

MALAYSIA IS **NOT** A "GARBAGE DUMP"

C4 Center Brief No. 2

**COUNTING THE COSTS
FOR HUMAN RIGHTS
AND THE ENVIRONMENT**



THE WASTE TRADE

China's import ban on waste materials disrupted the global market for recyclable material, leading to an influx of, most noticeably, plastic waste to Southeast Asian countries. In 2018, Malaysia became the world's top destination for plastic waste exports after China's ban, with more than 850,000 tonnes of plastic waste including municipal waste entering the country.

This led to a sharp rise in illegal recycling facilities as well as illegal dumpsites, causing land, water and air pollution that affected several communities nationwide. The plastic waste recycling factories around Peninsular Malaysia were rumoured to be organised collectively, with sorting and melting done at different locations across states. Allegations of malfeasance, misconduct, and corruption abound.

The global waste trade has led to human rights violations in importing countries all over the world, leading some to coin the term "waste colonialism" where more powerful countries export their toxic waste problem to developing countries. Local communities, often marginalised groups, find themselves living in environments polluted by waste imported from developed countries. They face health risks from toxic chemicals emitted during the materials recovery process, or greenhouse gas from fires that frequently occur, while residual waste has been indiscriminately dumped. Activists fighting to protect the right to a safe, clean, healthy, and sustainable environment

often face intimidation.

To find solutions, Malaysia needs to consider waste colonialism as a threat to human rights and the governance system, and not merely as an economic opportunity. The persistent illegality surrounding the processing of scrap (and other environmental crime) points to lax enforcement, which could be a consequence and cause of corruption.

HUMAN RIGHTS, THE ENVIRONMENT, AND GOVERNANCE

In mid-2021, the United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (SR on toxics and human rights) presented two reports. One report was on "The stages of the plastics cycle and their impacts on human rights",¹ while the second report focused on "The right to science in the context of toxic substances".² The comprehensive reports were clear on the harms of plastics to human rights and highlight why responses to plastic pollution (transboundary or otherwise) must be rights-based.

The recently concluded 48th regular session of the Human Rights Council held from 13 September to 11 October 2021

¹ <https://undocs.org/en/A/76/207>

² <https://undocs.org/A/HRC/48/61>

reflects the urgency of environmental crises. For the first time, the Council recognised that having a clean, healthy, and sustainable environment is a human right.

The right to a safe, clean, healthy, and sustainable environment has substantive elements and procedural elements. The substantive elements are: clean air; safe climate; healthy and sustainably produced food; access to safe water and adequate sanitation; non-toxic environment in which to live, work and play; and healthy ecosystems and biodiversity.

The procedural elements outlined are: access to information; public participation in environmental decision-making; and access to justice and effective remedies.

The Human Rights Council decision came weeks before the UN Climate Change Conference (COP26), which concluded with the Glasgow Climate Pact,³ referencing "climate justice" and the need to ensure that efforts to address climate change take consider obligations on human rights and social inequality.

Importantly, the Human Rights Council in 2013 also clearly established the strong connection between corruption and the protection of human rights,⁴ and in 2020, examined the interconnected nature

of business, human rights and the anti-corruption agendas.⁵

Although most of the plastic recycling facilities guilty of pollution were set up illegally and covertly, the stringent regulatory regimes that legitimate businesses are subject to in Malaysia outline the context where non-compliance, lax enforcement and the corruption risks occur. First were the elements of institutionalised petty corruption that enforcement agencies in Malaysia continue to be mired in. The key risk areas for graft are at the ports, where smuggling and the false declaration of containers can take place; during the transportation of smuggled goods should the trucks be stopped by law enforcement officers; and at the site of the factories, where lax enforcement enables illicit activity.

In addition, the recognition of the role of the state to protect the right to a healthy environment, the role of businesses to respect this right, and the availability of effective remedies when rights are breached, are urgently needed. The link between business, human rights, and the right to a healthy environment must be strengthened towards achievement of Malaysia's commitments to the sustainable development goals.

Lessons learnt from the plastic waste

³ https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/149/72/PDF/G1314972.pdf>

⁵ <https://undocs.org/A/HRC/44/43>

crisis should lead to improvements in policy and regulation as other waste materials are also entering Malaysia – scrap non-ferrous metals, copper, paper, electrical and electronic assemblies, and tyres, among others. Material recovery facilities have been found flouting environmental laws; several have caused massive fires. Residents living close to industrial areas are continually put at risk, even as the distance between residential and industrial areas becomes ever closer over the years due to development pressures and land scarcity.

KEY RECOMMENDATIONS

To Federal, State, and Local Governments in Malaysia:

- Implement the National Anti-Corruption Plan 2019-2023 and organisational anti-corruption plans
- Enact the Right to Information Act to promote the right to science when communities are faced with potential pollution, and the right to information on the hazards of plastics
- Strengthen the Whistleblower Protection Act, promote whistleblowing, and protect the confidentiality of all whistleblowers and complainants
- Develop a National Action Plan for Business and Human Rights to protect the right to a healthy environment, to promote respect for human rights by business enterprises, and to develop accountability and access to effective remedies for people affected by rights violations
- Reintroduce local government elections and empower local councils to better protect the rights of the communities they serve as well as uphold communities' right to participation in decision-making that affects their lives
- Adopt the precautionary and prevention principles of international environmental law to mitigate the risks and harms of plastics and other toxic wastes
- Streamline the governance of the waste sector under a single body, such as the ministry for environment, across functions – from the issuance of import permits to the handling

of waste pollution – to improve the management of all types of wastes (imported and domestic, solid and hazardous), as well as enhance monitoring and enforcement against pollution crimes

To the Human Rights Commission of Malaysia (SUHAKAM):

- Assist the government in developing a comprehensive National Action Plan for Business and Human Rights with a strong emphasis on anti-corruption and environmental protection
- Conduct an inquiry into the impacts of the plastic waste crisis on human and environmental health
- Investigate the implications of the expanding transboundary waste materials recovery industry in Malaysia
- Promote the right to a healthy environment to government, businesses, and communities

To Businesses Including Plastic Manufacturers and Recyclers:

- Declare any toxic additives in plastics and work to eliminate them
- Work with the government to develop and promote a National Action Plan on Business and Human Rights
- Encourage compliance with environmental and human rights laws and guidelines among association members and business partners
- Invest in research and development to develop safe and circular non-single use materials
- Develop organisational anti-corruption plans



Figure 1: Plastic waste at Kampung Sungai Rambai, Jenjarom, Selangor, 2018
(Source: Persatuan Tindakan Alam Sekitar Kuala Langat)



Figure 2: Waste from electric and electronic assemblies at Kampung Sri Cheeding, Jenjarom, Selangor, 2019
(Source: Persatuan Tindakan Alam Sekitar Kuala Langat)

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Figure 3: Waste paper at Telok Panglima Garang, Selangor, 2021
(Source: Persatuan Tindakan Alam Sekitar Kuala Langat)



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Figure 4: Plastic waste as raw materials for a recycling factory at Taman Sentosa, Klang, Selangor, 2021
(Source: C4 Center)

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Figure 7: Abandoned foreign municipal waste at Kampung Sungai Rambai, Jenjarom, Selangor, 2021
(Source: C4 Center)

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Figure 5: Abandoned plastic waste at Kampung Jawa, Shah Alam, Selangor, 2021
(Source: C4 Center)



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Figure 6: Abandoned plastic pellets or nurdles at Kampung Sungai Rambai, Jenjarom, Selangor, 2021
(Source: C4 Center)



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Figure 8: Abandoned foreign municipal waste at Kampung Sungai Rambai, Jenjarom, Selangor, 2021
(Source: C4 Center)



For more information, refer to the full report. C4 Center. (2021). *Malaysia is not a "Garbage Dump": Citizens against corruption, complacency, crime, and climate crisis* (2nd ed.). Petaling Jaya: **Center to Combat Corruption and Cronyism (C4 Center)**

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