

Smooth transitions of power: Hung Parliament and Caretaker Government

Introduction

In the previous Policy Ideas we looked into what to do before an election in order to ensure a smooth transition of power.

In this Policy Ideas we will explore the steps necessary after an election, especially if there is a hung parliament. In particular we look into the role of a caretaker government post-election. We will use more mature democracies with constitutional monarchies as case studies.

What is at stake?

- Power transition has to be examined with a long-term perspective. Preparing for transition should start well in advance of the election, but it does not always end with the incumbent accepting defeat and leaving.
- There are many issues that may arise during the transition process resulting from the lack of clearly defined guidelines, such as challenges in coalition formation, minority government formation, and how to run the country during transition periods.
- For example, how do we deal with the possibility of Barisan Nasional component parties in Sabah and Sarawak wanting to switch to Pakatan Rakyat if Barisan Nasional fails to garner the majority of popular vote in Peninsular Malaysia? Who will govern while they are negotiating?
- Without clearly defined guidelines there is a risk for a post-election stalemate, where the country cannot be successfully (or satisfactorily) run and tensions might erupt as a consequence.

What are the core issues?

- The Parliament Select Committee on Electoral Reform said that there is a need for a caretaker government from the dissolution of parliament until the formation of a new government. We believe the parameters for this caretaker government have to be established in order for it to be effective.
- In the case of uncertain election results there has to be an agenda in place for coalition negotiations, with a convention agreed in advance on who should have the prerogative to initiate negotiations and how they should be monitored.
- The role of the Rulers Council (Majlis Raja-Raja) in the democratic process too has to be defined, so as to avoid unnecessary confusion and interference with the popular will.



The Malaysian case

- Malaysia has very little experience in power transfers, and even then only at state level. This means we have not had the chance to develop strong customary principles on what to do in case of a stalemate after elections.
- Most countries with a longer and more organic history of democracy have developed these customary practices.
- Malaysia is currently a virtually two party system, with pre-fixed coalitions. However, independent candidates, changes in the coalitions – e.g. parties not getting re-elected or parties changing alliance – individuals changing party, etc can create a need for renegotiations in the coalitions post-election.
- The Rulers' power, including that of Yang di-Pertuan Agong, in the government formation process is not defined clearly enough. This creates a possibility that the institution is accused of going against the wishes of the people in certain cases.

Case studies of best-practises from other constitutional monarchies

United Kingdom

- In the UK, if there is an indecisive election (hung parliament) the incumbent government will be retained as a caretaker government until such time that a coalition has been formed.
- This government, however, is obligated to follow the 'Purdah' rules. These rules prohibit the caretaker government from announcing any policy changes, or advertise success from previous policy choices.
- Purdah rules are considered to be in place from the dissolution of the parliament until a new government is formed. It also applies to local elections.
- In the case of a hung-parliament, the leader of the biggest party has, according to convention, the prerogative to initiate discussions with other parties. If, and only if, these fail or stall, does the runner-up initiate conversations with other parties.
- Whilst staying informed during the process of government negotiations, the monarch does not have a formal role to play other than giving consent once the negotiations are completed. The monarch does not interfere in the negotiations.

Strengths:

- The UK system has clearly defined boundaries for the powers of its caretaker government. This

makes abuse of power and the usage of an unfair advantage in the election process less likely.

- The Queen has a clearly defined role. She acts as a guarantor for due process, but plays a very limited part in the government formation process.

Weakness:

- The UK has a small number of parties with significant amounts of seats. A more complex political system with more parties might require more complex guidelines for coalition negotiations.

The Netherlands

- In the Netherlands, just as in Britain, the incumbent government is retained as a caretaker government; however, the conventions are not as specific as in the UK.
- The main difference between the Netherlands and Britain is in the way government formation is negotiated. In the Dutch parliamentary system, no party is likely to win an outright majority. And since the parties do not run in pre-arranged coalitions, the government has to be formed after the election results have been announced.
- The formation process in the Netherlands is not initiated by any one of the political parties. Instead the Queen will hold closed door advisory



meeting with all the leaders from the major political parties. She will then appoint, by advice from the Dutch Council of States, an 'informateur' (or negotiator) who will maintain neutrality whilst assisting the leaders of the various parties in reaching a deal of government.

- Once the deal is done, the negotiator notifies the Queen and the new government is put to vote in parliament.
- The monarch in the Netherlands has in theory a more pro-active role to play through the appointments of the negotiator. But in practice, the monarch does not act alone. She decides based on advice from a council of advisors.

Strengths:

- Using an independent negotiator in the coalition negotiation process allows for fairer proceedings. No party will get the upper hand in the negotiations, though of course the larger parties will still have greater chances at playing major roles.

Weakness:

- The negotiator system can lead to very drawn out coalition negotiation. In neighbouring Belgium which uses the same system the country was without a federal government for 196 days after the election in 2007 before a government could finally be formed.
- The role of the Queen allows for more than just a guarantor of due process. The Queen plays an active part in giving advice to candidates of the political parties. If not monitored carefully this could be a source for abuse of power.

- Furthermore, it is the speaker's role to suggest the new government before the vote in the parliament. The speaker is given four attempts to suggest a new coalition to be voted in parliament. If he fails a new election will be announced (but this has yet to ever happen).
- Formation of a minority government is also possible. The current Swedish government is a minority coalition government, which means that in order to pass a bill they will need the support of about 10 members of the opposition parties. Likewise, if the opposition join forces, they can push their bills through parliament.
- The Swedish King's role in government formation is even more marginal than that of the British. The King's role is solely ceremonial and limited to the formal opening of Parliament, and he is not even present during the government formation process.

Strengths:

- The possibility of having a minority government creates flexibility in the government formation process, and acts as a way to avoid drawn-out coalition negotiation processes.
- The speaker of the parliament only has four attempts to form a government before a new election has to be called. This further prevents a drawn-out process and puts pressure on all parties involved to make a deal.

Weakness:

- The role of the speaker of the parliament in facilitating government formation is not straight forward. The speaker is not an independent figure, but is member of one of the political parties (usually from the incumbent Prime Minister's party), this might lead to a situation where one party is favoured over the rest.
- The role of the King is limited to the extent that he is not even given the role of being a guarantor of due process, which means losing out on one possible route to ensuring due process.

Sweden

- After an election with an uncertain result the incumbent government of Sweden hands in their resignation to the speaker of the parliament, but is asked to stay in power as caretakers until a new government can be voted in through parliament.
- In Sweden it is the speaker of the parliament who initiates coalition negotiations in the case of uncertain election results.



Policy suggestions

- The boundaries and limitations of the post-election caretaker government has to be clearly defined pre-election. It is not enough to have a caretaker government nominated if the scope of its power is not defined. The guideline should include:
 - o Who should be in the caretaker government and what size it should be.
 - o The power should be limited to decisions of national security and the continued execution of already approved policies.
 - o No new policy decisions should be made, nor should any announcements of new projects launched.
- Clearly defined practises needs to be put in place in order to prevent stalemate in the case of an uncertain election result. These guidelines should include who has the prerogative to start the negotiation and which body should oversee the negotiation to ensure due process.
 - o Any system developed has to make sure that the negotiation process is fair and transparent. It is advisable to use an independent negotiator to ensure that all parties have a reasonable access to the negotiation process.
 - o Safeguards against a drawn-out process have to be included, for example a limit on the number of government formation attempts that can be done without invoking a new election.
- Finally, the roles of the Rulers and Council of Rulers have to be defined. As seen in the European constitutional monarchies the monarch takes a back-seat role in the government formation process to respect the democratic wishes of the people. Their involvement is limited to general interest and the maintenance of due process.
 - o The Rulers have an important role to play as a guarantor of due process and as a unifier of the people.
 - o However, the role of the Rulers should not include an arbitration role during the coalition negotiations, or indeed afterwards. This will safeguard the institution from accusations of being partisan.



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Institute for Democracy and Economic Affairs (IDEAS)
D6 Taman Tunku, Bukit Tunku, 50480 Kuala Lumpur
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