

Transition: the civil service and change of government

Introduction

- Since independence, Malaysia has seen several changes of state governments, but none at the federal level.
- The transition from one state government to another has not always been smooth, with the civil service being forced to adapt abruptly to the new administration.
- Independent observers have suggested that GE13 may result in some changes, be it at state or federal level.
- As a maturing democracy, it is important to carefully consider how the civil service can transition quickly and effectively, while continuing to provide high quality services to the rakyat.
- We appreciate that there are other institutions – the monarchy, judiciary, security services, media, etc - that will also play important roles to ensure a smooth transition. But this *Policy Idea* will only focus on the civil service.
- We also feel that there needs to be a focus on state administrations. For the past two years IDEAS has been working with state politicians, and we discovered that states have not received the attention and support that they deserve despite Malaysia being a federation of states.

The Issues

- A smooth transition is more than just a peaceful transfer of power. It is also about ensuring that the effective functioning of government does not become too disrupted during the transition period.
- In situations where the government – whether federal or state - has been in the hands of one coalition for an extended period of time, the opposition may be out of touch or completely inexperienced about the inner workings of the civil service. Similarly, the civil service too may not be aware about the plans and policies of the incoming administration.
- Without proper preparations, it can only be expected that both situations may cause severe disruption to the rakyat's lives.
- However, a professional and independent civil service can avoid this disruption by making the necessary preparations well in advance.

Transitions in 2008

- The transitions that took place after GE12 in March 2008 were fraught with challenges. The change of government in Selangor, Perak, Penang and Kedah was not fully expected and therefore preparations were minimal.
- More importantly, even if change was expected, the civil service were not able to make the necessary preparations prior to the elections due to restrictions imposed on them.
- As a result, the incoming administration had to learn very quickly how to govern the state that they have just won, and the civil service had to adapt equally quickly too.



International Examples

- As a young country, there has been relatively few power transitions in Malaysia. Therefore, unlike more mature democracies, we have not yet developed our own transition procedures and mechanisms.
- But Malaysia does not have to start from zero either. We can look at other countries where the processes have grown organically from trial and error and democratic crises. To simplify the picture, we will only use national transition processes as case studies.

United States

- To ensure smooth transition, the winner in an American Presidential election will become 'President-Elect' before being inaugurated officially as President of the United States.
- The inauguration takes place circa 10 weeks after the election result is announced. The President-Elect is given access to all departments (ministries) and top civil servants. He is also given information about the inner workings of the state.
- During this period, the outgoing President remains in office but only as a 'caretaker'.
- The Presidential Transition Act (PTA) makes it the duty of the US General Services Administration (GSA) – an independent agency of the US Government – to provide the President-Elect the services and facilities needed to assume their official duties. The Act states that the President-Elect should receive federal funds to hire and train his staff during the transition period, in order "to promote the orderly transfer of the executive power".
- The PTA also guarantees the same resources for the outgoing President for the purposes of "winding up the affairs of his office".

- Strengths:
 - This system allows the President-Elect to get in-depth exposure to the state of affairs and the workings of departments and the civil services. The President-Elect also has time and money to set-up and prepare his new government and team of staff.
 - It also addresses the problem of efficiency of the civil services just after the changeover. Access to the departments and civil service during the transition period provides the President-Elect and members of his administration with an opportunity to earn trust and build co-operation.
- Weakness:
 - During these months the incumbent president is virtually powerless, yet still 'in power'. This can lead to important decisions being stopped or significantly delayed.
- It must be noted that this process may not be compatible with Malaysia's parliamentary democracy. In the US, even though the President-Elect is busy setting up his administration during the transition period, legislative bodies continue to function. This may not be possible in a parliamentary system.

United Kingdom

- In the UK key leaders from the main opposition are given access to top civil servants many months in advance of the election.
- These meetings are strictly confidential, and allow both sides to discuss the possible policy changes and how the civil service can implement them without disrupting the operations of government.
- The UK civil service also independently plan for various possible outcomes well in advance.



For example, on 1 January 2009, the British civil service set up a committee to study the possibility and implications of a 'hung parliament' (i.e. an election outcome where no single party gains a majority of the seats in the House of Commons). This was a full 17 months in advance of 7 May 2010, when the general elections were actually held.

- Unlike the United States which has the PTA as an official law, the UK relies more on conventions. The steps involved in a transition in the UK are not written in law. Even though such meetings have been the norm for the past 30 years, they are solely at the discretion of the incumbent Prime Minister. It is therefore the integrity of the Prime Minister that ensures smooth transition.

- Strengths:
 - The pre-election meetings between the civil service and opposition help to form a bridge between both sides, and help to build trust.
 - It gives the opposition the chance of getting to know the inner workings of the civil services, so that even if the opposition leaders are inexperienced they can still be effective leaders of the country from day one.
- Weaknesses:
 - This system requires both sides – the civil service and the opposition – to have unquestionable integrity. Both sides must commit to keeping the content of the meetings confidential, without which everything will crumble.
 - The lack of a specific law mandating the preparation means the processes are still at the mercy of the incumbent Prime Minister.

Germany

- Contacts between the opposition (i.e. the new government) and the civil service start post-election. This arrangement is largely based on conventions. There is no law outlining the steps.
- Germany makes a distinction between ordinary civil servants and political civil servants. The political civil servants are the top levels, such as the Permanent State Secretaries, Under-Secretaries of State etc. These political civil servants must share the same fundamental political vision as the government of the day.
- Directly after the formation of a new government a 'handover phase' starts. During this period, the newly elected leaders may reshuffle the top-level civil servants in accordance to their political priorities.
- The government can also place these politically appointed civil servants on 'temporary retirement' at any time. This means that their duties are temporarily suspended, whilst they are entitled to a state pension. However, this power is rarely used.

- During this handover phase, which can last for several weeks, the outgoing team is required to go over, in great detail, all the affairs and documents from the old administration with members of the new administration.
- Strengths:
 - The possibility of reshuffling the top level civil service acts to ensure that there is trust between the new government and the civil service.
 - The briefings and discussion between outgoing and incoming teams help ensure continuity and reduce disruption.
- Weaknesses:
 - The scope of the new administration's penetration is limited to the political civil servants only. There are only around 400 political civil servants out of the 130,000 federal civil servants.
 - Even though the newly appointed political civil servants have the support of the newly elected political leaders, they still need to earn the trust and respect from the rest of the civil service.



Implications for Malaysia

- A clearly defined transition process is important. Even though our country is still relatively young, we can learn from the experiences of other countries to allow our own democracy to leap forward.
- More mature democracies accept that trouble-free and smooth transitions are in everyone's interest. This too should be the attitude of state and federal governments in Malaysia.
- Politicians, especially those who are now in power, must accept that for the sake of the rakyat, they must create a proper transition plan. There must be no grandstanding on this matter, refusing to accept the possibility of a change of government.
- It is the responsibility of the incumbent administration to put in place a credible process.

Immediate term

- Civil service must conduct detailed scenario planning
 - With the general elections looming, the civil service at federal level as well as in all states must conduct independent scenario planning in anticipation of the different possible outcomes.
 - This planning must be done by the civil service and for the civil service, without interference from politicians.
 - To ensure an effective planning process, politicians must make a commitment that they will respect the independence of the civil service to conduct their scenario planning. Such preparation is the duty of a professional civil service to the rakyat, not a sign of disloyalty to the incumbent government.
- Allow opposition leaders to meet senior civil servants at both state and federal levels
 - Activities to enhance the trust between the civil services and the opposition must be defined and implemented to ensure cooperation from the first day of the new government, if any.
 - The meetings must be held in confidence, and it must at least include the top two or three layers of civil service.
 - These meetings are particularly important in states where the possibility of change is high.
- Focus at state level
 - It is likely that there will be changes at state level in the coming elections. However, attention is still focused at the federal level and not much support is given to state level politicians, especially to prepare them for government. This has to change immediately.

Longer term

- Develop a transition guideline
 - An official guideline should be introduced at Federal as well as in all states. This guideline should detail the processes involved before and immediately after elections to ensure smooth changeover.
 - The drafting of this guideline should be done on cross-party basis. This will introduce a 'convention' that is flexible and can be amended easily to guarantee relevance.
 - However, the guideline also has to be strong enough and penetrate deep enough to ensure that transition processes are not left to the whims of the incumbent government.
- Upskill politicians at both state and federal levels
 - Federal and state opposition parties should be trained on the inner-workings of the civil service.
 - This should be funded by taxpayers, but conducted by a body that is independent from the government.

