

# **Palm oil, migrant workers, indigenous peoples and corporations: Responses of Malaysia's Human Rights Commission**

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Malaysia is the world's second largest exporter of palm oil, a key component of many packaged foods and cosmetics. Malaysia's economy is highly dependent on the palm oil industry, which is the country's top agricultural export. In 2018, the broader agriculture sector contributed over 7% to the country's Gross Domestic Product (GDP), with nearly 40% of that coming from the palm oil industry.

Malaysia's palm oil industry, however, comes with challenges. It is heavily reliant on foreign workers, with over 70% of the sector's workforce coming from neighbouring Southeast Asian countries such as Indonesia. There have been repeated reports of the exploitation of palm oil workers, including children. A recently released report by the United Nations on extreme poverty and human rights in Malaysia, noted that 'oppressive quota systems in the palm oil sector drives families to bring their children to work as unpaid labourers'. Similarly the clearing of forest lands to make way for palm oil plantations has led to increased pollution and significant loss of biodiversity. Deforestation also has a significant impact on indigenous peoples' livelihoods and culture, one example being the struggle of the Murut people in Sabah.

Human rights abuses related to business activity are not only of concern in the palm oil sector. Malaysia is a major destination for migrant workers. In 2018, the International Organisation for Migration (IOM) estimated that there were 2.2 million documented migrant workers in the country, and 2-4 million undocumented migrant workers. In addition to the palm oil industry, migrant workers often work in construction, electronics and manufacturing sectors. There have been persistent reports of the violation of migrant workers rights, including having to work long hours in poor conditions, inadequate rest or pay, as well as the seizing of workers' passports by employers. Female workers, often employed in domestic work, are particularly vulnerable to abuses and often become victims of sexual harassment. The challenges related to human rights and business are not exclusively an issue for Malaysian companies or employers, but are often also connected to actors outside of the country. An investigation by the international NGO Global Witness outlined how Japanese companies purchasing timber products from Sarawak, to build venues for the 2020 Olympics in Tokyo, were linked to widespread illegal and unsustainable logging, and in turn human rights abuses and rainforest destruction.

In an attempt to address business-related abuses of human rights, in 2011 the United Nations Human Rights Council unanimously endorsed the United Nations Guiding Principles (UNGPs) on Business and Human Rights. Developed by John Ruggie, the UN Special Representative on Business and Human Rights, the UNGPs encompass three pillars: the duty of the state to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims. The Guiding Principles provide a global standard for preventing and addressing the risks of adverse human impacts linked to business activity.

The need for better human rights protection and the role that the UNGPs may play in this process is recognised by many corporations in Malaysia. In 2011, the Malaysian multinational conglomerate Sime Darby sent a letter to John Ruggie pledging its support for the UNGPs. Sime Darby added that it believed that the UNGPs would help businesses to better understand and manage their roles and responsibilities in relation to human rights. Similarly, some transnational companies

in Malaysia have explicitly included the UNGPs in their operations. In fact, a study on human rights disclosure in ASEAN has revealed that Malaysia is a regional leader with 84% of top-listed companies having made some kind of commitment to human rights, with tobacco and palm oil companies standing out as being most active.

A recent study has investigated human rights disclosure among 16 Malaysian palm oil companies certified by the Roundtable on Sustainable Palm Oil (RSPO), a voluntary and multi-stakeholder organisation which focuses on standard setting and certification of sustainable palm oil production. Using 20 disclosure indices, derived from the UNGPs and specific human rights - such as labour standards, prohibition on child labour and indigenous peoples' rights -the research found that the majority of Malaysian palm oil companies have clearly expressed their commitment to human rights. This in turn affects companies' suppliers, business partners and workers, as well as relationships with indigenous and local communities. However, at the same time the study also showed that there is no common standard of reporting between companies, making it difficult to establish how companies compare to one another. Companies are also generally reluctant to disclose information about due diligence, a detailed action plan or information on progress (or lack thereof), or elaboration on what their partnership between companies and suppliers exactly looks like. Thus, while human rights disclosure can offer more transparency on corporate human rights responsibility, it does not necessarily provide an accurate reflection of the human rights issues that corporations are faced with. In fact, RSPO-sustainably certified companies in Malaysia continue to be associated with human rights violations, including child, forced and bonded labour.

## **The establishment of National Human Rights Institution, Suhakam**

A study published earlier this year by the Danish Institute for Human Rights argues that National Human Rights Institutions (NHRIs) have a unique role to play in promoting the UNGPs. This is because of the mandate of NHRIs that allows them to

conduct investigations or public inquiries, provide input to government rules and regulations and by engaging stakeholders to enhance their understanding of business and human rights. In addition, for those NHRIs that have the authority to hear individual complaints, NHRIs can contribute to remedies for rights which have been violated.

Business and human rights are firmly on the radar of the Malaysian NHRI, Suhakam (Suruhanjaya Hak Asasi Manusia, National Human Rights Commission). It regularly receives complaints pertaining to companies, including damage to and eviction from customary land and the violation of workers' rights including payments and unfair dismissal. In addition to the palm oil industry, the sectors that are most frequently subject of complaints are the forestry, security and finance industries.

Malaysia's NHRI, Suhakam, is an important reference point for complaints pertaining to the business sector, as the only bodies in Malaysia that are mandated to hear human rights complaints are Suhakam and the courts. In comparison to the courts, Suhakam has been far more proactive on the issue of business and human rights and the Commission has, in fact, made a significant contribution towards the implementation of the UNGPs in Malaysia - which will be discussed below.

Suhakam's successes in this area are particularly remarkable when taking into account the circumstances in which the Commission was established and its organisational history. Suhakam's creation came at a time where the Malaysian government displayed an ambivalent, and often hostile, position towards international human rights norms which manifested itself both at the international and domestic levels.

Internationally, the 1990s saw a renewed debate on the universality of human rights following the end of the Cold War. In 1993 more than 30 Asian states, including Malaysia, signed the Bangkok Declaration. While this Declaration reaffirmed the Universal Declaration of Human Rights (UDHR), it also expressed concern about the politicisation of rights by making development aid dependent on human rights

performance and the imposition of ‘incompatible values’. A few months later, the 1993 Vienna Declaration, also signed by Malaysia, sought to resolve these issues by both underlining the universality of rights and recognising national and regional particularities. This Declaration also recognised the role of regional and national human rights institutions. However, the Bangkok Declaration continued to be used by authoritarian leaders, including the then Prime Minister of Malaysia Mahathir Mohamad, to repudiate the notion of universality arguing it was foreign to Asian societies. Thus, while the Malaysian government engaged with and showed some support for the international human rights framework, it also took a strongly relativist position on human rights.

Domestically, the Malaysian government came under increased scrutiny on its human rights record in late 1998 following the dismissal, subsequent arrest and trial of former Deputy Prime Minister, Anwar Ibrahim, who had fallen out with Mahathir. This had led to mass protests across the country which called for the resignation of Mahathir and an end to corruption associated with his government. When the government’s intention to establish a National Human Rights Commission was announced in mid-1999, a lack of consultation with opposition parties and NGOs meant that civil society representatives suspected that the establishment of Suhakam was an attempt by the government to decrease criticism of its human rights record especially ahead of the 1999 general elections. The government’s ambivalent relationship with international human rights norms was evident when Syed Hamid Albar, the then Foreign Minister, stated that Suhakam’s establishment was a ‘testimony to the earnest desire of the government to protect and promote human rights for all Malaysians’, while adding that the decision was ‘to ensure that human rights issues do not continue to be played up by groups providing a cynical or inaccurate picture’. As such, the government positioned Suhakam as a buffer against local and international criticism.

## Suhakam's successes and limitations

While these beginnings raised doubts about what Suhakam could achieve, the Commission has certainly made important contributions to the Malaysian human rights movement. The Commission did so by addressing issues such as preventive detention and in particular the draconian Internal Security Act (which was eventually repealed in 2012 as a result of concerted civil society activism), freedom of association, and lending public support to the *reformasi* movement. This was a novelty in Malaysia, where human rights activists had previously not experienced such actions from a government body. Activist Yap Swee Seng explained what this meant for the broader Malaysian human rights movement: 'before [the establishment of Suhakam], human rights were considered a western and dirty concept. But they [Suhakam] legitimised human rights discourse in Malaysia. They generated a lot of media reports on human rights, and it became a less problematic concept. [...] and we [human rights NGOs] finally had a public institution that was on our side'.

Prior research has also shown that from early in its history Suhakam had a tendency to keep a distance from issues considered 'sensitive': race and religion. That the Commission has done so cannot be separated from the broader context in which it operates and in particular the complexities of racial politics in Malaysia. Issues affecting racial and religious minorities are often avoided by the Commission, as well as those that may be perceived as being critical of the Malay-Muslim majority. This means that depending on political context, human rights bodies may be selective in what they choose to address and, as a consequence, that other human rights concerns may be overlooked.

Although business and human rights can be a contentious issue, in comparison to human rights issues that touch upon racial and religious sensitivities this appears to be less so. From 2010, Suhakam started addressing issues pertaining to business and human rights more comprehensively. The Commission sought dialogue with

stakeholders, including government bodies, businesses and civil society organisations. It also conducted studies into corporate human rights violations, for instance in the logging and plantation industries. Suhakam's landmark National Inquiry on the Rights of Indigenous Peoples in Malaysia, conducted between 2010 and 2012, saw the Commission address the adverse impact of business activities on these communities. A key finding of the Commission's initial work was that many companies lacked awareness of their human rights responsibilities. Suhakam noted that while many businesses were familiar with the concept of corporate social responsibility (CSR), this was not the case with the UNGPs on Business and Human Rights. The Commission noted a similar lack of awareness within government circles.

In its work to promote the business and human rights agenda in Malaysia, Suhakam has targeted and worked with national and state governments, companies, and civil society actors. At the level of national policy, in 2014 the Commission, supported by the United Nations Development Program (UNDP) and with funding from the United Kingdom's Foreign and Commonwealth Office, started to work on a project to formulate and propose a National Action Plan for the adoption and implementation of the UNGPs by both state and non-state actors. A Strategic Framework (a precursor to a full NAP) was launched in 2015, and it identifies several sectors where there have been adverse business-related human rights impacts. For each of these sectors, the Strategic Framework also proposes concrete and achievable actions. For instance, with regard to the hydropower and plantation industries, Suhakam identified that human rights violations have occurred as a result of poor community engagement by companies and insufficient environmental and social impact assessments. In response, the Commission recommended enhanced training of company officials and clearer mechanisms for communication with stakeholders. Suhakam's partnership with the UNDP has been ongoing, and the Commission has also translated key documents related to the UNGPs from English to Bahasa Malaysia. Suhakam also regularly organises forums on business and human rights with stakeholders, including state governments, businesses and business

associations, and civil society groups.

An example of Suhakam's direct engagement with businesses is its signing of a 2017 Memorandum of Understanding with key actors in the palm oil industry, FGV Holdings and the Federal Land Development Authority (FELDA). FGV Holdings is the world's largest palm oil producer, while FELDA controls more than 850,000 hectares of land licensed to palm oil companies. Under the MoU, Suhakam provides support to develop action plans to ensure compliance with human rights principles, enhanced consultation with stakeholders (including civil society groups), the provision of human rights training for FGV and FELDA officials and any parties affiliated with them, as well as the visiting and monitoring of plantations to ensure adherence to human rights standards. As part of the MoU, Suhakam has organised training for employees, which included subjects such as the rights of employees, sexual harassment, discrimination, human trafficking and forced labour (including child labour), the environment and indigenous peoples' rights.

In addition to targeting government actors and businesses, Suhakam has also worked with civil society organisations to promote business and human rights in Malaysia. In 2018, for instance, Suhakam organised a consultation in collaboration with the NGO the Forest Trust on supply-chain issues, focusing in particular on child labour in palm oil plantations in Sabah.

Moreover, civil society actors in Malaysia have taken up issues related to business and human rights. NGOs often do this in broader contexts, such as the rights of migrant workers, women's rights and indigenous people's rights. Other NGOs have sought to connect the implementation of Sustainable Development Goals (SDGs) to businesses. NGOs have also come together in coalitions, for instance to oppose the proposed Trans-Pacific Partnership Agreement (TPPA) arguing it can have a detrimental impact on labour rights and small businesses. Lawyers have also supported individuals and communities in bringing human rights cases against companies, while academics and universities have also increasingly taken an interest in business and human rights.



## Progressing the Business and Human Rights Agenda in Malaysia

Despite the efforts undertaken by Suhakam and civil society actors, much work remains to be done to further the business and human rights agenda in Malaysia. A key constraint in this respect is the absence of a broader commitment to address human rights abuses in the country. For instance, Malaysia is yet to issue a National Action Plan on business and human rights, and in 2015 the government was 'reluctant' to support Suhakam's Strategic Framework on business and human rights. Although in 2018 the then government issued a proposed National Action Plan on Human Rights, this was a disappointment for Malaysian human rights advocates due to its lack of ambition and most NGOs dismissed it.

However, only a few months later, seemingly significant shifts in Malaysia's human rights landscape appeared on the horizon. In May 2018 a historic election saw the coalition led by the United Malays National Organisation (UMNO), that governed Malaysia since 1957, voted out in favour of the Pakatan Harapan alliance. Led by former Prime Minister Mahathir Mohamad, Pakatan Harapan ran on an election program that, amongst others, promised to improve Malaysia's human rights record. In September 2018 Mahathir addressed the UN General Assembly and somewhat surprisingly, given his human rights record, stated that 'the new Malaysia will firmly espouse the principles promoted by the United Nations [...] These include the principles of truth, human rights, the rule of law, justice, fairness, responsibility, and accountability, as well as sustainability'. Indeed the Minister of Laws, Liew Vui Keong, announced a number of human rights reforms, including cabinet approval to develop a National Action Plan on Business and Human Rights. However, Malaysia is yet to issue a NAP on Business and Human Rights, and other human rights reforms have also faltered. This can be attributed to strong political opposition from political elites, including UMNO and the Malaysian Islamic Party (Parti Islam Se-Malaysia, PAS). Due to the pressure of these groups, the government reversed some rights

commitments, including the planned ratification of the International Convention on the Elimination of All Forms of Racial Discrimination. Another major reversal related to the Rome Statute of the International Criminal Court (ICC), where the Malaysian government withdrew its decision to accede due to concerns relating to the ICC's powers over Malay rulers.

While Suhakam's MoU with FGV Holdings and FELDA shows the Commission's success in engaging directly with companies to provide them with support to comply with human rights standards, this has not meant that human rights problems connected with them have ceased to exist. In fact, in 2018 the Roundtable on Sustainable Palm Oil (RSPO)—which seeks to develop and implement global standards for sustainable palm oil—found that FGV Holdings was involved in exploitative labour practices, including the confiscation of passports of foreign workers, deductions in wages and inadequate food supplies. Similarly, recently civil society groups reported that palm oil giant Sime Darby, which expressed support for the UNGPs on BHR, used forced and child labour on its plantations.

National Human Rights Institutions, such as Suhakam, have indeed played, and continue to play, a crucial role in promoting the implementation of the UNGPs. That Suhakam can perform this role as a broker is, in part, due to its mandate, which encompasses the ability to hear individual complaints, open inquiries, issue policy recommendations, and engage with a wide range of stakeholders including businesses in human rights education and training. In addition, taking into account the specific Malaysian context and the sensitivities around issues such as race and religion in the human rights sphere, this particular issue also seems somewhat easier to pursue for the Commission. This is because it is evident to stakeholders that the need for business compliance to human rights principles carries economic importance, including access to foreign markets.

At the same time, however, the trajectory of promoting the UNGPs in Malaysia also illustrates that despite the efforts of Suhakam and other actors, implementation of these principles ultimately remains dependent on backing by political elites and

businesses. The 2018 elections have shown that even a dramatic change in the country's political history has not translated into the broad reforms that many human rights advocates had hoped for. Similarly, businesses—despite their various forms of commitment to human rights—continue to struggle to adhere to human rights standards. This illustrates that the journey towards the implementation of the UNGPs in Malaysia has only just begun.

*Image: A worker loading oil palm fruit onto a truck in Sabah, Malaysia. Credit: CFOR/Flickr*