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NETWORK

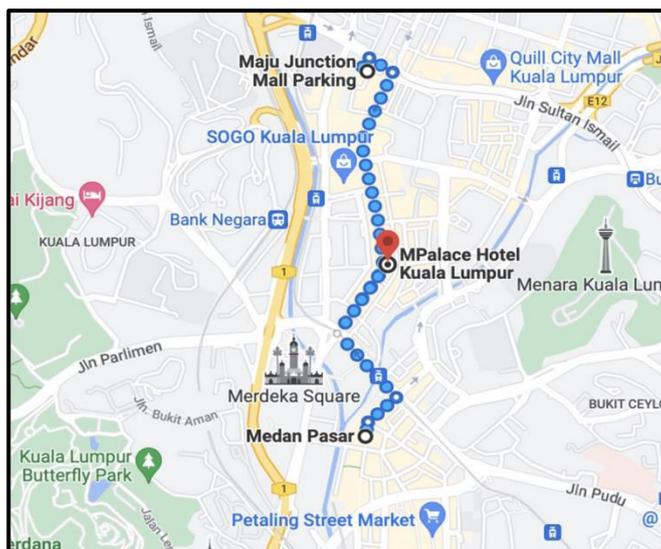
ASSEMBLY OBSERVATION REPORT Malaysia: May Day public assembly

29 May 2023

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1. General Information about the assembly and the observers

On 1 May 2023, in Kuala Lumpur, Malaysia, over 400 people attended the annual May Day (International Labor Day) march from Maju Junction through central Kuala Lumpur and rally at the end point of Medan Pasar. The organizers of the assembly were a coalition of human rights NGOs and political parties, including Suara Rakyat Malaysia (SUARAM), which is an FIDH member and the AAON host for this event.¹



A Google Maps screenshot shows the march route, starting from Maju Junction and walking south to Medan Pasar. © FIDH

The march began at 10:00am and participants marched about two kilometers to reach the rally point around noon. The rally peacefully dispersed at 1:00pm. The demonstration was organized around the theme of “minimum salary and food security,” and participants brought their own signs and banners displaying a range of messages and demands. These included, but were not limited to: ending the private contract system for government sanitation and security workers; respecting the land rights of agricultural workers; increasing and enforcing the minimum wage; increasing the availability of public housing; and improving the social security system. Women held visible leadership positions at the demonstration and participants included members of vulnerable groups, such as indigenous ethnic groups.

¹ The Asia Assembly Observation Network (AAON) is an initiative by the International Federation for Human Rights (FIDH) to ensure independent monitoring of public assemblies in Asia.



Participants line up at the start of the march, with those in front holding a large banner. SUARAM Executive Director (right, red cap) motions to marshals further back. © FIDH

AAON deployed three observers. They began their observation together at the march starting point around 9:00am and each observer was accompanied by a SUARAM staff member throughout the event. One observer was located at the front of the march and walked next to a pick-up truck that carried several of the demonstration leaders. Another observer marched in the middle of the procession, walking between the flow of participants and the police on the side of the traffic. The third observer marched within the crowd and toward the end of the procession. All three observers ended at the rally point and monitored the rally and the eventual dispersal of the demonstration.

2. Background: Compliance of the domestic legal framework with international standards

Article 10(1)(b) of the Malaysian Constitution states that all citizens have the right to peacefully assemble without bearing arms.

Malaysia's legal framework for peaceful assemblies is regulated by the Peaceful Assembly Act of 2012 (PAA), amended in 2017. Under Section 9(1) of the PAA, organizers of a public assembly must inform the police of their intent to assemble at least five days before the assembly. This notice requirement for public assemblies was shortened from 10 days to five days in the 2017 amendment.

Section 4 of the PAA bars non-Malaysian citizens from participating in public assemblies. In addition, persons under the age of 21 may neither participate in, nor organize, an assembly. Although not specifically mentioned in the PAA, sexual and gender minorities lack protections under Malaysian law, and expressions of their LGBTIQ identity subject them to state-backed discrimination and even criminalization.

Article 3 of the PAA defines a "public place" as "a road; a place open to or used by the public as a right; or a place for the time being open to or used by the public [...]." Some spaces are designated as unlawful for holding public assemblies, ostensibly for public safety reasons. The list of excluded places includes locations important for public utilities (such as dams and

electricity generation stations) and public transportation (such as gas stations, transit stations, ports, and bridges). Hospitals, places of worship, kindergartens, and schools are not lawful sites for public assemblies.

The fine for contravening the PAA is a maximum of RM 10,000 (approximately US\$2,200). Organizers and participants of public assemblies may face harassment, detention, or arrest under other laws, such as the Communications and Multimedia Act of 1998 or the Sedition Act of 1948.

This legal framework does not comply with international law and standards on peaceful assembly and the principles of legality, necessity, and proportionality. Specifically, the notification requirement and police discretion operate to prohibit spontaneous assemblies. In practice, different policing responses to certain assemblies and the disallowance of others have not been consistent in recent years.

3. Conduct of the assembly organizers and participants

The May Day assembly was entirely peaceful. Organizers were well prepared and experienced in managing crowd and traffic flows through identifiable marshals, having first aid materials available, providing snacks and bottled water, and having trash collection at the rally point.

Immediately prior to the official start time of the march, police attempted to restrict the modalities of the march further than those agreed upon in the days leading up to the event. March organizers peacefully and calmly handled this negotiation (see image, below) and were successful in resisting any additional changes to prior agreed-upon modalities.



SUARAM Executive Director (center, red cap) negotiates with police at Maju Junction just prior to the scheduled start time. © FIDH

The march began at 10:00am at Maju Junction, a public crossroad. Organizers and participants gathered there in advance and lined up behind a pickup truck outfitted with a sound system. A handful of organizers sat and stood in the truck bed and led songs and chants. The truck was flanked by marshals, and other marshals were stationed at various points along the march route. The march took up one lane of traffic on a one-way street for the main portion

of the march, which allowed for the free flow of traffic. When the march reached the intersection with Independence Square, the organizers safely diverted traffic and led the assembly to cross two busy intersections with no incidents. The march ended at Medan Pasar at around 12:00pm, and the truck bed was used as a stage for organizers to make speeches, lead participants in song, and finally read the May Day Declaration.

Assembly participants brought their own banners and flags. Some wore arm bands, pins, and other accessories. Participants marched in a neat formation behind the pickup truck, remaining in only one lane of traffic and followed the marshals' cues. They marched, sang, and chanted.

4. Presence and conduct of counter-demonstrators/non-state actors

There was no counter demonstration or organized interference by non-state actors. However, AAON observers noticed a participant carrying a small rainbow flag with the word "peace" on it and observed this same flag, unmanned, at the rally end point (see image below). At the rally, AAON observers learned from SUARAM staff that the participant holding the flag was approached by a bystander along the route who raised his voice at the participant, demanded the flag be put away, and even threatened to beat the participant with the rainbow flag if he did not remove it.



© FIDH

The police were not involved in this minor altercation. The organizers handled it themselves by deescalating the situation and asking the bystander to leave the procession, thereby protecting the participant from any harm.

Organizers told AAON observers that the bystander perceived the flag as representing pro-LGBTIQ messages. The intended message of the participant holding the flag is unknown, but the bystander intended to discriminate against support of sexual minorities' rights. Although state actors were not involved in this incident, state laws do not protect a participant's right to display a pro-LGBTIQ message at assemblies, and LGBTIQ issues are criminalized in practice in Malaysia.

5. Issues of concern

5.1 Restrictions

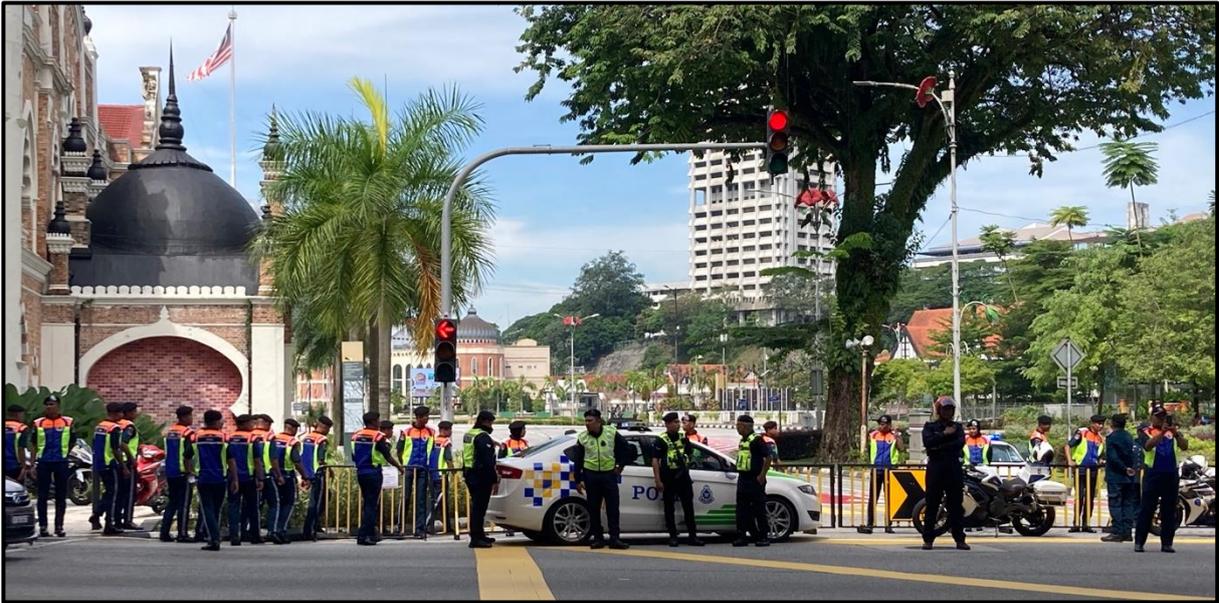
In addition to the restrictions imposed by the PAA and the police notification requirement, the police approval process is subject to a high level of discretion. In this case, that discretion was used to place additional and burdensome restrictions on organizers for this small-size assembly that witnessed a high degree of coordination of marshals to ensure traffic flow and public safety.

In general, the police discretion is subject to abuse, and SUARAM organizers have documented how other demonstrations have not been as well-received by police in the recent post-pandemic environment.²

After receiving advance notice of the May Day assembly, the police imposed restrictions on the march route starting and ending point. These negotiations turned on the issue of what can be considered a public place under the PAA. A frequent demonstration site is the paved area outside the SOGO department store, just a few blocks south of Maju Junction, which could be interpreted as a place lawfully open to, or used by, the public under the PAA. Police claimed that permission from the private owners of SOGO would be needed to start the march there, despite this space being considered a public place in the recent past. Because this space was not permitted as a starting point, organizers changed the starting location to Maju Junction – a “road” under the PAA – on the night before the march, perhaps setting precedent for the SOGO site to no longer be a permitted venue for public assembly in the future.

In addition, early on, police stipulated that entering Independence Square, which is unequivocally a public place, would not be permissible. Independence Square is adjacent to one area where the march passed by, and although organizers did not attempt to include Independence Square in their march or rally plan, the police further cordoned off the square on the day before the demonstration, claiming it was under construction. During the march, additional police personnel, a police car, and a team of three higher-ranking officers – one of whom conspicuously held a semi-automatic weapon (see image below) – were stationed at the north end of Independence Square. The day after the demonstration, AAON observers noted that most of the square was accessible, and only a small portion was cordoned off, contrary to the statement that the entire square was under construction.

² SUARAM, *Malaysia Human Rights Report 2022 - Chapter 4: Freedom of Assembly*; available at: <https://shorturl.at/kmyBJ>



At Independence Square (large, open area in the background), three Malaysian police officers stand in front of a police car. The officer in the center has a gun strapped to his chest. To the left and right are City Council forces wearing reflective vests. © FIDH

On the day of the May Day assembly, just minutes before the march was scheduled to start, the police attempted to impose further restrictions on the assembly by telling the organizers to conduct their march on the sidewalk instead of the single lane of the road allotted to them as a result of prior negotiations. The organizers held their ground and peacefully asserted their right to occupy the lane for the assembly, as agreed upon earlier. They later told the observers that they did so in order to avoid setting a precedent for future assemblies. The police finally agreed, and the assembly proceeded as planned.

Regarding content restrictions, police in their negotiations stipulated that certain types of content would not be permissible at the demonstration. These included clear red lines, such as disparaging the Malaysian monarchy, racist epithets, and other extreme language not contemplated by the organizers, who agreed to these restrictions.

AAON observers noticed several young people at the demonstration, accompanied by their parents. Although the PAA prohibits the participation of those under 21 years of age – in violation of international law and standards – neither organizers nor police attempted to remove the minors or penalize anyone for their presence.

a. Law enforcement

AAON observers noticed the presence of about 75-100 law enforcement officers. Police forces were the most obvious presence, with uniformed regular forces policing the march from start to finish, mostly unarmed and carrying handcuffs, radio equipment, and recording devices. The police took photos and videos of the organizers and participants. At the starting point, an additional contingent of uniformed police officers – including women officers - with handguns on their belts were present, but they did not follow the march. At the intersection with Independence Square, a group of three police officers stood by a police car wearing reflective vests. One of them had a semi-automatic weapon strapped to his chest.



A Malaysian police officer on a motorbike rides beside the procession. © FIDH

Further, about a dozen special police forces were deployed, wearing casual clothing that still clearly identified them as belonging to the force. These officers conspicuously surveilled the assembly (see photo below), recording photos and video footage of the participants, the speeches, and the flags, signs, and banners.



A member of the special forces wears a casual shirt with the official #KeepKLSafe message and logo on the sleeve. He takes photographs of organizers on the truck and marching behind it. © FIDH

At the SOGO department store intersection, the initially planned march start site, about 50 uniformed security personnel from the Kuala Lumpur City Council stood to meet the demonstrators. As the march approached, they split in two groups to flank both sides of the march and some followed it to the end point. These security personnel wore blue uniforms

and reflective vests, did not carry weapons, and did not act in an aggressive manner. SUARAM staff told AON observers upon seeing the City Council forces that they were not notified of this arrangement and had never encountered the dispatch of these personnel in previous assemblies.



City Council forces lined up outside the SOGO department store to meet and follow the procession. © FIDH

6. Assembly observers (restrictions and/or attacks on observers/ journalists by state or non-state actors)

None to date.

7. Sanctions against organizers and/or participants of the assembly

As of 1 June, no charges had been brought against organizers or participants.³ A news article published on 5 May 2023 reported that one woman organizer was called in for questioning by the Dang Wangi District police, who have jurisdiction over the march starting point.⁴ The article also states that police were opening an investigation under the PAA. Another news article, published on 2 May 2023, reported that the police considered the assembly unlawful for failing to give 10 days' notice.⁵

AAON observers note that the PAA requires only five days' notice, and organizers gave such notice. Further, the police were quoted as warning members of the public not to become involved in "any gathering that did not comply with the provisions of the law to avoid being prosecuted."

³ However, according to SUARAM, police have frequently used their power of summons to harass and intimidate assembly organizers and the public. See: SUARAM, *Malaysia Human Rights Report 2022 - Chapter 4: Freedom of Assembly*; available at: <https://shorturl.at/kmyBJ>

⁴ Star, *May Day rally organizer has statement recorded by police*, 5 May 2023; available at: <https://www.thestar.com.my/news/nation/2023/05/05/may-day-rally-organiser-has-statement-recorded-by-police>

⁵ Bernama, *Cops open investigation papers into May 1 rally, launch of 'Gerakan Rakyat'*, 2 May 2023; available at: <https://www.malaysianow.com/news/2023/05/02/cops-open-investigation-papers-into-may-1-rally-launch-of-gerakan-rakyat>

8. Follow-up documentation (if applicable)

Not applicable.

9. Recommendations

AAON observers recommend that:

- Police should close the investigation against May Day organizers and cease all intimidation tactics against organizers, participants and the general public for the peaceful assembly.
- When receiving notice of a public assembly, police should follow the PAA and avoid imposing any additional and burdensome requirements on organizers that are disproportionate to public safety and/or the policing peaceful demonstrations.
- Police should guarantee the right to privacy of participants and organizers and clarify whether surveillance footage and data collected at public assemblies is used according to police guidelines, including guidelines on data retention policies, and these policies or the absence of them should be made public.
- The state should immediately amend the PAA to ensure the notification system is in line with international standards, including that the process does not act as an authorization system, impose unduly bureaucratic demands disproportionate to the potential public impact of the assembly, or operate to render the assembly unlawful for failure to notify.
- The state should immediately amend the PAA to conform with international standards by eliminating discrimination against foreign nationals, migrants, and minors; permitting assemblies in public places and prohibit blanket prohibitions on certain public spaces; and removing restrictions on content and modalities of assemblies.