Malaysia is not a garbage dump

C4 Center Brief No. 1

Good Governance and the Global Plastic Waste Trade
OVERVIEW

China’s ban on waste materials disrupted the global market for recyclable material, leading to an influx of waste to Southeast Asian countries. Research was carried out from November 2019 to March 2021 to examine the value chains of the import, transport, and processing of plastic waste in recycling facilities in Malaysia, and to trace the actors and agencies involved in regulating the chains. The aim of the research is to investigate the problem of illegality linked to imported plastic waste in the country.

Drawing from 40 interviews conducted with government officials, businesses, and community representatives, findings show that despite extensive efforts by the Malaysian government, industrial activity including plastic waste recycling is extremely difficult to regulate. Environmental laws continue to be flouted by unscrupulous operators through illegal burning, dumping, and improper management of emissions and effluents, gravely affecting the lives of people living around such waste processing facilities or dumpsites.

KEY RECOMMENDATIONS

To countries exporting plastic waste:
• Prevent plastic waste generation by redesigning products and packaging for reuse, and for mechanical recycling once a product or packaging is no longer reusable.
• Prioritise local plastic waste management over exports.
• Ban plastic waste exports. Until a ban is implemented:
  1. enforce limits of 0.5% contaminants and require disclosure of additives contained in plastic waste;
  2. fully comply with other Basel Convention requirements;
  3. Ensure full transparency for plastic waste exports;
  4. only allow exports where there are effective guarantees of environmentally-sound management.
• Increase resources to tackle illegal plastic waste shipments and effectively collaborate with importing countries to prevent illegal trade and ensure the repatriation of illegally-exported wastes where necessary.

To countries importing plastic waste, including Malaysia:
• Assist local recycling operators in sourcing recyclable material from waste generated domestically as a priority, including by enhancing domestic waste collection and waste separation at source, and through extended producer responsibility.
• Ban plastic waste imports. Until a ban is implemented:
  1. enforce a limit of 0.5% contamination, and require disclosure of additives;
  2. ensure transparency for plastic waste imports;
  3. ensure that imported wastes are managed in a manner that minimises harm to human health and the environment.
• Strengthen national policies as well as regional and international coordination and cooperation in monitoring, enforcement, and anti-corruption efforts, and importantly, enhance participatory multi-stakeholder engagement to tackle the illegal waste trade.
• Adopt whole-of-society and whole-of-government approaches in all policymaking, in line with climate change mitigation and adaptation strategies.

Beginning January 2021, the trade of certain categories of plastic waste are subjected to the Basel Convention’s regulation system, where trade must be based on prior informed consent (PIC) from importing countries, while plastic waste shipments that are not subject to PIC must be destined for environmentally-sound recycling.
Considering the challenges of governance in developing countries including Malaysia, there can be no guarantee that this requirement is respected. Exporting countries cannot rely on Malaysian authorisations or licences to recycling facilities to conclude that there will be no environmental harm from activities carried out to recycle their countries’ waste. The administration in Malaysia has much room for improvement towards better governance, transparency, and accountability in the conduct of public and private business. The plastic waste crisis highlighted the extent of this persistent problem plaguing the country.

**Complexity and complacency in monitoring and enforcement**

The Malaysian experience shows that it is almost impossible to stop the false declarations of goods and smuggling at ports due to the volumes of containers that pass through the ports daily. Malaysian port authorities are still finding falsely declared or undeclared containers of waste, including plastic, electronics, and even hazardous heavy metals, at Malaysian ports. Communities still observe factories in their neighbourhoods full of bales of plastic waste, operating with no approved permits to import plastic waste.

Despite intercepting and sending back 254 containers and 5,512 tonnes of waste back to their countries of origin, as of 28 February 2021, more than 200 containers are still stuck at the North Butterworth Container Terminal in Penang, incurring costs for the port.

The enforcement of compliance with environmental laws also proved to be an uphill battle as illegal burning and dumping often occur at night. Recycling factories are often caught with inadequate facilities to treat the emissions and effluents from their processes. On the one hand, communities lament the lack of governmental response to their complaints, while on the other hand, the Department of Environment (DOE) has begun patrols at night.

Multi-agency joint enforcement operations, involving the local government authority, the DOE, the immigration department, the customs department, utility companies, the police, the fire department and other enforcement bodies, have been organised to conduct spot-checks on facilities, but these are costly and time-consuming affairs. Table 1 shows the complex regulatory framework governing plastic recycling value chains in Malaysia.

**Coherence needed in the development of the waste and recycling industry in Malaysia**

The common argument that plastic waste imports are required to meet the needs of the domestic plastic industry is untenable. The capacity of the domestic industry is limited, and key players were overwhelmed
by the massive increase of imports in 2018, leading import permit holders to pass on their imported plastic waste to other less-equipped facilities for processing.

The imports should have been controlled and capped before they caused severe environmental damage and adverse effects to residents. Instead, after an initial freeze of import permits in end-2018 amidst a barrage of complaints from local communities, the Malaysian government has allowed increasing volumes of plastic waste imports in 2020. Important questions that must be asked are: who has been profiting from these imports, how much revenue is accrued to domestic businesses and to foreign investors, and what the costs of these plastic waste imports are, taking into account externalities and the risk of illegality.

More information must be forthcoming about what kind of products the factories producing – single-use plastics or plastic pellets, and for whom – domestic market or foreign market. Whilst absorbing the costs of dealing with contaminated, non-recyclable, residual waste from the plastic imports, how much value is benefitting Malaysia?

There is a lack of clarity, transparency and policy coherence in Malaysia on the expansion of the waste and recycling industry. Recent massive foreign direct investment flows into the country across all sectors appear ad-hoc, with approvals being given before institutional architecture is set in place. This can be seen in the expansion of plastic waste imports and more recently paper waste imports, where large-scale projects are approved without public participation and before regulations are in place.

To meet the needs of the domestic recycling industry, the government’s policy should first and foremost be to source materials from waste generated in Malaysia, particularly since many landfills are reaching full capacity, and finding available land for landfills is a long-standing problem. The role of the recycling industry must first and foremost be to divert waste from landfills and incinerators or other thermal treatment. Any expansion of the imported waste recycling industry must be done in consultation with multiple stakeholders including local communities, due to the high environmental risks involved.

Corruption and criminality

The National Anti-Corruption Plan 2019-2023 revealed that 23.9% of corruption complaints between 2013-2018 were related to enforcement, 8.6% were related to licensing and permits, and 1.2% related to business and industry, among others. Malaysia is also a well-known hub for illicit transborder trade.

Compounding the difficulties and limitations of enforcement is the impunity of a certain segment of businesses in Malaysia. This is evident in the recurring cases of factories caught with inadequate air and water pollution monitoring devices, the ease with which imported plastic waste could be passed on to and processed in unlicenced facilities, and the proliferation of waste dumping in illegal landfills and on riverbanks. Even worst, residents who complaints had been intimidated by gangsters.

Factories continuously find ways to flout not only environmental laws, but also local government and town and country planning laws, such as regulations on buffer zones between industrial zones and residential areas.

The most industrialised and wealthiest state of Selangor still has 5,589 unlicenced factories despite more than ten years of effort by the government to encourage the factories to become legalised through various means, such as meeting land-use criteria, adhering to environmental regulations, or applying for operating licences from the
local authorities. More than 800 factories are located beside rivers, with more being planned. Selangor also faced multiple water disruptions due to pollution because of indiscriminate dumping or discharge of waste into waterways throughout 2020.

**Conclusion:**
**Governance critical to protect human and environmental health**

Local communities around Malaysia are already facing the consequences of pollution from the waste processing industry in the form of fires and illegal dumps. The potential long-term impacts on the environment and human health are worrying. Despite extensive enforcement efforts by the Malaysian government at ports and around factories, the non-transparent and non-consultative style of decision-making by the top levels of government and the lack of respect for environmental laws and human rights by businesses further exacerbate public fears.

In the face of a climate crisis, it is imperative that governments institute a whole-of-society and whole-of-government approach for all policy, regulation, and decision-making, approaches that; approaches that embrace the “precautionary principle” expressed in the Rio Declaration on Environment and Development 1992, as well as the “prevention principle” and the “proximity principles” of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989.

Economic planning and development must take into account future environmental risks, while laws regulating the generation, transportation, storage, treatment, and disposal of wastes should aim to minimise production, combat illegal dumping, and ensure disposal in an environmentally sound manner and as close to the source of waste generation as possible.

Equally important are measures to combat corruption, strengthen enforcement, and uphold the right to information, transparency and accountability in both public and private sectors.

1) Figure 5: Facility on fire in Sungai Rambai, Jenjarom, Selangor, 12 January 2019 (Source: PTASKL)

2) Figure 6: Shredded waste dumped close to residential areas and set on fire in Sungai Petani, Kedah, 31 January 2020

3 & 4) Figure 7: Plastic stockpiles on fire in Sungai Petani, Kedah, 21 November 2020 (Source: PTASSP)
### Table 1: Institutions, regulatory areas and legislation governing plastic recycling value chains in Malaysia

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<tr>
<th>Value chain</th>
<th>Take: Import and transport of raw materials</th>
<th>Make: Processing</th>
<th>Use: Distribution</th>
<th>Throw: Disposal</th>
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<td>Basel Convention,</td>
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<td>Environment Quality Act 1974</td>
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<td>National Solid Waste Management</td>
<td>Approved (import) permit Custom</td>
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<td>Department</td>
<td>(Prohibition of Import) Order 2017</td>
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<td>Royal Malaysian Customs Department</td>
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<td>Customs Act 1967,</td>
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<td>Customs Duties (Exemption) Order 2017</td>
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<td>Road Transport Department</td>
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<td>Road Transport Act 1987,</td>
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<td>Commercial Vehicles Licensing Board Act 1987</td>
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<td>Solid Waste and Public Cleansing</td>
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<td>Management Corporation</td>
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**REGULATORY AREAS AND LEGAL FRAMEWORK**

- Environmental impact assessment, environmental quality assessment, pollution control
- Environment Quality Act 1974 and Regulations
- Policymaking
- Solid Waste and Public Cleansing Management Act 2007
- Licences Waste collection policies
- Local council by-laws (seven states and one federal territory)
- Policy implementation and waste collection
- Solid Waste and Public Cleansing Management Corporation Act 2007 (six states and two federal territories)