

Malaysia

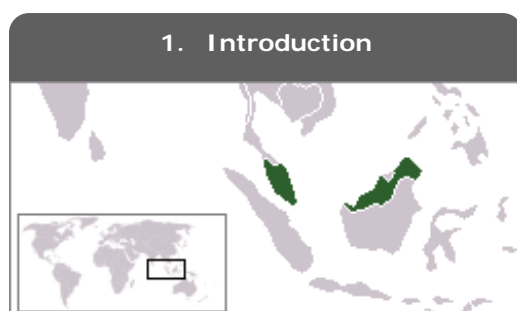
(ايسيلم)



Capital: Kuala Lumpur

Inhabitants: 26.130.000 (2005)

Area: 329.750 km²



Malaysia comprises two geographical regions, Peninsular Malaysia¹, which is connected to mainland Southeast Asia, and Malaysian Borneo², which is located on the island of Borneo. Thirteen largely autonomous states and three federal territories construct the Malaysian federation. As of 2005, the population of Malaysia is approximately 26.13 million, over a land mass of 329,750 km². Of both regions, East Malaysia is the larger, covering an area of 198,154 km², as opposed to the land mass of the Peninsular, which is 131,582 km². GDP grew at the rate of 4.5% per annum in the period 2001-2005, and was RM 494,544 million in current prices and RM 262,029 in 1987 constant prices. In the same period, per capita GNP in current prices grew at a rate of 5.7% per. annum to RM17,687 in 2005. The services sector was the major

contributor to GDP growth, and its share of GDP was 58.1% in 2005.³

The status of Malaysia⁴ as a former colony of the United Kingdom has resulted in British styled governmental objectives, governance style and legal precedent. Accordingly, early forms of local authorities in Malaya, and the legal statutes by which they were bound, were fashioned after the British model of local governance as well. Local governmental systems were first set up in the Straits Settlement⁵ states of Penang and Malacca: the Committee of Assessors was formed by the British in Penang in 1801 for the purpose of urban planning and implementation, and a local council was established in Malacca soon after. Similar local councils were then formed in the other Federated and Unfederated Malay states⁶. The Local Authorities Elections Ordinance (1950)

³ Economic Planning Unit, Ninth Malaysia Plan 2006-2010.

⁴ Formerly known as Malaya, before the 1963 establishment of the Federation as it stands today, excluding Singapore which obtained independence from the Federation in 1965

⁵ The Straits Settlements states of Penang, Malacca and Singapore were the major hubs of the imperial administration.

⁶ Former Federated Malay states include Selangor, Pahang, Perak, and Negeri Sembilan who were under direct British rule. These states acknowledged the primacy of British Residents in all administrative purposes. The Unfederated Malay states of Kelantan, Johor, Kedah, and Terengganu retained a greater measure of autonomy.

¹ West Malaysia

² East Malaysia



granted town councils power to hold elections, and the Local Councils Ordinance (1952) provided local residents with the power to establish local councils if necessary.

After independence (1957), however, the Malaysian local government system distanced itself further away from British antecedence. When the Federal Constitution was drafted, local governments outside the federal territory were no longer directly placed under the responsibility of the federal government; instead, they were placed under the State List, or under the jurisdiction of the respective states. The devolution to the states was not unproblematic, especially in the 1960s, when violent Indonesian opposition to the then newly-formed Malaysian federation⁷ in 1964, and the

racial riots of 13 May 1969, caused the immediate suspension of local government elections. Two regulations were enacted to enable this suspension: the Emergency (Suspension of Local Government Elections) Regulations (1965) and the Emergency (Suspension of Local Government Elections) Amendments Regulations (1965). From that point until today, local government elections in every state have been suspended indefinitely. By the 1958, there were in existence 390 local councils in Peninsular Malaysia alone. Due to this largely unregulated growth, there were various types of local councils: the city councils, municipal councils, municipal boards, town councils, town boards, rural district councils, management boards and local councils. The federal government was thus required to review and rethink the local governmental system as a means of

Table 1: Local Authorities by Category and State

| State/ Federal Territory | City Hall/ Councils | Municipal Councils | District Councils | Total |
|--|---------------------------|-----------------------|----------------------|------------|
| Johor | 1 | 5 | 8 | 14 |
| Kedah | 1 | 3 | 7 | 11 |
| Kelantan | - | 1 | 11 | 12 |
| Malacca | 1 | 1 | 1 | 3 |
| Negeri Sembilan | - | 3 | 5 | 8 |
| Pahang | - | 3 | 8 | 11 |
| Perak | 1 | 4 | 10 | 15 |
| Perlis | - | 1 | - | 1 |
| Penang | - | 2 | - | 2 |
| Sabah | 1 | 2 | 19 | 22 |
| Sarawak | 2 | 3 | 20 | 25 |
| Selangor | 2 | 6 | 4 | 12 |
| Terengganu | - | 2 | 5 | 7 |
| Federal Territory of Kuala Lumpur | 1 | - | - | 1 |
| <i>Total</i> | <i>10</i> | <i>36</i> | <i>98</i> | <i>144</i> |

⁷ The Malaysian Federation included the Malaysian Borneo states of Sabah and Sarawak; Indonesian opposition to this

formation was spurred by their claims of sovereignty over Sarawak



regulation: a Royal Commission was established in 1965 to synchronise the workings of the local governments.

Despite the efforts of the Royal Commission, their report was not accepted wholesale, but its recommendations were nevertheless to form the basis of the local governmental system in Malaysia, by way of the Local Government Act 124.⁸ Act 124 called for the restructuring of local authorities, and for the review of the laws concerning the responsibilities and powers of local authorities. Three parent laws were then formed under Act 124: The Street, Drainage and Building Act 133, the Local Government Act 171, and the Town and Country Act 172.⁹ Act 171 enforced the restructuring of local government as stipulated in Act 124, by allowing only three classifications of local authorities: city halls for cities¹⁰, municipal councils for large towns, and district councils for smaller urban centres. As opposed to the profusion of local councils before the enactment of Act 124, there are now ten city councils, 36 municipal councils and 98 district councils (see Table 1). The act also ensured that all local councils are bodies appointed by the state, and led by chief executives (mayors, presidents) who are also appointed by the state.¹¹

With Act 171, local government functions now include both the mandatory provision of services, and the discretionary community-based development. Principally, the functions of local governments are limited by *ultra vires*. Functioning as a corporate body, any activities that are undertaken by a local council that is beyond the scope of its

powers are *ultra vires*, and subject to cessation from the judiciary.

2. Territorial Organisation

Malaysia, a federal constitutional elective monarchy, is nominally ruled by the King or Yang Di-Pertuan Agong. The administration of the country is divided into three tiers: the federal, the state, and the local. The country's chief administrator is the Prime Minister, who is the head of the cabinet, the highest coordinating executive body overseeing all government interests and activities. The responsibilities of the federal government are enumerated in the Federal List and the Concurrent List (shared responsibilities of the federal and state governments). These duties are fulfilled by way of further stratification into ministries, departments and agencies directly responsible to the federal government.

Despite state being a virtually autonomous member of the Federation and despite its responsibilities being itemised in the State List, the constitution also provides for a degree of federal oversight. This is primarily done through three constitutionally provisioned councils that feature representatives from both federal and state governments, and which are answerable to the Prime Minister: the National Council for Local Government, the National Land Council, and the National Finance Council.¹² Further instances of federal oversight into the affairs of state which are not constitutionally bound include: periodical meetings between the Prime Minister and the Chief Ministers of the states, the Federal-State Liaison Committee, and the National Development Planning Committee.

⁸ 1976; provisionally the Local Government Act 124 (Temporary Provisions) 1973

⁹ 1976, 1975, and 1976 respectively

¹⁰ Change in status from town to city (usually dependent on population and finance) requires the conferral of the King and the concurrence of the Conference of Rulers (Sultans).

¹¹ Excepting Kuala Lumpur

¹² Under Articles 95A, 91 and 108 respectively



Sultanate or Malay states¹³ are ruled by the hereditary Sultan, whereas a Governor is elected by the King to be the ceremonial head in non-sultanate states.¹⁴ Although the governance model at state level mirrors that of the federal, state legislatures are unicameral, as opposed to the bicameral system of the federal government. The State Legislative Assembly has the power to pass any law that does not impinge upon federal responsibilities, as outlined by Schedule IX in the Federal Constitution. The State Executive Council is the state equivalent of the federal Cabinet, and is the highest coordinating body on all state matters.

At the local level, district administration is headed by the District Officer¹⁵. The District Officer is the most senior officer in the district, and reports directly to the State Secretary.¹⁶ In the former Federated

Malay States, the District Officer is a senior Administrative and Diplomatic Officer¹⁷ of the Federation; in the former unfederated Malay states, however, district officers are chosen from the State Civil Service. Distinct from the district administration, but still operating at the local level, is the local government or local authority. Item 4 in List II of the Ninth Schedule of the Federal Constitution specifies that local governments fall under state jurisdiction. Under Act 172¹⁸, local councils are to function as local planning authorities to oversee all development projects in their respective areas of jurisdiction, as well as to provide a localised consultation forum in the District Action Committee. To allow for federal oversight into the governance of local authorities, the federal government has amended the constitution to form the National Council for Local Government. This council acts to advise and coordinate local authorities in issues pertaining to legislation and policy.

Before the implementation of Act 171¹⁹, the Federal Territory of Kuala Lumpur was the only city to be governed by a city hall. Since the Act, however, the conferral of city status to other large towns has meant that Kuala Lumpur no longer enjoys the unique distinction. For instance, Petaling Jaya²⁰ has recently been conferred city status, and its municipal council has been upgraded into a city council.²¹ Legal autonomy in Kuala Lumpur exists in the form of its independence, by and large, from state jurisdiction: whereas other municipal councils require their respective chief executives to be appointed by the state, the Mayor of the City Hall of Kuala Lumpur is also the Commissioner of Kuala Lumpur.

Table 2: Distribution of Population by State

| State/ Federal Territory | Population |
|---|-------------------|
| | 2,740,625 |
| Kedah | 1,649,756 |
| Kelantan | 1,313,014 |
| Federal Territory of Labuan | 76,067 |
| Malacca | 635,791 |
| Negeri Sembilan | 859,924 |
| Pahang | 1,288,376 |
| Perak | 2,051,236 |
| Perlis | 204,450 |
| Penang | 1,313,449 |
| Sabah | 2,603,485 |
| Sarawak | 2,071,506 |
| Selangor (incl. Federal Territory of Putrajaya) | 4,188,876 |
| Terengganu | 898,825 |
| Federal Territory of Kuala Lumpur | 1,379,310 |
| Total | 23,274,690 |

¹³ Perlis, Kedah, Perak, Pahang, Selangor, Negeri Sembilan, Johor, Kelantan, Terengganu

¹⁴ Penang, Malacca, Sabah, Sarawak

¹⁵ District officers can also hold the post of Mayor or President of a local council

¹⁶ Setiausaha Kerajaan Negeri

¹⁷ Pegawai Tadbir dan Diplomati

¹⁸ Town and Country Act 172 (1976)

¹⁹ Local Government Act 124 (1976)

²⁰ Selangor

²¹ Majlis Bandaraya Petaling Jaya



Mayors of city halls retain the same range of powers as presidents of municipal councils, especially in terms of their appointment by the state, except for the Mayor of Kuala Lumpur. However, despite the chief executives (mayors and presidents) of local authorities in the states of Kelantan and Terengganu being appointed by the state, as they are elsewhere in the country, they do not rank amongst senior state administrators. Chief executives are chosen from amongst politicians from the ruling party, with only the deputy mayor or deputy president

chosen from amongst state administration staff. In the states of Negeri Sembilan, Pulau Pinang, Pahang, Perak and Melaka, mayors, presidents and secretaries are chosen from the Malaysian Administrative and Diplomatic Service Officer.

The distribution of population in the federal territories and states are listed in Table 2 above.

Department of Local Government under the Ministry of Housing and Local Government in 2002 found that local government expenditure amounted to only 3.5–5% of total government expenditure in 1991–2001. Of the total government expenditure in 2001, the federal government share was 84%, the state government 11.2% and the local government 3.9%. Per capita expenditure was RM3,829, RM509 and RM161 for the federal, state and local government respectively.²²

3. Local Democracy

Since 1965, local elections have been suspended indefinitely. Thus, local officials are to a degree no longer divided by partisanship, and have ceased to be elected into the office by the public,

guaranteeing a form of continuity in governance at the local level. Today, all chief executives of local authorities but the Mayor of Kuala Lumpur, are elected by the respective state governments. While it has already been stated that the mayors and presidents of some local councils are politicians from the ruling party, it is nevertheless important to note that these chief executives are not directly elected into the local government, but they are instead individuals selected by the ruling political party to govern a given local council.

Local authorities have to report to the public on their activities, and in the form of annual financial accounts. The term 'public participation' in a Malaysian context encompasses at least four general forms that signify a system of representative or participatory democracy in local governance: consultation, where the council identifies an issue and seeks public response; community action, where groups put forward their own demands; community self-management, where groups have control over facilities and resources; and direct involvement or power sharing, where the community is a full member in the decision-making body.

Power sharing entails direct representation in the local government. The appointment of councillors to the local government from amongst members of the public is stipulated under section 10 Act 171²³, whereby persons who are involved in local government affairs, or who have achieved distinction in any profession, can represent community interests in the area of jurisdiction. Act 171 requires that no less than eight and no more than 24 councillors may be appointed to a local council. Councillors can be viewed as community representatives, because they function as intermediaries between the local

²² Ministry of Housing and Local Government

²³ Local Government Act 171 (1976)



government and local residents. This is especially important when a local council is drafting a structure plan, due to the fact that Act 172 also stipulates that it is a duty for local government to take into account representations and objections from the public.

4. Central-local Relationships

Local governments fall beneath the jurisdiction of the state, as indicated by the State List in the Federal Constitution. The mayors or presidents of most councils answer directly to the Office of the State Secretary²⁴, since they are appointed by the State. The State Secretary, in turn, serves the executive branch of the state government, the State Executive Council; thus, all local government administrative and financial affairs are under the jurisdiction of the State Executive Council, with the State Secretary acting as the intermediary. Legislative authority at the state level rests with the State Legislative Assembly (Dewan Undangan Negeri-DUN), which has the power to draft ordinances that affect local administration, so long as they are not in conflict with the Federal Constitution.

The division between the tasks ascribed to the federal and state governments respectively in the Federal Constitution is outlined in the Federal and State Lists. Since local governments are placed under the jurisdiction of the state, this would imply that the federal government cannot directly intervene in the administration of local government as well. Although the Ministry of Housing and Local Government is a federal body, which as its name implies, is responsible for local governance, the federal government nonetheless has to deal with local authorities through the state government.

Beyond the State List, however, the administrative autonomy of local governments is also ensured by Act 171²⁵, which provides local governments with a very distinct set of functions and responsibilities. Two parent laws - Act 133 and Act 172²⁶ - disseminate developmental and urban management responsibilities onto local governments. Although the Malaysian Borneo states of Sabah and Sarawak are not subject to Act 171, the autonomy of local government is ensured by their respective ordinances, such as the Local Government Ordinance, and Chapter 117 of the Local Authority Ordinance²⁷ in Sabah, Volume 5 of the Sarawak Law, the Local Authority (Rating) Regulations, the Kuching Municipal Ordinances, and the City of Kuching North Ordinance²⁸ of Sarawak.

Federal financial oversight occurs by way of direct transfers to the local government, which include provision and launching of annual grants, minor projects grants, and contributions in-lieu of rates. Beyond these direct transfers, the federal government cannot interfere in the affairs of local authorities, because as stipulated by the Act 171, the state government has direct financial authority over local governments. Even if situations were to arise where the state government temporarily withholds contributions in-lieu of rates, or the state refuses to impose new rates based on the property revaluation by the Ministry of Finance, the federal government is powerless to rectify the situation.

The Act 171 also stipulates that every local government has the power to recruit, promote and terminate personnel to carry out its range of duties. The onus of training, promoting, managing pension, and exercising disciplinary action also falls

²⁵ Local Government Act 171 (1976)

²⁶ The Street, Drainage and Building Act 133 (1974), and the Town and Country Act 172 (1976) respectively

²⁷ 1961 and 1948 respectively

²⁸ 1988

²⁴ Pejabat Setiausaha Kerajaan Negeri



on the local authorities, as long as these actions are approved by the state government.

Table 3: Share of Expenditures of Local Authorities in 1994

| Expenditure Items | Percentage (%) |
|-----------------------|----------------|
| Emoluments | 38.24 |
| Services and Supplies | 39.51 |
| Capital Expenditures | 9.23 |
| Grants and Compulsory | - |
| Contributions | 7.88 |
| Others | 5.14 |
| Total | 100.00 |

Any unconstitutional breach of local government rights would be an infringement of the constitutional rights of the state, thus, the state can opt to bring the federal government to the Federal Court²⁹, which is the judicial body in charge of disputes between the Federation and any state. Another way for local councils is to voice their dissatisfactions in the National Council for Local Government, which is represented by members from both federal and state governments.

The National Council for Local Government is the only formally constitutional body that represents the rights and need of local governments with respect to the federal government. Under Article 95A of the constitution, the duties of the council include formulating policy concerning the promotion, development and control of local government (with prior consultation of both the federal and state governments), and ensuring that the council is consulted on any proposed legislation pertaining to local government, drafted by either of the governments of the Federation or the state. The council's clout is such that even the federal government cannot defy or infringe upon its rulings. It has to be noted, however, that the state and local governments of Sabah and

Sarawak are not bound by any policies formulated or decisions undertaken by the National Council for Local Government.

5. Local responsibilities

The main functions in budgetary terms are listed in Table 3 below:

Despite the fact that the above table indicates the expenditure shares as of 1994, the breakdown has remained relatively constant until today. While development expenditure constitutes less than ten percent of total expenses, operational expenditure, which includes emoluments, services and supplies, requires nearly 78 percent. It follows that with heavy operational costs, local authorities need to procure loans and other sources of funding, usually from the Federation.

Under Act 171³⁰, development functions are considered as discretionary, as opposed to mandatory maintenance services. The Act also provides a legal backdrop for these functions to be carried out, by way of Act 133 and Act 172³¹, which ensure that local governments are fully responsible for the development of a given locality. The developmental responsibility of local authorities in the states of Sabah and Sarawak are not governed by Act 171, but instead by the respective ordinances of the two states.³²

Started in July 2007 under Solid Waste Management Bill, tasks such as solid waste

³⁰ Local Government Act 171 (1976)

³¹ Street, Drainage and Building Act 133 (1974) and Town and Country Planning Act 172 (1976) respectively

³² Sabah: Local Government Ordinance (1961) and Chapter 117 of the Local Authority Ordinance (1948); Sarawak: Volume 5 of the Sarawak Law, the Local Authority (Rating) Regulations, the Kuching Municipal Ordinances (1988) and the City of Kuching North Ordinance (1988).

²⁹ ahkamah Persekutuan Malay



management, collection of recyclable material, and developmental construction have been largely privatised and being centralised under the Federal Government. However, vital local governmental tasks that cannot be deregulated, and remain very much centralised include all licensing tasks, land-use planning and urban renewal beautification/ upkeep services.

6. Local finance and management

Legal provisions with regard to revenue collection are spelt out by Part 5 of Section 39 of the Local Government Act (1976) in Peninsular Malaysia, while the states of

Sarawak and Sabah are governed by their respective ordinances. These include the Local Government Ordinance (1961) of Sabah and Chapter 117 of the Local Authority Ordinance (1948), Volume 5 of the Sarawak Law, the Local Authority (Rating) Regulations, the Kuching Municipal Ordinances (1988) and the City of Kuching North Ordinance (1988) of Sarawak.

The Ministry of Housing and Local Government, classifies the sources of income for the local authorities into six groups, namely: assessment rates or tax (inclusive of contribution in-lieu-of rates); licenses; rentals; government grants (inclusive of road grants); car park charges, planning fees, compounds, fines and interests; loans (from government and/ or financial institutions).

The breakdowns of revenues for local authorities are indicated in Table 4:

It is evident from the table above that tax revenues represent the greatest share of income for local authorities. The majority of this income is garnered from assessment rates. Generally, collection of assessment rates or tax from the government for its property, however,

takes the form of contributions in-lieu of rates or grants. Due to the over-reliance of most council on these assessment rates, external financial aid is frequently sought by local councils from the state by way of tax sharing in the form of grants. Grants include launching, annual equalisation, development project, road maintenance, drainage, and balancing grants. The assessment tax is a property tax collected on the basis of the annual assessment of rental value or the value-added (selling price) of the property. The local government Act sets a ceiling on the tax of 35% of annual value or 5% of value-added of a holding. Taxation rates, however, can be varied according to the use and location of the property. Thus, the amount of revenue that can be collected from the assessment tax depends on the property's level of physical development, and on whether or not a particular locality has many residential houses, commercial and industrial buildings, and vacant land. Assessment Tax revenue, therefore, varies with the taxation rate, annual value (or value-added), and number and type of holdings. Rate increases are subject to approval by councils and state governments, whereas changes in the annual value (or value-added) of holdings require an elaborate revaluation exercise. Launching grants are provided by the state to local authorities for restructuring purposes: to purchase new equipment for service extensions or to undertake infrastructure development projects. These

Table 4: Breakdown of Sources of Revenue for Local Authorities in Peninsular Malaysia from 1996 to 2000

| Sources | Year | | | | |
|----------------------------|------|------|------|------|------|
| | 1996 | 1997 | 1998 | 1999 | 2000 |
| Tax revenues | 52.0 | 53.7 | 58.4 | 60.8 | 62.3 |
| Non-tax revenues | 28.0 | 30.2 | 27.4 | 24.0 | 23.1 |
| Grants (federal and state) | 20.0 | 16.1 | 14.2 | 15.2 | 14.6 |



grants have to be approved by the Ministry of Housing and Local Government. The size of the grants to a particular council depends on factors such as land area, population and expected revenue of a particular council. Annual equalisation grants, available to all Peninsular Malaysian states, serve to compensate the difference between the fiscal capacities and the fiscal needs of a council. These grants are channelled by the Federation to local authorities through the state, in accordance to the Maintenance of Local Authorities Act 191 and Act 245.

Development project grants are funds made available to all local authorities for the implementation of socioeconomic projects, encompassing infrastructure projects, social facilities, cleanliness, beautification, purchase of equipment and machinery, recreational parks and sanitary projects. According to the Seventh Malaysia Plan³³, local authorities can obtain development funds for implementing socioeconomic projects designed to help Bumiputera³⁴ communities. The grants can also be used for the development of new and traditional villages within local authority areas. Balancing grants are offered by the state to cover the rising operational expenditure costs, such as from the increase of pay levels negotiated by the federal government for the public sector. Smaller local councils can also choose to utilise these grants to aid in minor development projects.

Charges and fees issued by local authorities for activities and services amount to approximately 20 percent of total revenues. Basic charges are raised on service provision, such as planning applications, dislodging of septic tanks, burial facilities and refuse collection. Fees include the rental of local property, fines and compounds for offences such as illegal

parking, dumping of household refuse, and trading licence violations. Licensing charges are for business activities and amount to approximately 5% of total revenues. All charges and fees, including the allocation and renewal of licences, are entirely regulated by the local authorities.

Transparency International's Corruption Perception Index (CPI) ranks Malaysia as 39th among 158 countries with a score of 5.1, above the global average of 4.16 and regional average of 4.36.³⁵ In fact, the fight against corruption began as early as 1957, when the then Prime Minister commissioned a study titled "The Problem of Corruption in the Federation of Malaya. This was followed by the setting up of a task force to investigate corruption, and in 1961, the Anti-Corruption Agency (ACA) was formed to enforce the Prevention of Corruption Act 1961. Further measures were instituted in the fight against corruption with the establishment of the Integrity Management Committees (IMCs) in all Federal and State Departments and agencies in 1998.³⁶

Local councils' practices and procedures are subject to the scrutiny of guidelines of the Auditor-General (AG), who acts as a watchdog over financial integrity and credibility of reported information. However, according to the Audit Act 1957, the Office of the AG is still subject to some executive control with regard to appointment (by the King on the advice of the Prime Minister), and conduct of audits on all public resources, and reporting. The Director General of the ACA is also appointed by the King on the advice of the Prime Minister, thereby making the ACA subject to the Executive instead of being responsible to the Legislature. An independent media is the watchdog that

³³ For the years of 1996-2000

³⁴ Indigenous population (including Malays)

³⁵ Transparency International, 2005

³⁶ "The Malaysian Government's Anti-Corruption Drive", in *Transparency*, Vol 2 No. 1, April 2006.



keeps a given society informed of any misconduct and abuses of powers.

Strategies to improve the efficiency of local governments also include productivity and quality management programs, first initiated in 1989. To implement these programs, the government has encouraged public agencies to adopt a total quality management approach, the establishment of a Client's Charter, and the implementation of ISO 9000 standards. To reinforce these efforts towards creating and sustaining a culture of quality, the government has also launched a number of awards such as Efficiency Service Awards, Public Sector Innovation Awards, Quality Control Circles Awards, the Prime Minister's Quality Award and Public Service Quality Awards as part of the incentive package for public agencies.

Local government reforms include the provision of customer-oriented services, improvements to systems and procedures, greater use of information technology, strengthening relationships with the private sector, improvements to the organizational structure and human resource management, enhancing accountability.

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