN MALAYSIA BAHARU

The PMD

Many of the reforms outlined in PH's Manifesto aim to redress the excesses of power concentration under recent BN governments and to prevent their recurrence. Promise #12 addresses the PMD, seeking to reduce its number of ministers and cut its budget. Both have occurred: the PMD now has only three ministers and an annual budget of approximately RM7.4 billion, relative to RM17 billion under Najib's last government—with much of the decrease coming from items that have been repealed or transferred to appropriate ministries (Joshi 2018). Mahathir also ended the long-standing practice of the PM holding the Minister of Finance position, thereby severing the PMD's direct control over that vital portfolio. Equally notable is the movement of several important agencies—including the Election Commission (EC), Malaysian Anti-Corruption Commission (MACC), and the Public Prosecutor's Office—out of the PMD and under parliamentary oversight.³ The potential impact of a more independent EC is particularly noteworthy, given its role in managing and administering Malaysia's (at least formerly) biased electoral process (Fann 2019).

Other measures seek to strengthen parliament, making it a more effective counterbalance to the PMD. Of these, the introduction of parliamentary select committees is noteworthy, as—in principle—they introduce a systematic check on the ability of the PMD to act unilaterally on key appointments and decisions. Several committees have been formed, including on the Budget, Major Public Appointments, Defense and Home Affairs, and Federal State Relations.

These reforms are laudable: if fully functional, they provide clear mechanisms to reduce the concentration of the power in the PMD, and consequently to reshape the dynamic of Malaysian politics.⁴ Their practical impact in the one year since PH took power, however, has not matched that potential. In some instances, it is too early for their full effect to be realized, for example with the reformed EC, which has not yet overseen a major election. In other instances, the fledgling checks on the PMD have been bypassed in the name of political expediency, justified by the need to act quickly in the aftermath of the unprecedented transition. Two examples stand out. Mahathir's strong top-down control over the cabinet and reliance on external advisors like Daim Zainuddin—who appears to have played a major role in the renegotiation of mega-projects and other significant economic reforms—undermines the formal constraints on the PMD. Likewise, his unilateral appointment of Latheefa Beebi Koya as Commissioner of the MACC bypassed the select committee, which was to play a role in the appointment of key positions like hers.

Federalism and the autonomy of the states

In promise #24, PH pledged to “revive the true spirit of federalism” by strengthening the states vis-à-vis the federal level and restoring elements of their autonomy. Aside from curbing the excesses of power concentration, fulfilling this would allow Malaysia to capture the many theoretical advantages of a decentralized structure.

The manifesto noted a four-pronged approach towards that end, comprised of (1) respecting the Ninth Schedule of the Constitution that specifies the rights and responsibilities of the states; (2) decentralizing suitable jurisdictions like water management, public transportation, welfare, and social services; (3) returning at least 10 percent of income tax generated in a state to that state; and (4) focusing development expenditures on the five poorest states during the administration's first three years.

The IDEAS (2019) *Projek Pantau*—a report card on PH's progress in fulfilling its manifesto promises—assesses prongs (2) and (4) as “on track”, (3) as “in trouble”, and (1) as “not started”. This may be an optimistic reading of progress. On decentralizing jurisdictions, only water management has seen significant decentralisation to the states. While PH has announced that half of tourism tax collected would be distributed back to the state governments, it has not moved on the redistribution of income tax. Furthermore, as Yeoh (2019) notes, PH has also maintained the Federal Development Offices, through which the PMD disperses funds to local development projects, providing a channel to effectively bypass the state governments.

Local Governments

The manifesto's promise #25 seeks to “strengthen the role and powers of the local authorities.” The logic for this is well established from a theoretical perspective, as local governments have a better understanding of local needs than does the more distant central

government. The former is also thought to be more accountable to local citizens, again by virtue of proximity. Local elections are the clearest mechanism for ensuring both the necessary autonomy and bottom-up accountability of local governments.

Given this, PH's minister responsible for local government—Zuraida Kamaruddin—expressed an intention to reinstate local elections within three years of GE14. At a recent public forum in Penang, she noted the ministry is preparing a working paper to table in Cabinet, but that it would take time to ensure that the proposed model could accommodate the particularities of the Malaysian context. In the meantime, workshops and forums would be organized to prepare communities for their eventual implementation, likely beginning in Penang.

Support for the restoration of local elections has not, however, been universal. Notably, Mahathir has spoken out against them on several occasions, stating explicitly last December that the government will not reinstate them due to potential unintended consequences. As the requisite legal amendments can proceed only with the Cabinet's support, progress is uncertain as long as Mahathir remains in power. Expecting a protracted fight, advocates in civil society have prepared recommendations for strengthening local government in the absence of local elections.

INSTITUTIONAL STICKINESS

Why has PH's first year in government produced relatively little in terms of decentralizing power, despite that objective being a central pillar of the *Reformasi* agenda over the past two decades? The transition away from six decades of dominant party rule was a once-in-a-lifetime occurrence that placed competing—and perhaps irreconcilable—demands on the new government. The first was an urgent need to produce results and demonstrate a clear distinction from the BN, while projecting steady leadership to the segments of the electorate left anxious by the change. The second was to undergo the complex and often tedious process of restructuring institutions left ossified by decades of misuse and mismanagement under the BN.

PH has skewed strongly towards the former by prioritizing economic reforms and high-visibility policy changes that alter the look of Malaysia's political landscape. As outlined in this Perspective, deep restructuring of institutions, especially those involving the concentration of power, has by contrast had rather limited practical effects. Several reasons for this are notable.

The first is a predisposition in Malaysia towards strong, centralized leadership, which has allowed Mahathir to prioritize his preferred agenda. This predisposition is broad-based: in a poll conducted several months after GE14, roughly two-thirds of respondents indicated that they preferred power to be concentrated at the central level in the form of a strong PM,

rather than in the states, localities, or traditional institutions (Ostwald 2019). Notably, this sentiment was strongest among PH supporters, suggesting that having now captured power, many see a decisive leader as key to rapidly changing the country's course. As the original architect of personalizing power in the prime minister (Slater 2003), Mahathir clearly is receptive to assuming this mandate. In fact, while decentralizing power was a long-standing *Reformasi*-era demand that *Pakatan Rakyat* fully embraced, it is unclear to what extent Mahathir shares the conviction. Given his instrumental role in securing the BN's defeat (Abdullah 2018) and his clear control over the Cabinet now, he is unlikely to be overridden in the foreseeable future.

The second is a strong reluctance in Malaysia to undertake actions that risk—or are perceived as risking—stability. Institutional reform is procedurally complex and often produces unanticipated outcomes. It is worth recalling Indonesia's "big bang" decentralisation, in which an extensive set of competencies was shifted from the central level to localities in the wake of Suharto's overthrow in 1998. While this achieved the main objectives of preventing the fragmentation of Indonesia and the return of a personalistic dictatorship, it also created a lengthy list of governance problems that the country has spent much of the past 15 years trying to correct (Ostwald, Samphantharak, Tajima 2016).

In the Malaysian case, it is clear that getting both the sequencing and balance of decentralisation right is a difficult undertaking. Deliberations around restructuring the local and state tiers provide a good example. As the autonomy of the states was hollowed out over the past half century, they increasingly came to rely on the local tier to act as their agents, without which they would struggle to function properly. Consequently, if the local tier is granted greater autonomy before the states are themselves strengthened, the states may lack the capacity to carry out their responsibilities, compounding the "missing middle" problem that already plagues Malaysia (Hutchinson 2017). Understanding this, the states are likely to resist the reform, as are those now in Cabinet with recent experience at the state level. In short, while ostensibly independent issues, decentralisation to the state and local tiers must happen in closely coordinated manner, which significantly increases its complexity.

Furthermore, the growing collaboration between UMNO and PAS—whose political relevance is in large part reliant on Race, Religion, and Royalty remaining salient—complicates PH's reform agenda. This is because any reform that can be framed as hostile to the interests of the three R's can be used to mobilize resistance against PH, in the process creating at the very least unnecessary distractions. Whether warranted or not, there are concerns that some elements of the decentralisation agenda are vulnerable to this trap. Mahathir himself, for example, justified his resistance to local elections by stating that they could aggravate racial tensions. Given the concerns around a growing Malay and Islamist backlash (Saat 2019; Rahman 2018), PH's caution around these issues is hardly surprising.

In short, one year into the post-UMNO era, the power of personalistic politics and urgent need to deliver tangible results have limited the practical redistribution of power through deep institutional restructuring. It remains entirely possible that several of the relevant initiatives will be fully implemented in the coming years, thereby clearly distinguishing the PH state from its predecessor's. But it is also possible that the waning momentum of the transition and the ongoing complexity of Malaysia's racial politics continue to thwart that objective.

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¹ As Serina Rahman (2018, p. 669) notes, a close evaluation of what drove the electorally pivotal rural Malay vote suggests that it was primarily "against former Prime Minister Najib Razak, and not necessarily ... in support of the then-opposition." Ostwald and Oliver (2019) argue that it was precisely this vote that was critical in bringing about the BN's defeat.

² See Cheng (2018) and Ostwald (2019) for a full discussion of local elections.

³ See the Bersih 2.0 (2019) report for a comprehensive discussion of these reform initiatives.

⁴ It is important to note that several of these reforms have not yet been codified in law, limiting their current efficacy and creating uncertainty about their future form.

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