

Statement of the Seed Community for a Professional Parliament

17 June 2021

Parliament Should Reconvene Immediately, Not September or October

We, the undersigned civil society groups, express our appreciation and support for the recommendations and concerns shown by His Majesty the Yang di-Pertuan Agong (YDPA) and Their Royal Highnesses the Rulers on the urgent need for Parliament and the State Assemblies to reconvene immediately as a legitimate avenue to address the COVID-19 pandemic that has hit hard on the nation's economy and the livelihood of the rakyat.

We urge all parties, especially Tan Sri Muhyiddin Yassin's administration to undertake what is necessary to restore parliamentary democracy and with it, the political and economic stability that the country so crucially needs in the immediate future to overcome the uphill battle of economic recovery.

Our full position is as follows:

1. The opinion and advice of His Majesty the YDPA and Their Royal Highnesses the Rulers are unambiguous. Parliament must convene immediately – not in September, not upon the expiry of the Emergency term on 1 August, but immediately.

2. When Tan Sri Muhyiddin Yassin's administration and the Attorney-General (AG) advised the YDPA on the purported necessity of enforcing a State of Emergency and suspending Parliament at least until 1 August, they would have known and ought to accordingly have advised the YDPA that by doing so, they would be placing the YDPA in the difficult position of potentially acting in conflict of Article 55(1) of the Federal Constitution. Article 55(1) imposes a constitutional obligation directly on the Constitutional Monarch not to allow six months to elapse between Parliament's last sitting in one session and the date appointed for its first meeting in the next session - an obligation that His Majesty the YDPA can only act on once the Prime Minister takes the initial step of fixing a date for the sitting. While the State of Emergency was declared under the YDPA's powers under Article 150 of the Constitution, nevertheless, the tenure of the Emergency Proclamation would mean that Tan Sri Muhyiddin Yassin's administration was placing the YDPA in the difficult position of being unable to fulfil the constitutional obligation under Article 55(1).

3. Given the potential constitutional conflict under which the institution of the Constitutional Monarch was being placed, the onus and duty of Tan Sri Muhyiddin and the AG to the YDPA was to ensure that the suspension of Parliament and the Emergency be lifted as soon as it was clear that these measures were not absolutely necessary to manage the COVID-19 pandemic.

4. However, recent events have clearly established that the enforcement of a State of Emergency has done nothing to stem the rising number of COVID-19 infections, as Their Royal Highnesses the Rulers pointed out. Also as Their Royal Highnesses noted, Parliament and the legislative assemblies can and should convene during the pandemic precisely because these institutions are integral in monitoring the implementation of COVID-19 policies, programmes and expenditures and in debating alternatives for improvement.

5. It is therefore incumbent on Tan Sri Muhyiddin and the AG to now immediately advise the YDPA to revoke the State of Emergency, or to revise the Emergency Ordinance (or invoke Sections 14(1)(b) and 15(1)(b)) to lift the suspension of Parliament and the State legislative assemblies.

6. Once lifted, parliamentary rules provide a pathway for Parliament to reconvene immediately, but it requires Tan Sri Muhyiddin to act under, for example, Standing Order 11(2) of the Dewan Rakyat Standing Orders. Also as Prime Minister, he can request for an emergency sitting of the Dewan Rakyat under Standing Order 11(3). Tan Sri Muhyiddin is able to do so on short notice, and should in fact call for such a sitting on or by 28 June 2021, before the expiry of the six-month period after the last sitting of Parliament (29 December 2020). To do so may avoid any implication that Article 55(1) of the Federal Constitution has not been complied with. Such an emergency sitting, with the agreement of the respective political parties, can be conducted with a minimum number of MPs, convening for the dominant purpose of putting in place the necessary first steps towards conducting hybrid parliamentary proceedings.

7. In any event, the Emergency Ordinance should be revised to at least allow, on an urgent basis, the essential committees of the Dewan Rakyat and the Dewan Negara such as the House Committee and the Standing Orders Committee to convene so that the formal process of agreeing on the rules for hybrid proceedings can take place. The Ordinance should also be revised to allow all parliamentary committees, caucuses and groups to function immediately.

8. As Prime Minister, Tan Sri Muhyiddin holds the authority to initiate the procedures necessary for Parliament to reconvene; and the AG's role in this as advisor to the Cabinet is crucial. There are procedural pathways to do so. The failure to advise the YDPA accordingly and act expeditiously will not only be a clear refusal to acknowledge the decree of both the YDPA and the Rulers, but also could be construed as a move to govern the country as an unconstitutional and illegitimate authority.

9. Should Tan Sri Muhyiddin's administration fail to take the necessary and immediate measures to reconvene Parliament, therefore potentially leading to a constitutional crisis, we respectfully ask His Majesty the YDPA to consider seeking independent legal counsel to invoke Article 130 of the Federal Constitution and seek the Federal Court's opinion on the provisions of the Constitution that would enable Parliament to reconvene in the face of the Executive branch's refusal to discharge its constitutional duty.

10. We further call on all Menteri Besar and Chief Ministers to seek advice on the reconvening of their respective State Assemblies regarding which Their Royal Highnesses the Rulers have expressed their favour.

11. We urge the Minister of Science, Technology and Innovation (MOSTI), Khairy Jamaluddin to immediately prioritise vaccination for all personnel working in Parliament House and the State Assemblies, and of Members of Parliament and State Assemblypersons who are yet to be vaccinated, as a practical and concrete step towards paving the way for the reopening of Parliament and all State Assemblies. Delay in this aspect may be construed as a deliberate move to delay the opening of Parliament and the State Assemblies.

This statement is initiated by the Seed Community for a Professional Parliament, a network of individuals active in civil society organisations, think tanks and academia working towards a professional Parliament that facilitates healthy policy competition between parties.

Signed by:

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2. Coalition for Clean and Fair Elections (BERSIH 2.0)
3. Institute for Democracy and Economic Affairs (IDEAS)
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5. Institute for Political Reform and Democracy (REFORM)

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