



CENTER FOR TRANSITIONAL and POST-CONFLICT GOVERNANCE

Delimitation Equity Project

Case Study: Malaysia

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Case Study: Malaysia

Malapportioned Districts and Over-Representation of Rural Communities

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Malaysia utilizes a simple plurality First Past the Post (FPTP) electoral system modeled on the British Westminster System, with 219 single member constituencies (SMCs) used for electing representatives to the House of Representative. In the most recent elections of March 2004, the ruling coalition won 90 percent of the seats in the House (198 out of the 219) with only 60 percent of the national vote. Opposition parties lost more than half of their 45 seats in the election, winning only ten percent of the seats (20 seats) despite attracting nearly 40 percent of the votes nationwide.

Since independence, Malaysia has been governed by a coalition of political parties named the *Barisan Nasional* (BN).¹ While striving to promote the multi-ethnic nature of the coalition, true power resides with the dominant ethnic Malay party, the United Malays National Organization (UMNO). Other coalition members also represent specific ethnic groups but retain very little autonomy from UMNO. Parties outside the coalition have never captured more than 40 percent of the seats in Parliament and under the current electoral framework, they never will.

The BN's tight control over the election process has limited the ability of opposition parties to successfully contest elections. The Election Commission is seen as one of the primary instruments through which the BN has manipulated the election process for its own political gain.²

Electoral System

Malaysia is technically a monarchy, although the "Paramount Ruler" (*Yang di-Pertuan Agong*) is elected every five years by and from the hereditary rulers of nine Malay states and plays a very limited role in governing the country. At the national level, the federation has a bicameral legislature consisting of the Senate (*Dewan Negara*) and the House of Representatives (*Dewan Rakyat*). Of the 69 members of the Senate, 43 are appointed by the king, with the remaining 26 elected from the state legislatures. The Senate is generally considered little more than a rubber-stamp for legislation passed by the House of Representatives.

The House consists of 219 members (increased from 193 in 2003) elected from single member constituencies throughout Malaysia's thirteen states and three federal territories. The Federation of Malaysia utilizes a plurality first-past-the post electoral formula based on single-member constituencies. Elections are to be called at least once

¹ Malaysia is a federation consisting of thirteen states and two federal territories. Eleven states and the federal territories are contiguously attached on the Malay Peninsula, and two additional states (Sabah and Sarawak) are on the Island of Borneo. These latter states joined the federation only in 1963 and are accorded special representation rights under their ascension agreements.

² US State Dept. 2003 Country Reports on Human Rights Practices: Malaysia, Annual Human Rights Report. Available at http://www.state.gov/www/global/human_rights/2002_hrp_report/malaysia.html, Internet; accessed March 2003.

every five years and, since independence in 1957, elections have taken place every fifth year.

Legal Framework for Delimitation

The Election Law Malaysian elections are governed both by the constitution and by the “Elections Act of 1958,” both of which are subject to frequent amendment. The Constitution stipulates the FPTP formula and establishes criteria for the Election Commission.

Election Commission Established in 1957, the Malaysian Election Commission is charged with conducting elections for the House of Representatives and state legislatures. The Commission is also charged with recommending changes to constituency boundaries, which are then implemented by the federal government. The Commission is also responsible for the planning and oversight of all of the technical aspects of voter registration and elections. It also acts as a judicial body, hearing grievances from both candidates and electors about any aspect of the election process.

The Commission originally consisted of three members, a chairman and two subordinates. In 1963 an additional member was added to represent the states of Sabah and Sarawak. In 1981, the post of Deputy Chairman was established, bringing the total number of members of the commission to five, where it remains today. All members are appointed by the Paramount Ruler in consultation with the Conference of Rulers, an unelected body consisting of the executives of each state. The five members may serve until the mandatory retirement age of sixty-five, and may be removed from office only by a special tribunal called by the Prime Minister. Members of Parliament may not serve on the Commission.³

The Election Commission is not a fully autonomous body. The Constitution stipulates, “so far as may be necessary for the purposes of its functions under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law.” Therefore, any provision created by the Commission can be reversed by a federal law. In addition, any recommendations for changes to constituency boundaries proposed by the Commission must first go to the Prime Minister, who may make alterations as he sees fit. The Prime Minister then submits the proposal to the House of Representatives, which then approves or disapproves of the delimitation plan.⁴

Criteria for Delimitation All criteria for the delimitation of electoral boundaries are contained in the Federal Constitution, as modified by periodic “Amendment Acts.” Core principles related to districting criteria include:

1. Delimitation may not take place more frequently than once every eight years;
2. No single delimitation exercise may take longer than two years to complete;

³ *Constitution of Malaysia, Art 113(2)(i)* [online]. 1957. Malaysia; available from http://confinder.richmond.edu/local_malaysia.html; Internet; accessed January 2003.

⁴ *Thirteenth Schedule of the Malaysian Constitution, Part II (8&9)* [online]. 1957. Malaysia; available from http://confinder.richmond.edu/local_malaysia.html; Internet; accessed January 2003.

3. The recommendation of the Commission is submitted to the Prime Minister, who must then present it to the House of Representatives with or without amendment for a simple-majority vote.⁵

The core issue confronting the Malay election system is the constitutional provision guaranteeing over-representation of rural constituencies. This principle was a product of negotiations held between the British colonial authorities and the two main Malay independence movements during the 1950s. In 1953, the British established a 46-member committee of the Federal Legislative Council to make proposals for a post-independence electoral system. The Committee recommended equality of population across the SMC districts but qualified this proposal by including an exception for rural areas. Since ethnic Malays predominated in the rural areas and non-ethnic Malays resided primarily in the urban centers, this “rural weightage” effectively ensured Malay dominance of the political system.

The Committee report held that: “the number of inhabitants within each constituency should be approximately equal except that, having regard to the greater difficulty of contacting voters in the country districts and the other disadvantages facing rural constituencies, a measure of weightage ... should be given to the rural constituencies.”⁶ The original 1957 Constitution contained a provision limiting the size discrepancy between any two districts to no more than 15 percent. This restriction, however, has since been eliminated by constitutional amendments in 1962 and 1973.⁷

Gerrymandering Districts to Benefit Ruling Party

Size Discrepancies in Districts One of the biggest complaints from the opposition has been that the ruling party, the BN, through electoral gerrymandering, has slowly eroded the principle of “one man, one vote.” Districts that have traditionally demonstrated strong support for opposition parties often have disproportionately large populations when compared to those districts that have traditionally supported the BN. For example, Penang – a state where opposition parties have done very well in the past – averaged 50,838 voters per district; on the other hand, Perlis, which has typically supported the ruling party, averaged only 33,032 voters per district in 1990.⁸

Gerrymandering by the BN also appears to favor the native Malay population, traditionally strong supporters of the party, at the expense of the large Chinese and Indian minorities. The Malay population tends to live in more rural areas, whereas the Indian and Chinese tend to live in the urban centers. The delimitation exercise in 1994 created rural districts with much smaller populations than their urban counterparts. For example, the constituency of Hulu Rajang, a rural district with a large Malay population in Sarawak, has an electorate of 16,085 and sends one representative to the House;

⁵ Other principles include constituencies not crossing state boundaries, availability of administrative facilities for carrying out elections, size of constituencies, and the desire to avoid excessive changes to constituencies; these are to “as far as possible be taken into account.” *Ibid.* Part I (2) (a-d).

⁶ *Ibid.* Part I (2) (c).

⁷ Hai, Lim Hong. 2000. *Electoral Politics in Malaysia: Managing Elections in a Plural Society and The Electoral Process* [online]. Malaysia; available from <http://www.malaysia.net/aliran/hr/js10.html>; Internet; accessed December 2003.

⁸ *Ibid.*

Ampang Jaya, an urban constituency near the capital, with an electorate of 98,954 also sends only one representative to the House.⁹ While the constitution does allow for increased weightage to be given to rural constituencies, the elimination of the 15 percent limit by the BN has allowed for extremely large discrepancies.

2003 Delimitation Proposal The most recent round of electoral boundary delimitation, which took place in early 2003, sparked numerous complaints from opposition parties. In 2002, the BN asked the Electoral Commission to develop a new proposal for electoral boundaries to reflect changing population demographics. In response, the Commission developed a plan to create 25 new seats in the House of Representatives and 53 new state assembly seats. The House of Representatives subsequently approved the plan on April 8, 2003.

From the very beginning, opposition members opposed the plan, declaring it unconstitutional and claiming that, “the EC had not acted fairly and professionally in accordance with the principles of democracy.”¹⁰ In response, the BN proposed that all criticisms could be aired during the parliamentary debate on the proposal. As angry opposition party members publicly vented their frustration, however, the BN refused to address the issues raised and ended debate after just two days. Forty-four opposition members walked out just before the final vote to protest against both the proposal itself and the BN’s abuse of parliamentary procedure.¹¹

The DAP (Democratic Action Party) also raised a challenge against the plan under the Election Commission’s grievance process. The Commission’s chairman refused to hear the grievance, however, claiming that “although [the DAP] did submit a personal letter asking me to reconsider the State’s proposal on the delineation, [it] could not come up with a counter proposal which can grant a representation to be made and enable the EC to conduct [a] local inquiry to hear and consider appeals or objections.” The Commission effectively made it impossible for anyone to file objections to the plan unless they offered a full counter-proposal. The chairman of the Commission also refused to hear any objections filed on behalf of “an organization, political party, or certain communities.”¹²

Changes in the 2003 Delimitation The delimitation proposal passed by Parliament created 25 new constituencies – most of which emerged out of districts that had overwhelmingly supported the BN during the 1999 general election.¹³ Many of the changes seem to blatantly ignore population trends. For example, the state of Selangor, with a population of 4.19 million and an annual growth rate of 6.1 percent since the 1991 census, received five new seats. Johor, however, with a population of 2.74 million

⁹ Ranawana, Arjuna. 1999. “The Maps to Power: Anwar’s Claims Fill the Court and the Media” [online]. *Asiaweek.com*. 5 November. Available from <http://www.asiaweek.com/asiaweek/magazine/99/1105/nat.malaysia2.html>; Internet; accessed December 2002.

¹⁰ “EC Chief: Constituency Delineation Exercise Constitutional,” *New Straights Times*, 6 March 2003, 2.

¹¹ “Parliament OK’s re-Delineation of Electoral Boundaries,” *Financial Times*, 8 April 2003, 4.

¹² “EC Chief: Constituency Delineation Exercise Constitutional.” 2003. *New Straight Times*, 6 March, 2.

¹³ Siang, Lim Kit. “DAP Will Challenge the Constitutionality of the 2002 Electoral Constituency Re-delineation Exercise.” *DAP Media Statement*. Malaysia; available from <http://www.malaysia.net/dap/lks1804.htm>; Internet; accessed April 2003.

and an annual growth rate of 2.6 percent, was granted six new seats. Given the much larger total population and the much higher growth rate, Selangor should have received more new constituencies than Johor. The reason for the inconsistency is obvious: In the 1998 election, the BN only won 54.8 percent of the popular vote in Selangor, whereas in Johor they won 75.2 percent of the vote.¹⁴

The 2003 delimitation produced the highest population variations of any previous delimitation exercise. For example, Johore Bahru now has an electorate of approximately 90,000 voters, while Lenggong has approximately 21,000 voters – a population variation of over 325 percent. The maximum population deviation created by the 1994 delimitation was 250 percent.¹⁵

Conclusion

Although Malaysian voters are generally free from overt forms of intimidation during the voting process, more subtle forms of manipulation by the ruling BN party has created a system that is less than fair for opposition parties. Evidence of defective voting rolls, manipulation of postal votes, instances of vote buying through promises of lavish government programs in certain constituencies, and manipulation of the Electoral Commission have helped to maintain the BN's control over the government.

The boundary delimitation process has been a primary tool in the BN's manipulation of the electoral process for several reasons:

- Elimination of constitutional safeguards protecting the independence of the EC: The original constitution contained a provision allowing no more than 15 percent deviation between constituency populations. Constitutional amendments have removed the 15 percent limit which, when coupled with the provision allowing for increase weight to be given to rural districts, have allowed for gross discrepancies in constituency populations.
- Lack of independence of the Election Commission: The Government appoints all members of the EC, and all recommendations made by the EC must pass through the Government in order to take effect. The BN has been able to hastily push through delimitation proposals without serious debate in Parliament.
- The Election Commission's unresponsiveness to complaints: The commission has proven unwilling to answer grievances against delimitation plans brought by political parties or other groups. The difficulty in judicially challenging EC decisions, coupled with the questionable independence of the judiciary,¹⁶ has allowed the Commission to avoid any serious challenges.

¹⁴ Malaysian Department of Statistics. 2003. *Population Distribution and Basic Demographic Characteristics Report* [online]. Malaysia; available from <http://www.statistics.gov.my/English/pressdemo.htm>; Internet; accessed March 2003. Also, "Redelimitation Exercise in Sabah Based on Current Needs, Says EC" 2003. *Financial Times*, 4 April, 5. See also Appendix A for 1999 general election results and Appendix B for population figures.

¹⁵ Siang, *op. cit.*

¹⁶ US State Dept, 2002.

Appendix: Malaysia

Appendix A: Seats Won by State & Party in the 1999 General Elections¹⁷

State/Territory	Party							
	Total Seats	BN	PAS	ADIL	DAP	PBS	MDP	Other
<i>Perlis</i>	3	3	-	-	-	-	-	-
Kedah	15	7	8	-	-	-	-	-
Kelantan	14	1	10	3	-	-	-	-
Penang	11	6	-	1	4	-	-	-
Perak	23	20	2	-	1	-	-	-
Pahang	11	11	-	-	-	-	-	-
Selangor	17	17	-	-	-	-	-	-
Federal Territory	11	7	-	-	4	-	-	-
Negri Sembilan	7	7	-	-	-	-	-	-
Malacca	5	4	-	-	1	-	-	-
Johor	20	20	-	-	-	-	-	-
Terengganu	8	-	7	1	-	-	-	-
Sabah	20	17	-	-	-	3	-	-
Sarawak	28	28	-	-	-	-	-	-
TOTAL	193	148	27	5	10	3	0	0

* The BN won 148 out of 193 seats, but won only 56 percent of the popular vote.

¹⁷ "Malaysian General Election 1999," available at <http://www.sadec.com/Election/parliament.html>.

Appendix B: Population by State¹⁸ (in thousands)

State	1991	2001	2003
Perlis	184.1	198.3	214.5
Kedah	1,304.8	1,572.1	1,700.4
Kelantan	1,181.7	1,289.2	1,394.4
Terengganu	770.9	879.7	951.5
Penang	1,065.1	1,225.5	1,325.5
Perak	1,880.0	2,030.4	2,196.0
Pahang	1,036.7	1,231.2	1,331.6
Selangor	2,289.2	3,947.5	4,269.6
Negri Sembilan	691.2	830.1	897.8
Malacca	504.5	602.9	652.1
Johor	2,074.3	2,565.7	2,775.1
Sabah	173.6	2,449.4	2,649.2
Sarawak	1,648.2	2,012.6	2,176.8

¹⁸ The World Gazetteer, available at http://www.world-gazetteer.com/fr/fr_my.htm.

Appendix C: Change in Seat Allocation, 1994 to 2002

Increase in the percentage and number of voters by state between the 1994 and the 2002 delimitation exercises and under- or over- allocation of seats by voters for each state in these two delimitation exercises.¹⁹

State	Voters in 1994	Voters in 2002	% Change	Difference	Over/Under allocation in 1994	Over/Under allocation in 2002
Perlis	97,978	109,750	12.0%	11,772	1	1
Kedah	675,790	793,517	17.4%	117,727	1	-1
Kelantan	528,679	655,602	24.0%	126,923	3	1
Terengganu	337,918	411,453	21.8%	73,535	1	0
Penang	563,039	659,155	17.1%	96,116	-1	0
Perak	1,047,175	1,138,010	8.7%	90,835	1	2
Pahang	456,834	554,534	21.4%	97,700	1	3
Selangor	949,317	1,368,693	44.2%	419,376	-3	-5
Wilayah	591,806	664,233	12.2%	72,427	-3	-2
N. Sembilan	298,178	417,712	40.1%	119,534	1	0
Melaka	269,198	331,327	23.1%	62,129	-1	-1
Johor	982,484	1,223,532	24.5%	241,048	-1	2
Total	6,798,396	8,327,518	22.5%	1,529,122		

¹⁹ <http://www.malaysia.net/aliran/monthly/2002/8f.html>

