

BN becomes caretaker gov't on March 8

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COMMENT Parliament's term is five years. Article 55(3) of the federal constitution states: 'Parliament unless sooner dissolved shall continue for five years from the date of its first meeting and shall then stand dissolved.'

Because the current Parliament had its first meeting on April 28, 2008, it shall automatically 'stand dissolved' on April 28, 2013. As it is an instance of automatic dissolution, no action by any person is required to trigger it.

By virtue of Article 55(4), the 13th general election (GE13) 'shall be held within 60 days from the date of the dissolution of Parliament'. Hence, the very last date on which GE13 can legally be held, at least for Parliament, is June 28, 2013.

The Election Commission has already announced its intention to hold federal and state elections on the same day. Apparently, the first state assembly that met was in Negri Sembilan on March 26, 2008. The Negri Sembilan constitution has a similar 60-day provision (see Article 56(4) of the second part of the state constitution).

This means that if the BN wishes to have the same polling day for federal and state elections, the last day would be May 26, 2013 (and not June 28). In other words, if the general election is not held for the Negri Sembilan state assembly by May 26, its state government will be remaining in office illegally.

One of the great privileges that a Malaysian prime minister enjoys is to decide on the date of the general election before the expiry of his five-year term. The incumbent's advantage on timing elections is highly prized, and invariably exploited by leaders of most Westminster style parliamentary democracies in the Commonwealth.

Our five previous prime ministers have timed the polling date in order to take electoral advantage. Hussein Onn, Dr Mahathir Mohamed and Abdullah Ahmad Badawi even called for a general election before four years - that is, by three years 10 months, three years nine months and three years 11 months respectively.

The longest serving government since Merdeka was the Alliance/BN government which took office in May 1969 and faced the electorate again in August 1974, five years three months later. But special circumstances prevailed: after the May 13 riots, the National Operations Council (NOC) took charge of the nation's affairs and Parliament was suspended.

Normalcy only returned in August 1971 when Abdul Razak Hussein was sworn in as the prime minister (after acting as NOC director) and Parliament resumed sitting. Therefore, the five years three months between the third and fourth general elections do not really serve

as a precedent.

So why has Najib Abdul Razak not utilised the privilege attached to his office by advising the Agong to dissolve Parliament before the expiry of his term, to be followed by GE13? Only one answer can be inferred: BN is running scared of defeat.

Logic and common sense would suggest that if BN had been confident of victory, Najib would have called for election. But those who have inside information about the close ties between politics and big business suggest a more sinister reason for the delay. It gives more opportunity to enter into contracts.

Such close observers of the corridors of power say that it is no coincidence that not a day passes without a public announcement of a deal involving the public purse. Transactions kept private and confidential are even larger in number. From this perspective, their self-interest in staying in office is not confined to politics, but extends to commercial matters.

Limits on caretaker government

Ultimately, it is pointless to speculate. The undeniable fact is that five years would pass this weekend after the holding of the last election, with no announcement of a dissolution of Parliament and the fixing of the date for GE13. When this occurs, the BN government forfeits the moral high ground to govern our nation.

BN remaining in office from March 9 to June 28, 2013 is constitutional and legal, but its political legitimacy and moral authority are in question.

Voters can legitimately say that they voted for a BN government on March 8, 2008 to govern for five years, and if that government does not choose to secure another mandate within that period, it becomes a caretaker government.

Although the expression 'caretaker government' is not defined in constitutional or legal terms, it has been accepted in practical politics. It usually means a type of government that rules temporarily.

It is an interim government, not intended to govern permanently. It can occur in varied and infinite circumstances. Even past BN governments publicly concede that after Parliament is dissolved and before the national polls, they are a caretaker government.

I suggest that Najib should act honourably and announce on March 9, 2013 that, from that day until the polls are conducted, he will be the head of a caretaker government. He should set the lead, as a statesman would.

So how should a BN caretaker government act in practical terms?

1. The affairs of the state are still in the hands of the prime minister and his cabinet.

2. Implementation of executive decisions and the day-to-day administration of government are, in any event, carried out by the one million strong civil service, which is supposed to be independent and neutral with regard to party politics. In that sense, government is run by the bureaucrats who continue to manage, regardless of which political party is temporarily in power.

3. Foreign affairs and defence matters are managed as if there is no change. Thus, the defence forces should be entrusted to deal with the invasion of Lahad Datu, Sabah. Operational matters come within their discretion.

What the BN caretaker government should not do is to take policy decisions of a long term nature or which would bind the next government.

Likewise, it should not enter into contracts involving taxpayers' money and the public purse. A new government is perfectly entitled to review such contracts and terminate them if they are not in the public interest.

Finally, a caretaker government certainly cannot give away monies like the BR1M payments from taxpayers' fund.

It is a fundamental principle of our parliamentary system that no monies can be expended by the executive branch (the BN Government) without prior approval of the legislative branch (Parliament).

Monies cannot be paid out of the Consolidated Fund without Parliamentary approval. This is normally done through the Finance Bill, popularly known as the budget, presented in Parliament annually in October and passed in December.

Hence, the critical question is: what is the necessary parliamentary approval for BR1M and other payments doled out by the Santa Claus of Malaysia? It is clearly distributed for blatant electoral purposes. The effect is to worsen our ever-growing national debt.

Only time will tell whether Malaysian voters will punish Najib for delaying the calling of GE13. Recent British examples such as the fate of Prime Ministers James Callaghan in 1979 and Gordon Brown in 2010 will not provide Najib any comfort.

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