

An Independent Election Commission that doesn't hold elections?

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By S. RATNAJEEVAN H. HOOLE
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I belong to the so-called Independent Election Commission. I do not know why they call us Independent because I do not see that word in any of the legal instruments that appointed us. That, however, is the perception of the public. They expect us to act independently and hold the long overdue local government (LG) Elections immediately. It is a normal expectation in a democracy.

In the meantime, many contradictory statements with different dates by the Minister for Provincial Councils and Local Government (Faiszer Musthapha), the President, and the PM, among many others, have added to the confusion. The Island editorial (13.10.2016) gives as reason "The entry of a new political force led by the Rajapaksas into the fray will make the situation worse for the ruling coalition" and bets its bottom dollar that "the government will postpone the mini polls indefinitely on the pretext of finalising electoral reforms." The evidence seems to suggest that The Island is right.

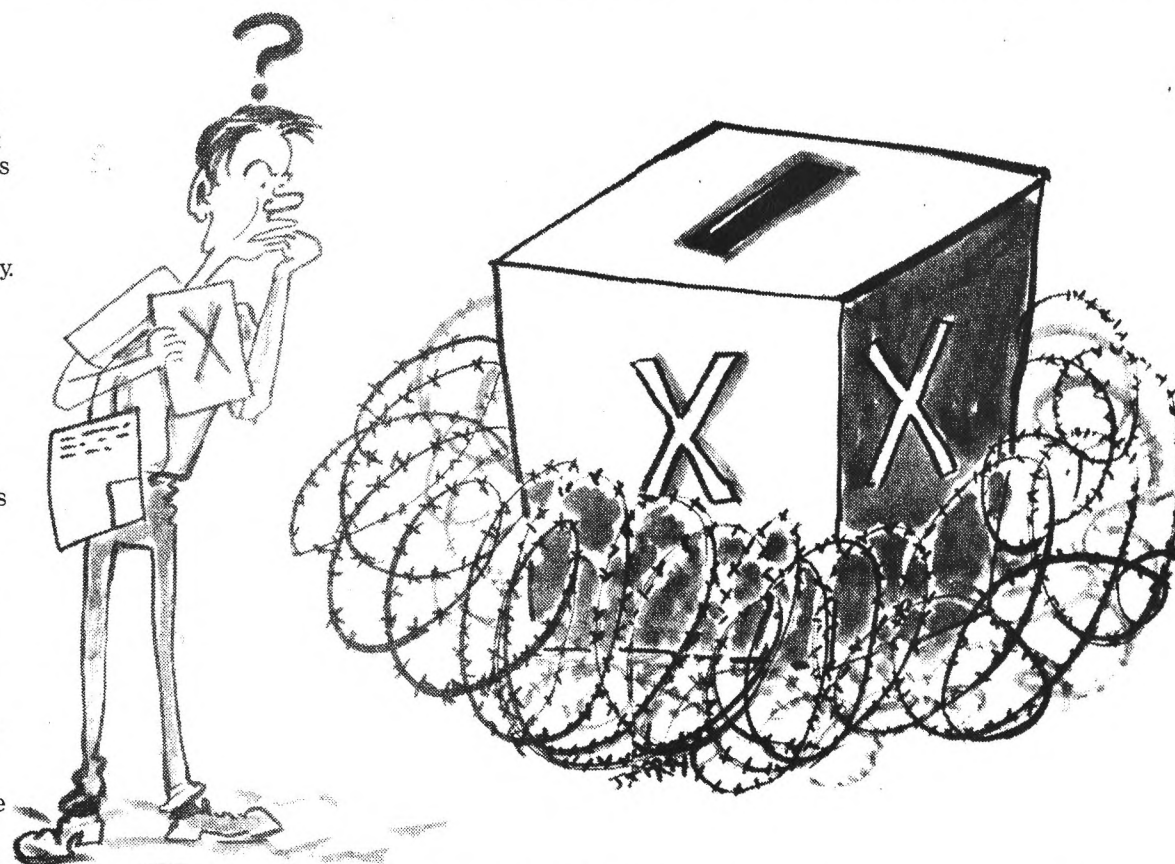
The Joint Opposition periodically visits the Commission demanding LG Elections. Everyone outside the government blames us saying we are independent and must hold elections. The JO at a public meeting even accused our Chairman of being partial to the government. We are the punching bag.

The President however spelt out the exact nature of our independence when Economy Next (12.10.2016) reported that the President "warned secretaries of independent commissions that it was he who had appointed him [sic, them] and they should know their 'limits' and must keep him informed," adding that he had decided to speak out and take "stern action."

At least on the Election Commission, our Secretary is appointed by us and not the President, and we are answerable only to Parliament, not to the President. We Commission Members accepted our positions believing we would be truly independent. We began saying we are an independent commission and will not be summoned by anyone except by Parliament, the only entity to which we report. We have progressively learnt otherwise, culminating in this Presidential threat.

With many things in Sri Lanka being illegal including the apparent sweeping under the rug of night club brawls, the threat is chilling. Worse, in that same Economy Next article, the President said, "military commanders who led a successful campaign to crush separatist Tamil Tiger rebels in May 2009 should not be humiliated by bringing them to courts." In other words, total impunity and hero-status to those who butchered Tamil civilians in the tens of thousands. That is even more chilling.

Despite the threat of stern action, we must speak up in our newly threatened democracy. Signals of our Commission's irrelevance have been coming for some time. On 14.09.2016 Minister



Musthapha, with many speculative election dates in backdrop, invited us to his Ministry to discuss the LG Elections. We would not have gone but for his telling us that it is to meet the Cabinet Subcommittee on the Local Government Draft Election Act. Traffic as it is in Colombo, we ended up at Union Place at 4:00 PM for the 4:30 PM meeting, looking our best in our ties. (Mahinda Deshapriya of course has his own unique wardrobe!) Secretary H. T. Kamal Pathmasiri, served us good ginger tea and kept stalling us for more time for the Ministers to turn up. Minister Musthapha arrived at 6:30 PM by helicopter with nary an apology. Not one of the other Ministers on the Cabinet Subcommittee (Rishad Bathiudeen, Mahinda Amarasinghe, Mano Ganesan, Rauff Hakeem, Sushil Premajayantha, Vajira Abeywardena, or Wijeyadasa Rajapakshe) turned up or sent us word that they would not come.

In the course of discussions when one of us was asked to draft an Act and give a timeframe for his work, the Minister said, "Yes, let's set a time. The problem in this country is lack of discipline." It did not seem to occur to him that it applied to his own tardiness and his cabinet colleagues' too.

However, by the end of the meeting we had agreed to a careful timeframe for the LG Elections. Specific time allocations for required actions before elections can be held under the Local Authorities Elections (Amendment) Act of 2012

were agreed to – for the Delimitation Committee to do its work, for the Appeals Committee to hear and dispose of appeals, for translations, for the Survey General to map out the wards, and for the wards to be gazetted. For the first time since we took office in Nov. 2015, we had a date for the LG Elections – we would shoot for March 2017.

After that happy outcome, the Minister, effusive and expansive, said he was being blamed for the delay and asked if any of us thought so. He asked. So I told him that I thought so when Asoka Peiris (Chairman, Delimitation Committee) had promised to finish his work by 15.08.2016 and the Minister gave an unsolicited extension to 31.10.2016. The Minister readily came with the repartee to the effect: "I could see that Asoka Peiris was working with impossible dates and ruining his health. I wanted him to have a respite."

In contrast to Faiszer Mutapha's two-hour tardi-

ness at the end of which he did turn up, worse was Prime Minister Ranil Wickremasinghe. He summoned us on 20 Sept. for a meeting at 5:30 PM with a Parliamentary Select Committee. We were told the meeting would be in Parliament's Committee Room 3 and that one person was already there. We found the room; that one person there was our Commission Secretary. No Prime Minister. After much waiting and inquiry we were informed that the PM had gone out of Parliament without saying where, and was unlikely to be back. Not one word to us warning us not to wait or apologizing. We are taken for granted. We were effectively told we are nobodies. The meeting took place the next day but I had to be back in Jaffna after spending a good quarter of my monthly travel allowance on petrol, and, to stay within my allowance, I did not want to continue eating in tea boutiques and living in cheap government rest houses where bed-sheets are not changed. Besides, what guarantee that he would not abscond again?

That is the backdrop to the straw that broke the camel's back on 12.10.2016 when The Island reported that "Minister Lakshman Yapa Abeywardena gave the country another surprise when he declared that the long overdue local government polls would not be held till June, 2017." We are rightly angry when a Minister whose portfolio has nothing to do with Local Government makes such a pronouncement.

At the meeting of the Commission with representatives of parties on 12.10.2016, Chairman Deshapriya expressed our anger and promised that the matter would be on the agenda at next week's Commission meeting (18.10.2016) after which we would make a press statement. I will say no more because he has asked me not to say anything until that Press Statement is agreed upon by the Commission.

For my part, I will press the Election Commission for LG Elections as soon as possible. It is a democratic right of the people. As I teach in my Ethics class for Engineers, often two rights are in conflict and we must establish a hierarchy to be able to choose. In this case, we have on the one hand, the 2012 Local Authorities Act, which is in force, and we need to wait for the provisions to be implemented and new wards demarcated. We have also pointed out defects in the Act. It was drafted in English and translated into Sinhalese and Tamil, making the claim that in case of conflict between the versions, the Sinhalese translation shall prevail. However, the mistakes are in the Sinhalese version. For example, it says representatives are elected to Districts (as in Parliamentary Elections) rather than to Wards (as in LG elections). So any LG election of representatives to Wards can be challenged. We have pointed this out to the PM, who has not bothered to make this simple amendment.

On the other hand, we already have boundaries demarcated – gerrymandered by the old government, it is widely alleged – and these have been gazetted by the present President. We also have the principle of democratic representation, which demands immediate elections. Importantly, the Local Authorities Elections Ordinance of 2005 in Article 25 says elections shall be held 6 months before the terms of office of members end. That deadline is long gone but it does not mean the clause is not operative. If you have to apply fertilizer at the beginning of every spring, just because you miss the beginning of spring does not mean you need to forego fertilizer all together. The Commission therefore has the power to announce elections.

We need to decide on the hierarchy of the two competing claims. Normally when a government goes about its business with bona fides, we must wait for the work of the government to run its course. But it is no longer clear that the delays are not deliberate – a) playing with the public by giving various dates for elections, b) treating the Commission with absolute nonchalance (not keeping appointments and not setting or paying salaries which took a year and a public protest to get it done), c) making an agreement with the Commission on a target date and having an unrelated minister make a contradictory statement, d) not making the simple amendments necessary for elections where members are elected to Wards and not Districts, and now e) having the President himself threaten Commissions.

Do we then wait in fear of unspecified "stern action" by the President and let people be deprived of their democratic right to government by their chosen representative? Or do we exercise leadership and hold elections using the wards gazetted by President Sirisena himself even if they are gerrymandered? If we are challenged, let the courts decide. A commonsense interpretation that I would expect of the courts of what is meant by "District" in a local government bill clearly means "Ward."

The Commission going for elections could lead to an embarrassing reversal by courts but trying for the right thing is what leadership is about. Indeed, decisive action by the Commission would give pause to those who think they can play with the people's right to representation and make threats to a Commission.

Chapter XIV A, Article 103 (2) defines the object of the Commission to be conducting free and fair elections and referenda. Postponing elections to suit the interests of one group may still allow free elections, but they will not be fair.