

# Malaysia is not a “Garbage Dump”:

Citizens against corruption, complacency, crime, and climate crisis



Open burning of plastic waste in Pulau Indah in Klang. This photo was taken by Greenpeace Malaysia between October and November 2018.



A report by

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## EXECUTIVE SUMMARY

In 2018, China's National Sword Policy came into effect, banning 24 types of solid waste imports to the country including plastic and paper waste. This caused a global disruption of the market for recyclable material and redirected plastic waste to Southeast Asia and other developing countries with weaker regulatory frameworks and less technical capacity to deal with the massive amounts of waste. From January to November 2018, Malaysia became the world's top destination for plastic waste exports, importing more than 750,000 tonnes of plastic waste including foreign municipal or household waste. The massive influx of waste to Malaysia led to a sharp rise in illegal recycling facilities as well as illegal dumpsites, causing land, water and air pollution that has affected several communities nationwide.

This report examines the value chains of the import, transport, and processing of plastic waste in Malaysia, tracing the actors and agencies involved in regulating the value chains. Data is drawn from 40 interviews conducted with chain and non-chain actors from the government, businesses and community-based organisations, as well as from secondary reports and news articles. Research was conducted from November 2019 to March 2021.

The **overall aim** of this study was to examine the illegality surrounding plastic recycling in Malaysia, how it occurred, and the implications on the peoples' right to a safe, clean, healthy, and sustainable environment. **Three key questions** were:

- How did the plastic waste enter Malaysia with such ease and what elements of illegality surrounded the plastic recycling facilities?
- What are the roles played by the federal, state and local governments in governing the plastic waste recycling industry?
- What are the weaknesses of legal and policy frameworks in Malaysia in this area?

### *Key findings*

The problems plaguing the plastic recycling industry are not new to Malaysia, including allegations of smuggling, factories operating with no proper licences and pollution controls, gangsterism, political-business nexus, and a lack of public access to information. The ease with which illicit activity took place throughout the value chain, in so many locations around Malaysia, and the impunity with which actors functioned despite causing severe environmental destruction, points to pervasive **petty corruption** and **complacency** of regulators and businesses. The experience also exposed weaknesses in enforcement and oversight mechanisms in Malaysia, which have enabled the prevalence of **environmental crimes** that will exacerbate the **climate crisis** and further threaten peoples' health, a serious concern in the face of the COVID-19 pandemic.

This plastic waste crisis has deepened the trust deficit between local communities suffering from pollution and the government. While the communities accused the government of corruption and collusion with businessmen and gangsters, some government officers were

suspicious of the community groups, viewing them as minority voices over-exaggerating the issues, having alternate motives, or wrongfully blaming the government.

A key difference between the plastic waste crisis and other forms of petty corruption, poor governance or illicit international trade that plagues the country is that plastic waste has direct and tangible consequences on human and environmental health, which has awakened an otherwise tolerant citizenry against institutionalised corruption. The local communities affected by illegal plastic recycling, later joined by other segments of society including the civil service, had mounted an admirable fight not only against plastic pollution, but also against corruption, complacency, crime, and the climate crisis.

### *Recommendations*

- The illegal waste trade is extremely difficult to monitor and control. The capacity of enforcement agencies in a developing country like Malaysia is clearly limited. This is where the international community plays a crucial role. In particular, western developed countries must take responsibility for solid waste generated by their people and stop the export (legal or illegal) of non-recyclable or hazardous plastic waste. **A complete ban on the export and import of plastic waste should be considered.**
- **If a ban is not feasible, at the very least, exporting countries should institute controls that will only allow the export of waste with a maximum of 0.5% contamination rate, according to the Basel Convention.** Allowing the continuous exports of mixed, contaminated waste will only lead to more pollution in importing countries.
- **The Malaysian government, businesses and communities must come together in multi-stakeholder, multi-level efforts to address the challenges of balancing economic growth and environmental protection.** The plastic waste crisis clearly shows that, to address the problem of pollution, the root causes must be addressed. Action must be taken throughout the supply chain, beginning with the approval of projects and permits, until waste management. Putting blame and responsibility on enforcement agencies each time pollution occurs is highly ineffective for developing long-term solutions.
- The right to a safe, clean, healthy and sustainable environment is becoming increasingly relevant in the face of a climate crisis. The substantive elements of this human right are the full enjoyment of the right to life, health, food, water, sanitation, adequate standard of living and more. It is important that the government enhances institutional and legal frameworks to protect these substantive elements by **increasing penalties for environmental pollution, enhancing monitoring and enforcement efforts, and targeting anti-corruption measures among enforcement agencies through the implementation of the National Anti-Corruption Plan (NACP) 2019-2023.**
- There is also an urgent need to promote the procedural elements of this right to a healthy environment. The right to information, public participation, and effective remedy are procedures that are vital for environmental protection and good governance. Aside from enhancing environmental laws and governance mechanisms, this report recommends

that the Malaysian government enact a **Right to Information Act**, strengthen the **Whistleblower Protection Act 2010**, reintroduce **local government elections**, develop a **National Action Plan on Business and Human Rights**, and align economic development more substantively with the **Sustainable Development Goals**.

- A **culture of openness** instead of the prevailing culture of secrecy will enable transparency and accountability, prevent corruption and curb the abuse of power. Increasing transparency can serve both the business community and the people by enhancing the level of trust in the authorities and encouraging scientific, evidence-based decision-making. It is exceedingly important for the business community to embrace business and human rights principles, to bring economic progress without compromising the peoples' right to a healthy environment, and to mitigate against the climate crisis.

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### List of Abbreviations

|           |   |   |
|-----------|---|---|
| JKKK KBSJ | : | Sungai Jarom New Village, Village Development and Security Committee ( <i>Jawatankuasa Kemajuan dan Keselamatan Kampung Kampung Baru Sungai Jarom</i> )   |
| JPBD      | : | Town and Country Planning Department (PLANMalaysia)   |
| JPSPN     | : | National Solid Waste Management Department ( <i>Jabatan Pengurusan Sisa Pepejal Negara</i> )  |
| KASA      | : | Ministry of Environment and Water ( <i>Kementerian Alam Sekitar dan Air</i> ), formerly known as Ministry of Energy, Science, Technology, Environment and Climate Change ( <i>Kementerian Tenaga, Sains, Teknologi, Alam Sekitar dan Perubahan Iklim</i> , MESTECC) |
| KPKT      | : | Ministry of Housing and Local Government ( <i>Kementerian Perumahan dan Kerajaan Tempatan</i> )   |
| MIDA      | : | Malaysian Investment Development Authority  |
| MITI      | : | Ministry of International Trade and Industry ( <i>Kementerian Perdagangan Antarabangsa dan Industri</i> )   |
| MPKL      | : | Kuala Langat Municipal Council ( <i>Majlis Perbandaran Kuala Langat</i> ), formerly known as Kuala Langat District Council ( <i>Majlis Daerah Kuala Langat</i> , MDKL)  |
| PTASK     | : | Kuala Langat Environmental Action Group ( <i>Persatuan Tindakan Alam Sekitar Kuala Langat</i> )   |
| PTASKL    | : | Klang Environmental Action Group ( <i>Persatuan Tindakan Alam Sekitar Klang</i> )   |
| PTASSP    | : | Sungai Petani Environmental Action Group ( <i>Persatuan Tindakan Alam Sekitar Sungai Petani</i> )   |
| SWCorp    | : | Solid Waste and Public Cleansing Management Corporation Sdn Bhd   |

## CHAPTER 1: INTRODUCTION

### 1.1 Political context in Malaysia and the import of waste

From January to June 2018, Malaysia became the world's largest importer of plastic waste, essentially becoming the garbage dump of the developed world. That same year, Malaysia experienced a watershed moment in its political history; for the first time since the formation of the country in 1963, a new political coalition, Pakatan Harapan (PH), was voted into federal power on 9 May 2018 during the 14<sup>th</sup> General Election (GE14). PH took over from the Barisan Nasional (BN) administration led by then Prime Minister Najib Razak, who was mired in allegations of grand corruption.

The PH government had a tumultuous 22 months in power, dealing with one crisis after another. On the environmental front alone, the Ministry of Energy, Science, Technology, Environment and Climate Change (MESTECC) was faced with the massive influx of foreign plastic waste into the country, the ASEAN transboundary haze, the pollution of Sungai Kim Kim, further air pollution in Pasir Gudang, and the controversial resolution to the Lynas rare earth processing plant, among others.

In February 2020, the PH government lost control of the federal government when several cabinet ministers and members of parliament (MPs) defected to opposition parties. New political partnerships were formed, and a new federal government was announced in March, loosely grouped together as Perikatan Nasional (PN).

This issue of imported plastic waste into Malaysia spanned across all three administrations of BN, PH and PN, most notably from late 2017 until 2020. Table 1.1 shows the ministries involved in the Joint Ministerial Committee set up in end-2018 to find solutions to the plastic problem, and one additional ministry (Ministry of Human Resource, MOHR) that was not a part of the committee but is nevertheless important as MOHR regulates factories and machineries in Malaysia.

**Table 1.1: Ministers and Key Ministries Responsible for Solving the Plastic Waste Crisis**

| Area             | 2018  | 2018 – 2020   | 2020 Onwards   |
|------------------|---|---|--|
| Environment      | <b>Wan Junaidi bin Tuanku Jaafar (PBB)</b><br>Ministry of Natural Resources and Environment (NRE) | <b>Yeo Bee Yin (DAP)</b><br>Ministry of Energy, Science, Technology, Environment and Climate Change (MESTECC) | <b>Tuan Ibrahim Tuan Man (PAS)</b><br>Ministry of Environment and Water (KASA)         |
| Local government | <b>Noh Omar (UMNO)</b><br>Ministry of Urban Wellbeing, Housing and Local Government               | <b>Zuraida Kamaruddin (PKR)</b><br>Ministry of Housing and Local Government (KPKT)                            | <b>Zuraida Kamaruddin (Bersatu)</b><br>Ministry of Housing and Local Government (KPKT) |

|   |   |   |   |
|---|---|---|---|
| International trade and industry          | <b>Ong Ka Chuan (MCA)</b><br>Ministry of International Trade and Industry (MITI)                  | <b>Darell Leiking (WARISAN)</b><br>Ministry of International Trade and Industry (MITI)            | <b>Azmin Ali (BERSATU)</b><br>Ministry of International Trade and Industry (MITI)       |
| Land, biodiversity, and natural resources | <b>Wan Junaidi bin Tuanku Jaafar (PBB)</b><br>Ministry of Natural Resources and Environment (NRE) | <b>Xavier Jayakumar Arulanandam (PKR)</b><br>Ministry of Water, Land and Natural Resources (KATS) | <b>Shamsul Anuar Nasarah (UMNO)</b><br>Ministry of Energy and National Resource (KeTSA) |
| Occupational safety and health*           | <b>Richard Riot Jaem (SUPP)</b><br>Ministry of Human Resources (MOHR)*                            | <b>Kulasegaran V. Murugeson (DAP)</b><br>Ministry of Human Resources*                             | <b>Saravanan Murugan (MIC)</b><br>Ministry of Human Resources*                          |

\* Not a part of the Joint Ministerial Committee.

Source: Author's compilation from ministry websites

All five ministries in Table 1.1 play essential roles to facilitate and sustain a dynamic industrial economy. The variety of political parties which the respective ministers belong to could be an indication of the lack of importance placed on these ministries by the hegemonic ruling party in Malaysia. Since independence, despite being governed at the federal level by a coalition of parties, politicians from the party of the prime minister - the United Malays National Organisation (UMNO) up until 2018, and the Malaysian United Indigenous Party (Bersatu) since then - has always been allocated key ministerial positions that were seen as vital to consolidate political power.

Gomez, Thirshalar, Norfaryanti, Sunil, and Fikri (2018) and Gomez, Lau, and Shewandas (2019) have written extensively on the state-business nexus in Malaysia and the use of government-linked companies (GLCs) under key ministries to accumulate political and personal capital.<sup>1</sup> This research throws up important questions on whether the primacy of politics in the running of the country has led to a deep neglect of the roles of vital ministries. Has the overbearing focus on the active role of the government in business undermined its role as a regulator? Has this in turn led to an erosion of institutional capacity and integrity at all levels and arms of the bureaucracy? These issues are beyond the scope of the report, which explores only the tip of the iceberg on the state of industrial activity in Malaysia.

This report focuses on how the foreign plastic waste entered Malaysia so easily and managed to cause such widespread pollution before action was taken. This question rests heavily on the role of the government in regulation and law enforcement. Other questions that arose included: what were the elements of illegality? Who were the enforcement authorities and ministries responsible for the regulation and monitoring of the plastic recycling industry? What are the institutional, policy and legal frameworks governing this industry?

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<sup>1</sup> These ministries include the Ministry of Finance, the Ministry of Entrepreneur Development, the Ministry of Rural Development, the Prime Minister's Office, and between 2018 to 2020, the Ministry of Economic Affairs. See also <https://www.malaysiakini.com/news/497884> and <https://www.malaysiakini.com/news/520044>.

The report also examines what action has been taken by all stakeholders - communities, businesses, and government to solve the smuggling, processing, burning and dumping of foreign plastic waste, against the background of political change. The change of federal political leadership disrupted planned government initiatives and interrupted the engagement of community groups, businesses and the civil service with the political leaders elected in May 2018. The policies of the new federal government in dealing with waste imports is only beginning to unfold.

## 1.2 Citizen action against illegal plastic recycling

Since end-2017, illegal plastic waste processing facilities had mushroomed in the state of Selangor due to its easy access from Port Klang. The facilities are considered illegal if they were operating with no prior approval from the authorities. In addition, to process imported plastic waste categorised as HS Code 3915 plastics, companies have to hold Approved Permits (AP) issued by the Ministry of Housing and Local Government (KPKT), which are import licences for recyclable plastic scrap. Various terms including “clean, homogenous plastic”, “plastic scrap” and “plastic waste” have been used to describe what is allowable under the HS Code 3915. The import of non-recyclable household waste, municipal waste, or mixed waste is completely banned in Malaysia. Box 1.1 provides additional information on the restrictions placed on the import of plastic scrap.

Despite the Customs prohibitions, at one point, more than 17,000 tonnes or 17 million kilograms of unrecyclable rubbish entered Malaysia and was dumped openly in Jenjarom, a small town in the municipality of Kuala Langat in Selangor.<sup>2</sup> Greenpeace Malaysia (2018) documented discarded plastic packaging from 106 different brands of consumer household products from at least 19 countries in four sites: Pulau Indah (Klang), Telok Panglima Garang (Kuala Langat), Jenjarom (Kuala Langat), and Tasek (Ipoh).

In early 2018, a group of residents from the Sungai Jarom New Village’s Village Development and Security Committee (JKKK KBSJ) began mounting an opposition to the increasing levels of pollution surrounding their homes. Plagued by the toxic fumes of burning plastic, community members were falling ill. Urged on by a chemical engineer who has knowledge of toxic compounds, JKKK KBSJ began their own investigations, documenting the locations illegal factories based on numbers printed on electrical poles and then GPS coordinates, as the facilities had no signboards nor addresses. They submitted letter after letter, complaining to the local authority, but they were met with lacklustre response. Officers from the local authority berated them for being “too free” and having “nothing better to do”.<sup>3</sup>

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<sup>2</sup> Tan, Y. (2019, February 13). *Plastic pollution: One town smothered by 17,000 tonnes of rubbish*. BBC News. <https://www.bbc.com/news/world-asia-46518747>

<sup>3</sup> PTASKL member, several interviews, 2020.

### BOX 1.1: What are HS Code 3915 Plastics?

**Harmonized Commodity Description & Coding System**, commonly known as HS Codes, was created by the Customs Department for international use to classify commodities being declared at the customs frontiers by exporters and importers.

The **Customs (Prohibition of Imports) Order 2017, Second Schedule, Part 1**, lists the goods which are prohibited to be imported into Malaysia except under an import licence.

In this list, power is given to the **Department of National Solid Waste Management (JPSPN)** under KPKT to issue import licences for “**waste, parings and scrap of plastics**” under **HS Code 3915** (p. 40). This power to issue import licences was previously held by the Ministry of International Trade and Industry (MITI).

HS Code Chapter 39 includes all sorts of plastics and articles, including in primary forms, resins, or final products, with **Headings 01 to 26**. Only Heading 15 which refers to recyclable waste is under the purview of JPSPN.

Any plastic waste contaminated with “**chemicals, pesticides, mineral oil or scheduled wastes**” (p.155) is also included in Chapter 39. However, these items are listed in the **Third Schedule, Part 1**, which are goods **prohibited** to be imported into Malaysia except under certain manners of import. Because schedule or hazardous waste is involved, the importation requires a letter of approval issued by or on behalf of the Director General (DG) of Environmental Quality.

The Third Schedule, Part 1, also includes “solid waste (municipal waste)”, categorised under HS Code 3825.10.00 00. This item can only be imported with a letter of approval issued by or on behalf of the DG of JPSPN (Peninsular Malaysia and Labuan), or the

The group soon found mountains of foreign municipal waste hidden within oil palm estates around their homes. They set up the Kuala Langat Environmental Action Group (PTASKL) to consolidate efforts in fighting the illegal plastic waste factories. Appendix A1 details the complaints made by PTASKL and the responses by the government.

In nearby Klang, illegal factories were also in operation but as the facilities were more dispersed and less conspicuous. Residents similarly set up the Klang Environmental Action Group (PTASK), and like PTASKL, they traced factories which had stockpiled jumbo bags full of plastic waste, had no signboards, and were emitting noxious fumes. Appendix A3 details PTASK’s activities. The residents in Klang noted down GPS coordinates and addresses, and

took photographs. They lamented that the local authority or local council would not commence investigations unless they furnished sufficient evidence.<sup>4</sup>

Anecdotes in media articles presented hints on how these illegal factories came about. The *Los Angeles Times* reported a consultant for the plastic recycling industry saying, “The previous government was very supportive of China, so some companies found their way in outside the proper channels.”<sup>5</sup> Operations were spread out across various small facilities; one facility purchases, dismantles and crushes large plastic debris into tiny shards, to be trucked to another facility and refined into pellets and exported to China.

After GE14, complaints by the groups in Jenjarom and Klang finally received attention from the federal government.<sup>6</sup> Local news daily *Kosmo!* broke an award-winning exposé on the illegal factories in Kuala Langat,<sup>7</sup> supported by environmental groups PEKA (Malaysian Natural Heritage Protectors Society) and Greenpeace Malaysia, and the international media soon took notice. The PH administration began taking action in July 2018, sealing illegal factories and examining containers at ports. As the authorities began cracking down on operators in Kuala Langat and Klang, plastic recycling spread to other areas in Selangor; currently operations have been found in Ijok, Kundang, Semenyih, Rasa and Nilai.<sup>8</sup> Illegal factories have been discovered in almost every state in Peninsular Malaysia, and containers of waste have also been found at the ports in Butterworth, Penang and Kuching, Sarawak.<sup>9</sup>

Plastic recycling operations moved north to Penang. When the Penang government began clamping down on these operations in early 2019, factories then appeared in Sungai Petani, Kulim, and Gurun in Kedah, all of which were relatively close to the Butterworth port.<sup>10</sup> What PTASKL experienced in 2018 began to affect the residents in Sungai Petani in 2019. Air pollution in Sungai Petani intensified and this caught the attention of medical doctors, who, together with other affected residents, subsequently established the Sungai Petani Environmental Action Group (PTASSP). PTASSP organised protests, signed petitions and

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<sup>4</sup> The terms local council, local government or local authority tend to be used interchangeably but for this report, the term local council (comprising politically-appointed local councillors) is used to refer to the policymaking arm of the local government, while local authority is used to refer to the bureaucratic arm. See Lim (2020) for a detailed discussion of the role of the local government, taking the Penang Island City Council as an example.

<sup>5</sup> B. Shashank. (2018, December 29). *How heaps of U.S. plastic waste landed in Malaysia, broken down by workers earning \$10 a day*. Los Angeles Times. <https://www.latimes.com/world/asia/la-fg-malaysia-plastic-2018-story.html>

<sup>6</sup> The lack of response from the bureaucracy to public complaints between January to July 2018, and the failure of regulatory oversight which allowed the influx of foreign waste have yet to be addressed.

<sup>7</sup> Bernama. (2019, April 27). *Two Kosmo! journalists bag prestigious Kajai award*. Malay Mail. <https://www.malaymail.com/news/malaysia/2019/04/27/two-kosmo-journalists-bag-prestigious-kajai-award/1747448>

<sup>8</sup> PTASKL member, several interviews, 2020.

<sup>9</sup> Chan, D. (2019, February 24). *Illegal plastic recycling plants - 'Operators shifted to other states'*. New Straits Times. <https://www.nst.com.my/news/nation/2019/02/463130/illegal-plastic-recycling-plants-operators-shifted-other-states>; and information provided by the DOE in July 2020.

<sup>10</sup> Chern, L. T. (2019, July 29). *It's just about moving here to there*. TheStar. <https://www.thestar.com.my/news/nation/2019/06/12/its-just-about-moving-here-to-thereplastic-waste-factories-relocated-from-penang-to-kedah>

made police reports. They banded together to patrol the factories to find evidence of illegal burning and tested soil for pollutants. They plotted GPS coordinates of illegal facilities, and submitted memorandums to the Kedah chief minister, the member of parliament for Sungai Petani, and the prime minister. Appendix A2 provides a compilation of PTASSP's activities.

### **1.3 Good governance and the right to a safe, clean, healthy, and sustainable environment**

Much has been reported about the environmental impact of plastic waste imports into Malaysia by environmental groups and the media. This study situates the problem within a framework of governance. Almost three decades have passed since the World Bank first began focusing on public sector governance, yet public administration in Malaysia is still hindered by a severe lack of transparency and accountability. The plastic waste crisis highlighted the extent of this long-standing problem of governance in Malaysia and the dire consequences that weak governance has on the people.

In a 1992 report titled *Governance and Development*, the World Bank defined governance as “the manner in which power is exercised in the management of a country’s economic and social resources for development” (World Bank, 1992, p. 3).<sup>11</sup> Good governance is “central to creating and sustaining an environment which fosters strong and equitable development, and it is an essential complement to sound economic policies” (World Bank, 1992, p. 1).

In that report, four dimensions of governance were emphasised: public sector management, accountability, the legal framework for development, and information and transparency. The World Bank was concerned with helping countries build rules and institutions (legal framework) that are predictable and transparent, which would promote accountability in the conduct of public and private business, and crucially, prevent corruption to facilitate better economic and financial performance.

In addition, Kaufmann and Zoido-Lobaton (1999, p. 1) defined governance as:

...the traditions and institutions by which authority in a country is exercised. This includes (1) the process by which governments are selected, monitored, and replaced, (2) the capacity of the government to effectively formulate and implement sound

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<sup>11</sup> In the early 1990s, the World Bank shifted its focus from structural adjustment lending and related reforms of public sector management towards an emphasis on governance and improving institutional frameworks. The Bank was critiqued for constituting governance in neoliberal, market-friendly terms (Chang, 2002; Fine, 2011; Kiely, 1998; Leftwich, 1993), reducing government intervention in the economy to curbing corruption and creating an enabling environment for growth, limiting its role to the provision of public goods, correcting market failure, and creating laws and regulations that allow markets to work efficiently. A counterargument was offered by scholars working on the “developmental state” paradigm, which argued that successful economic growth requires strong and capable governments, playing important roles in directing, facilitating, and on occasion, participating in the economy (Amsden, 1989; Evans, 1995; Johnson, 1982, 1995; Skocpol, 1985; Wade, 1990). Regardless, the basic argument for good governance made in 1992 proves relevant and useful as a framework to examine the plastic waste crisis in Malaysia in the 21<sup>st</sup> century.

policies, and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them.

Importantly, this definition placed emphasis not only on a capable government and the rule of law in public administration, but also on the democratic accountability of governments to citizens (Kaufmann, 2008). Poor governance apparent in this plastic waste crisis has directly impacted the peoples' right to a safe, clean, healthy, and sustainable environment. The need to promote and protect this human right is urgent as it comes hand-in-hand with environmental conservation, which is crucial to mitigate the risks of the largest challenge of the 21<sup>st</sup> century - the climate crisis.

The United Nations Special Rapporteur on Human Rights and the Environment distinguished the right to a safe, clean, healthy, and sustainable environment into substantive elements and procedural elements.<sup>12</sup> 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.

Good governance is part and parcel of the procedural elements to the right to a healthy environment, and is crucial to protecting this human right.

#### **1.4 Objectives of the report**

This report aims to investigate the problem of governance and illegality linked to imported plastic waste – what happened, whether there were elements of corruption, or whether lack of enforcement, weak oversight mechanisms, and poor governance exacerbated the problem. This report also examines the effects of poor governance and petty corruption on human and environmental health.

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<sup>12</sup> See the UN General Assembly (UNGA). (2019, December 30). *Right to a healthy environment: Good practices - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment. A/HRC/43/53.* <https://undocs.org/en/A/HRC/43/53>. The Special Rapporteur also outlined 16 framework principles on human rights and the environment which set out the basic obligations of the state under human rights law, which can be retrieved at United Nation Human Rights. (2018). *Framework principles on Human Rights and the Environment.* <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>

The linkages between corruption and environmental crime have been well established<sup>13</sup> but the connection between health and corruption is at best indirect. The current COVID-19 pandemic, which has taken more than a million lives and devastated global value chains and public service delivery systems, has sparked off important conversations on public health, the environment, and the economy. What is lacking from the debates is the role of corruption.<sup>14</sup> This is an opportune moment to consider the interlocking nature of various issues and their impacts on human and environmental wellbeing.

The key questions guiding this research are:

1. How did the plastic waste enter Malaysia with such ease and what elements of illegality surrounded the plastic recycling facilities?
2. What are the roles played by the federal, state and local governments in governing the plastic waste recycling industry?
3. What are the weaknesses of legal and policy frameworks in Malaysia in this area?

## 1.5 Data collection and methodology

Qualitative data for this report was sourced from primary and secondary sources. Primary data was attained through semi-structured interviews with various stakeholders including politicians, government officials, businesses in the private sector, civil society activists and community group representatives. The interviews were carried out across field visits to Sungai Petani and Alor Setar (Kedah), Bukit Mertajam and Georgetown (Penang), Putrajaya, Klang, and Kuala Langat (Selangor), and also via teleconferencing or telephone calls, between November 2019 and March 2021.

A total of 40 persons were interviewed – 18 government officers (local and international) and/or elected members of the government; six elected representatives who were not part of the state nor federal governments, or their staff; 10 members of civil society organisations (CSOs) or community groups; and six individuals from the private sector related to plastic recycling or port management.

All information from the interviews was triangulated with other interviews or corroborated by a review of secondary data. Secondary data, particularly on governmental action, was compiled from news articles and research reports from other organisations. Data was also gleaned from company reports, government plan documents, the Hansard for the Parliament

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<sup>13</sup> See Amato and Zolij (2011), United Nations Office on Drugs and Crime (2012), and World Customs Organisation (2009).

<sup>14</sup> See Wong, P.Y. (2020, August 20). *Unhealthy air and plastic waste: The nexus of pollution, public health and corruption*. Asia Global Online. <https://www.asiaglobalonline.hku.hk/unhealthy-air-and-plastic-waste-nexus-pollution-public-health-and-corruption>

and the State Assemblies,<sup>15</sup> and documentation of protests and complaints by community groups.<sup>16</sup>

The problem of imported plastic waste escalated in 2018 and 2019 and the solutions were developed and pursued during that period. Most interviews for this report were conducted in early 2020 before the change of government administrations at the federal level (March 2020) and at the state level for Kedah (May 2020). In this report, persons, positions, and ministries will reference the initial institutions before March 2020 unless stated otherwise. The most significant changes were the reshuffling of the DOE from MESTECC to the Ministry of Environment and Water (KASA), and the change of environment minister from Yeo Bee Yin to Tuan Ibrahim Tuan Man.

At the state level, two key persons were replaced in the political power struggle - the Kedah state executive council chairpersons for Industry and Investment, Local Government and Housing Committee (exco for local government), Tan Kok Yew, and for Chinese and Siamese Community Affairs, Science and Technology, Climate Change and Environment Committee (exco for environment), Simon Ooi Tze Min.

Apart from this, the Kuala Langat District Council (MDKL) upgraded from a district to a municipality on 1 March 2020 and became known as the Kuala Langat Municipal Council (MPKL). Both MDKL and MPKL mentioned in this report refers to the same local authority.<sup>17</sup> In Kedah, Penang and Selangor, repeated and unsuccessful attempts were made to meet officers from the Sungai Petani Municipal Council (MPSPK), Seberang Perai City Council (MBSP) and MPKL.

Table 1.2 provides more details on the interviewees for this research.<sup>18</sup> An open data policy within the government is crucial to advance policy analysis and evidence-based policymaking, while transparency is a key pillar of anti-corruption and good governance. The government agencies and representatives below are commended for being open and accessible to researchers.

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<sup>15</sup> Hansard is freely available online for the Parliament and the State Assemblies of Selangor and Penang. For Kedah, written applications to access the State Assembly Hansard needed to be done which this research regrettably could not do due to resource constraints.

<sup>16</sup> No interviews were secured with parties involved in illegal plastic recycling.

<sup>17</sup> A City Council is a local authority with a total population exceeding 500,000 and an annual revenue exceeding RM100 million. A Municipal Council refers to local authority in urban or town centres with a total population exceeding 150,000 and an annual revenue exceeding RM20 million. A District Council is the local authority for less developed or rural areas, with a total population not exceeding 150,000 people and annual revenue less than RM20 million. The local governments in Peninsular Malaysia, Sarawak and Sabah are respectively governed under the Local Government Act 1976, Local Government Ordinance 1961 (Sarawak No. 11 of 1996) and the Local Authorities Ordinance 1996 (Chapter 20). This research is focused on Peninsular Malaysia which was more severely affected by illicit plastic waste imports. See Local Government Department. (n.d.). *Frequently Asked Questions*. <http://jkt.kpkt.gov.my/en/SoalanLazim/Umum-JKT%26PBT>.

<sup>18</sup> Only elected representatives, who are public figures, were named in this report. Other interviewees were assured of the confidentiality of the interviews and the anonymity of their identities, to protect them in an increasingly closed system of governance in Malaysia since the change of federal government.

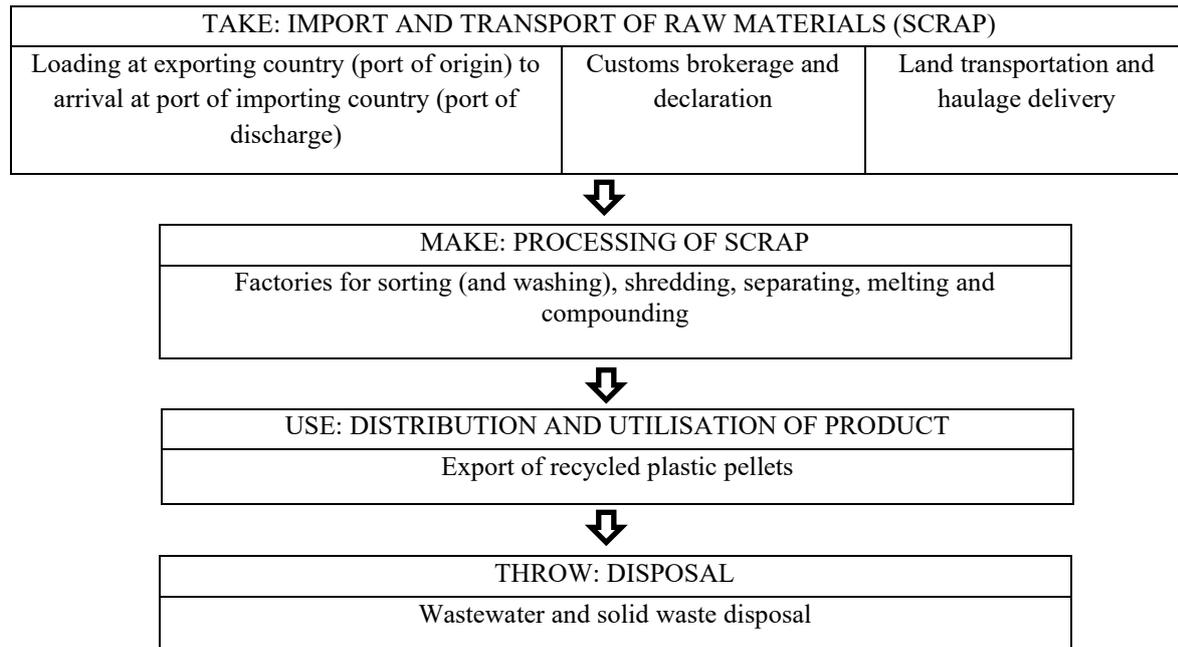
**Table 1.2: Interviewees Who Participated in This Research**

| Category           | Government agency/groups/actors   | Ministry/Government body                            |
|--------------------|---|---|
| Federal government | <ul style="list-style-type: none"> <li>• Department of National Solid Waste Management (JPSPN)</li> <li>• Solid Waste Management and Public Cleansing Corporation Sdn Bhd (SWCorp)</li> </ul>   | Ministry of Housing and Local Government (KPKT)     |
|                    | <ul style="list-style-type: none"> <li>• Royal Malaysian Customs Department (Customs)</li> </ul>  | Ministry of Finance (MOF)                           |
|                    | <ul style="list-style-type: none"> <li>• Former MESTECC minister, Yeo Bee Yin</li> <li>• Department of Environment (DOE)</li> </ul>   | Ministry of Environment and Water (KASA)            |
|                    | <ul style="list-style-type: none"> <li>• Former MITI deputy minister, Ong Kian Ming</li> <li>• Principle assistant director of a division</li> </ul>  | Ministry of International Trade and Industry (MITI) |
| State government   | <ul style="list-style-type: none"> <li>• Former executive councillor for local government, Tan Kok Yew</li> <li>• Former executive councillor for environment, Simon Ooi</li> </ul>   | Kedah state government                              |
|                    | <ul style="list-style-type: none"> <li>• State assembly representative for Sidam, Dr Robert Ling (current executive councillor for environment)</li> </ul>  | Kedah State Assembly                                |
|                    | <ul style="list-style-type: none"> <li>• Sungai Petani member of parliament, Johari Abdul</li> </ul>  | Parliament  |
|                    | <ul style="list-style-type: none"> <li>• Executive councillor for environment, Phee Boon Poh</li> </ul>   | Penang state government                             |
|                    | <ul style="list-style-type: none"> <li>• Machang Bubuk state assembly representative, Lee Khai Loon</li> <li>• Penanti state assembly representative, Dr Hajah Norlela Ariffin</li> </ul>   | Penang State Assembly                               |
|                    | <ul style="list-style-type: none"> <li>• Executive councillor for local government, Ng Sze Han</li> <li>• Executive councillor for industry, Teng Chang Khim</li> </ul>   | Selangor state government                           |
|                    | <ul style="list-style-type: none"> <li>• Sijangkang state assembly representative, Dr Ahmad Yunus Hairi</li> <li>• Former local councillor for Kuala Langat District Council and assistant to Dr Yunus</li> </ul>   | Selangor State Assembly                             |
| Society            | <ul style="list-style-type: none"> <li>• Kuala Langat Environmental Action Group (PTASKL)</li> <li>• Sungai Petani Environmental Action Group (PTASSP)</li> <li>• Klang Environmental Action Group (PTASK)</li> <li>• Greenpeace Malaysia</li> <li>• Sahabat Alam Malaysia</li> </ul> |   |
| Business           | <ul style="list-style-type: none"> <li>• Port operating company representatives</li> <li>• Plastic waste recycler</li> <li>• Plastic waste trader</li> </ul>  |   |

Source: Author

To answer the research questions, this report traces the value chains of post-consumer plastics, in other words, plastic recyclable scrap and unrecyclable municipal waste. This must be distinguished from plastic products manufactured from virgin plastic. A value chain refers the stages required to deliver a product or service, from the sourcing of materials to the design and production processes, to the distribution of the product to buyers. It can also refer to inter-company networks between suppliers and buyers that facilitate the flow of activities, information, and resources.

Figure 1.1 shows a basic value chain for the plastic recycling industry where raw materials are imported plastic waste, not plastic waste collected domestically for recycling. The value chains servicing the plastic waste trade begins from collection, to transportation, to recycling, incineration, and/or disposal into landfills. Tracing the value chains enables the identification of government, business, and community actors involved in each process along the chain, and the various roles they played. The three separate levels of government – federal, state, local – and their responsibilities in regulating the value chains are discussed.



**Figure 1.1: Plastic recycling value chain in Malaysia**

Source: Interviews, Malaysian Plastics Manufacturers Association and Malaysian Plastics Recyclers Association (2019, p. 10)

## 1.6 Organisation of this report

This report has six chapters.

- **Chapter 1** introduces the plastic waste crisis and outlines the objectives of this research as well as the methodology adopted.
- **Chapter 2** provides background information on how the plastic waste crisis occurred and the implications for affected communities.
- **Chapter 3** examines the complex institutional and legal framework (domestic and international) that governs the importation and recycling of plastic waste, specifically those that fall under the global HS (Harmonised System) Code 3915, as well as the regulations that businesses must meet in order to set up in Malaysia. Government policy regarding plastic waste imports is also discussed.

- **Chapter 4** expands in detail governmental actions taken at the ports, factories and dumpsites.
- **Chapter 5** illustrates brief case studies of past conflicts between industrial projects and nearby residents around Peninsular Malaysia.
- **Chapter 6** concludes the report with a summary of the findings and some recommendations.

## CHAPTER 2: IMPACT OF THE GLOBAL PLASTIC WASTE TRADE CRISIS ON MALAYSIA

### SUMMARY

- Chapter 2 provides an overview of how the plastic waste crisis happened and the extent of the problem in Malaysia.
- The influx of foreign plastic waste occurred because of China's import ban on 24 types of solid waste, namely mixed or contaminated waste, which took effect on January 2018.
- This sent recyclers in China scrambling for new markets to process imported waste to continue generating sufficient recycled plastic resins to meet the demands of China's manufacturing sector.
- The influx of foreign plastic waste in Malaysia led to rampant illegal processing of plastic without proper pollution controls, and the indiscriminate burning and dumping of wastes.
- The illegal activities have affected the health of local communities and polluted the air, land and water sources around the illegal factories and dumpsites. These activities will inevitably exacerbate the climate crisis.

### 2.1 China's Operation Green Fence, National Sword Policy, and Blue Sky

The pollution haven hypothesis predicts a trend of developing countries exporting polluting industries to less developed countries to avoid the costs of stringent environmental regulations (Davis, Akese, & Garb, 2019; Puckett & Smith, 2002). While most studies had been focused on e-waste, plastic waste has also been shown to flow from high-income countries to low-income countries. In the past, cargo vessels had carried China-made consumer goods to developed countries, and instead of returning empty, the liners offered favourable shipping rates to transport low-value products, including plastic waste and used paper, back to China using (backhaul) empty containers (Tran, Goto, & Matasuda, 2021).<sup>19</sup> Coupled with low labour

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<sup>19</sup> Penang Port authorities, interview, Butterworth, 21 November 2019.

costs, low environmental standards and high demand for recycling materials, the West had been shipping waste to China for decades.

China started regulating solid waste imports through Operation Green Fence (OGF) in 2013, increasing strict inspections to stop the illegal trade of hazardous waste and improve the quality of imported waste.<sup>20</sup> In July 2017, China announced the National Sword Policy which banned 24 types of solid waste imports including plastic waste, unsorted waste paper, waste textiles and waste from the manufacture of iron or steel, effective January 2018. The country also implemented a 0.5% contamination limit (down from 1.5% for OGF) for all solid waste imports in attempts to halt the continued contamination of the country by soiled imported waste, which were overwhelming its facilities. This was continued with Blue Sky 2018, and in April 2020, China approved a revision to policies, aiming to realise zero imports of solid waste (Tran et al., 2021).

China's ban caused disrupted the global market for recyclable material, exposing the lie of Western "recycling" programmes. Brooks, Wang, and Jambeck (2018) found that a cumulation of 45% of all plastic waste was imported by China since 1992, and they estimated that 111 million tonnes of plastic waste will be displaced by the ban by 2030. Even before the ban, only 9% of total discarded plastics globally were recycled. 12% were burned while 79% were sent to landfills or illegally dumped (Geyer, Jambeck, & Law, 2017).

The ban redirected plastic waste to Southeast Asia and other developing countries which have low capacity to process the massive amounts of plastic waste and lax regulatory frameworks to protect the environment (Wang, Zhao, Lim, Chen, & Sutherland, 2020). In 2015, a study examined countries' annual tonnes of mismanaged plastic waste and the total amount which ended up in the ocean. Researchers found that, out of the top eight polluting countries globally, five are in Southeast Asia - Indonesia (2nd), Philippines (3rd), Vietnam (4th), Thailand (7th), and Malaysia (8th) (Jambeck et al., 2015). The China ban exacerbated the situation of plastic pollution in Southeast Asia.

## 2.2 Plastic waste exports to Malaysia

Communities in Malaysia, Thailand, Indonesia, and the Philippines have been found living close to mountains of plastic waste, subjected to toxic fumes from openly burnt plastics since the China ban.<sup>21</sup> Malaysia became the world's top destination for plastic waste exports between January to November 2018, receiving 15.7% of the total plastic exports from the top exporting countries of US, Japan, Germany, UK and Belgium.<sup>22</sup> Malaysia had relatively good ports, roads

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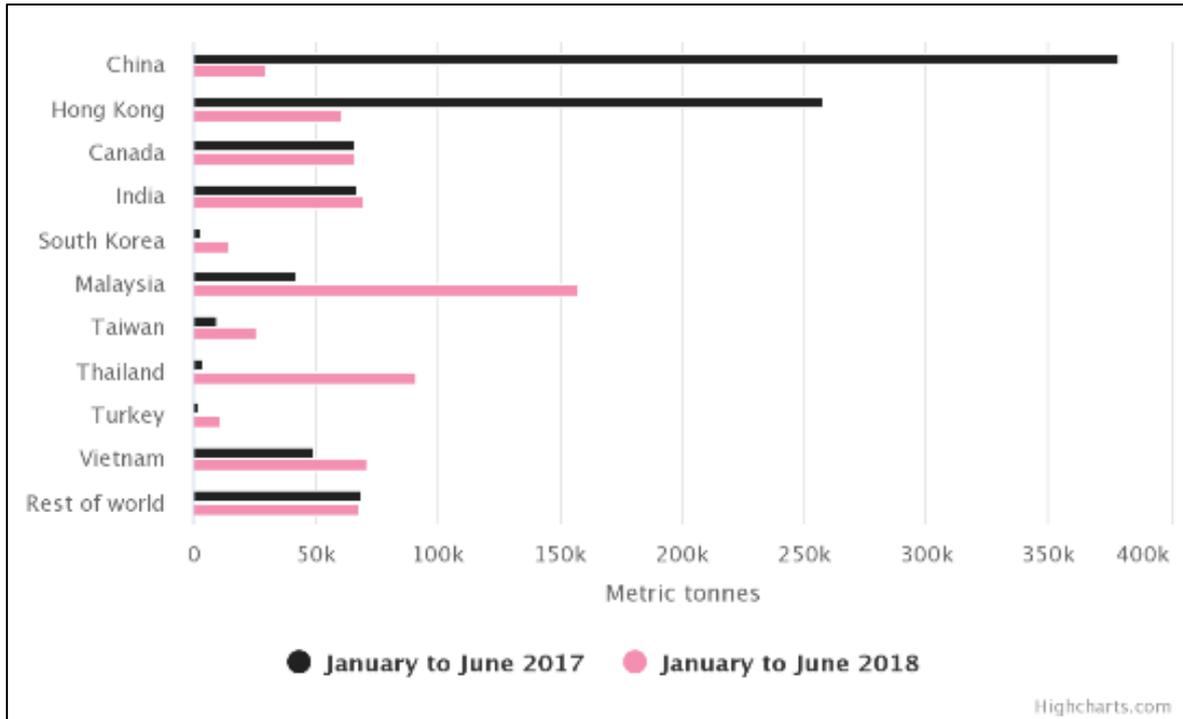
<sup>20</sup> Investigations by PTASKL around Klang revealed that recycling facilities set up by Chinese businessmen had been in the area since 2013, an indication that the facilities were set up after China's OGF led Chinese waste-related businesses to move to Southeast Asia.

<sup>21</sup> See Petrlik, Ismawati, Arisandi, and Bell (2019), Bueta (2020), Global Alliance for Incinerator Alternatives (2019), Akenji et al. (2019), and Sembiring (2019) for country case studies.

<sup>22</sup> Greenpeace. (2019, April 23). *Data from the global plastics waste trade 2016-2018 and the offshore impact of China's foreign waste import ban, An analysis of import-export data from the top 21 exporters and 21*

and industrial infrastructure, and a Mandarin-speaking business community ready to form partnerships with businesses from China.

From January to June 2018 alone, Malaysia imported more than 750,000 tonnes of plastic waste (Greenpeace Malaysia, 2018). Data from the United States (US) Census Bureau, Department of Commerce, showed that Malaysia became the largest importer of US plastic scrap with a rise of 273% to 157,299 tonnes, compared to the same period in 2017, as shown in Figure 2.1.<sup>23</sup>



**Figure 2.1: US plastic waste exports from January to June in 2017 and 2018**

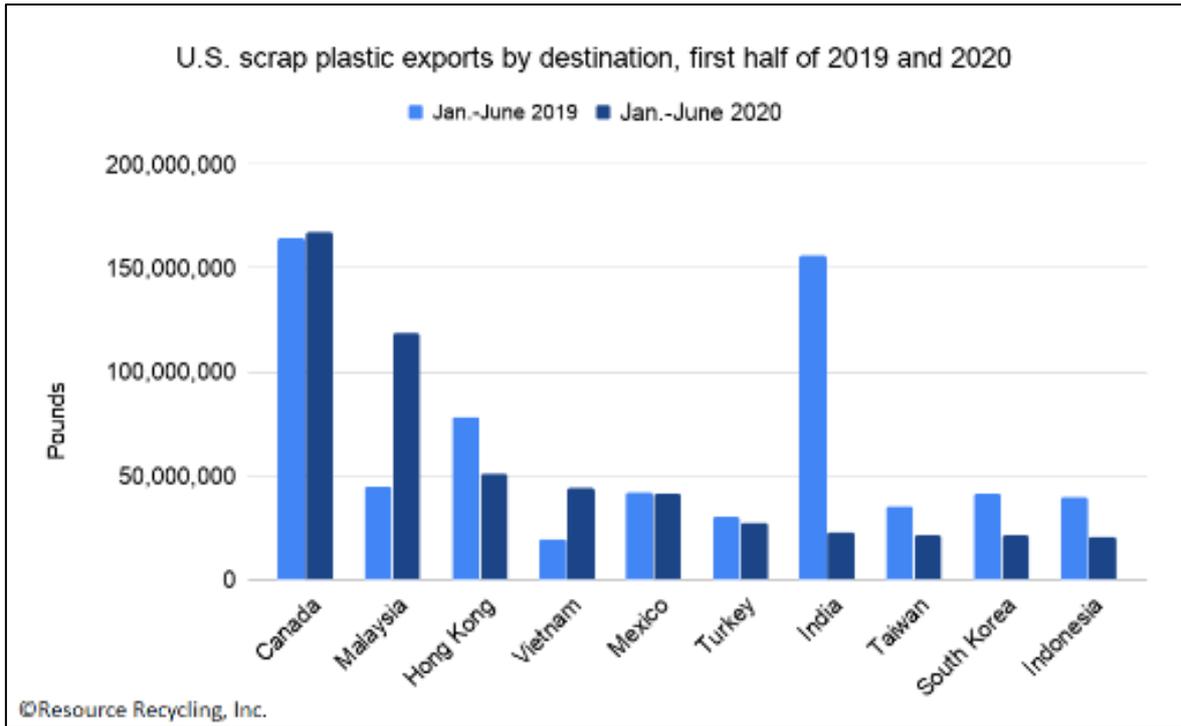
Source: Clarke and Howard, Greenpeace, 2018

The import of plastic scrap into Malaysia continued to increase in 2020. According to US Census Bureau export figures, while most major export markets for scrap plastic saw moderate to significant declines for the first half of 2020, Malaysia nearly tripled its imports despite enacting stringent scrap plastic import rules, as shown in Figure 2.2.<sup>24</sup>

*importers.* <https://www.greenpeace.org/static/planet4-eastasia-stateless/2020/06/9858a41c-gpea-plastic-waste-trade-research-briefing-v2.pdf>

<sup>23</sup> Clarke, J. S., & Howard, E. (2019, September 30). *US plastic waste is causing environmental problems at home and abroad.* Greenpeace. <https://unearthed.greenpeace.org/2018/10/05/plastic-waste-china-ban-united-states-america/>

<sup>24</sup> Staub, C. (2020, August 12). *Plastic exports drop 18% in first half of 2020.* Resource Recycling, publication. <https://resource-recycling.com/plastics/2020/08/12/plastic-exports-drop-18-in-first-half-of-2020/>



**Figure 2.2: US plastic waste exports from January to June in 2019 and 2020**

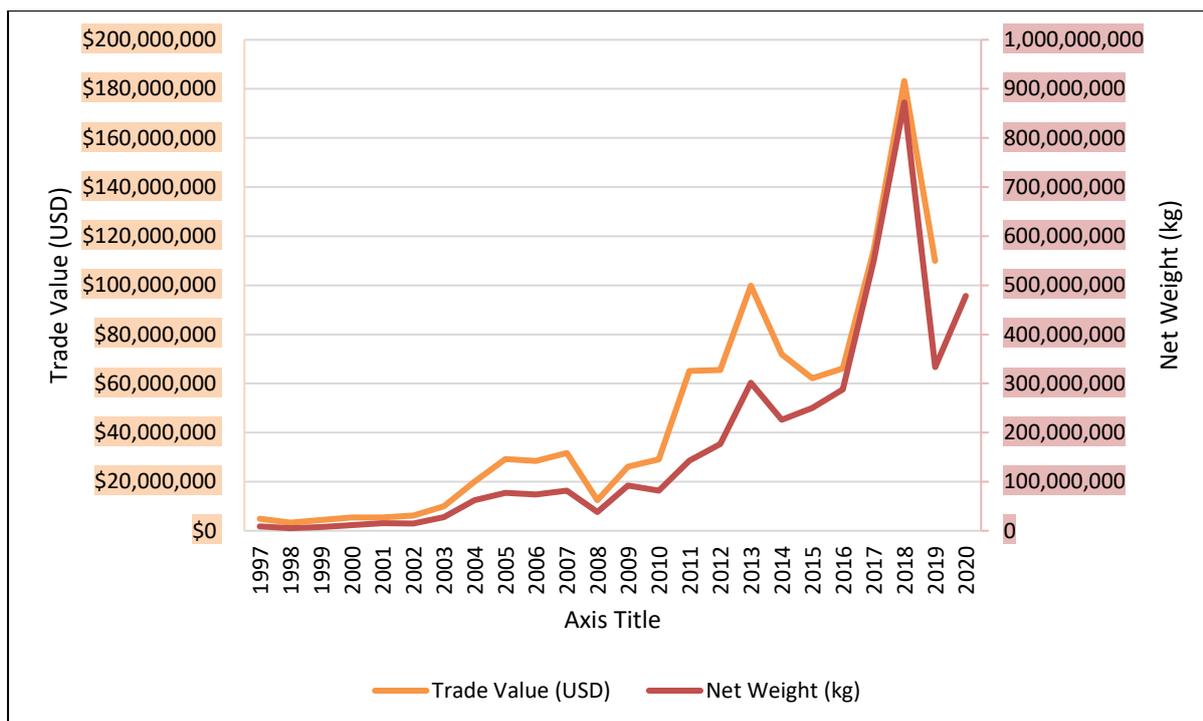
Source: *Resource Recycling* (2020, August 12)

Greenpeace’s *Unearthed* analysis released in October 2020 showed that Malaysia was the second largest market for plastic waste from the United Kingdom (UK), with exports increasing 81% from January to July 2020 compared to the same period in 2019.<sup>25</sup> Latest UK export data showed that overall, in 2020, UK plastic waste exports to Malaysia increased by 63% from 40,007 tonnes to 65,316 tonnes, but the volume remains lower than in 2016, 2017 and 2018.<sup>26</sup>

As a whole, more than 1.206 million tonnes of HS 3915 plastic scrap was imported by Malaysia in 2018 and 2019 (according to UN COMTRADE data), while data from JPSPN showed that 2020 saw imports of 478,092 tonnes, an increase of 43% compared to the year before. This sum only accounts for legal transactions (see Figure 2.3). Data on the amount of plastic scrap that has been recycled into resins, for domestic use or export, as well as the amount of unrecyclable or contaminated waste stranded in Malaysia, has not been estimated.

<sup>25</sup> Clarke, J. S. (2020, October 9). *UK still shipping plastic waste to poorer countries despite Conservative pledge*. Greenpeace. <https://unearthed.greenpeace.org/2020/10/09/plastic-waste-uk-boris-johnson-malaysia/>

<sup>26</sup> Moore, D. (2021, February 17). *‘Enormous’ increase in UK plastic waste exports to Turkey and Malaysia – Greenpeace*. Circular. <https://www.circularonline.co.uk/news/enormous-increase-in-uk-plastic-waste-exports-to-turkey-and-malaysia-greenpeace/>. For a response by Malaysian plastic industry players, see Free Malaysia Today. (2021, February 25). *Claims on plastic waste imports rubbished*. <https://www.freemalaysiatoday.com/category/nation/2021/02/25/claims-on-plastic-waste-imports-rubbished/>



**Figure 2.3: Import of HS Code 3915 plastic waste to Malaysia, 1997-2020<sup>a</sup>**

<sup>a</sup> The quantity of imports in net weight for 2020 was provided by JPSPN. The trade value was not available. Source: UN COMTRADE data (1997-2019) and JPSPN (2020)

### 2.3 Implications for Malaysia

More than 500 domestic and foreign news articles as well as special reports have been written on the plastic waste influx into Malaysia and the impact on the communities.<sup>27</sup> Several feature-length documentaries have also been made, including TRT World’s *Off The Grid*, “Malaysia’s Plastic Jungle” (2020),<sup>28</sup> Astro AEC’s *Social Playlist*, “Breathe” (2020),<sup>29</sup> NHK World-Japan Biz Stream Special Edition on “Plastic Wasteland in Southeast Asia” (2020),<sup>30</sup> CBC News’ *Marketplace*, “Tracking your plastic: Exposing recycling myths” (2019),<sup>31</sup>

<sup>27</sup> Aside from news articles cited throughout this report, see also the reports by Khor Reports (2019a, 2019b); Malaysian Plastics Manufacturers Association and Malaysian Plastics Recyclers Association (2019); E. K. J. Wong, Alyssa Farha (2019).

<sup>28</sup> TRT World. (2020, August 21). *Malaysia's plastic jungle | Off The Grid | Documentary*. [Video]. YouTube. <https://www.youtube.com/watch?v=38KNEHTm-Ds>

<sup>29</sup> Astro AEC. (2020, May 1). *第一集：塑料世界《Breathe》首播通知*. [Video]. YouTube. <https://www.youtube.com/watch?v=T2gMmMXP310>.

<sup>30</sup> Biz Stream. (2020, March 28). *Plastic wasteland in Southeast Asia*. [Video Broadcast]. <https://www3.nhk.or.jp/nhkworld/en/ondemand/video/3004657/>

<sup>31</sup> CBC News. (2019, September 28). *Tracking your plastic: Exposing recycling myths (Marketplace)*. [Video]. YouTube. <https://www.youtube.com/watch?v=c8aVYb-a7Uw>

Netflix's investigative series Broken, "Recycling Sham" (2019),<sup>32</sup> 60 Minutes Australia's "Plastic, Not So Fantastic" (2019),<sup>33</sup> and BBC One's "War on Plastic" (2019).<sup>34</sup>

Notwithstanding the extensive coverage and continuous complaints by the community groups about illegal operations and pollution caused, the Malaysian government remains reluctant to ban the import of plastic waste for economic reasons, opting to focus on enhancing enforcement efforts. Affected communities became increasingly distrustful of the government, which to them, appeared to engage plastic industry players more than the people, pandering to industry lobbyists. This is not surprising as the plastics manufacturing industry (which has close ties with the plastic recycling industry) is well established in Malaysia, with an association dating back to 1967. In 2018, the Malaysian Plastics Manufacturers Association (MPMA) had several engagements with the ministers of MESTECC, KPKT, and MITI (Malaysian Plastics Manufacturers Association, 2019, pp. 33-34).

The KPKT minister informed Parliament that the business potential for plastic imports was RM30 billion. She went on to elaborate that clean and homogenous plastics scrap could be processed into consumer goods and bring a revenue of RM30 billion to the country. However, none of the interviewees for this research were able to explain where the figure came from. An indication could be gleaned from *An Advanced Plastic Recycling Industry for Malaysia: A White Paper by MPMA and MPRA*.

The report stated that the plastics recycling industry is worth RM4.5 billion in revenue, and it supports the RM31 billion local plastics conversion industry (Malaysian Plastics Manufacturers Association & Malaysian Plastics Recyclers Association, 2019, p. 8). While it is necessary for the government to engage with industry stakeholders, in order to accurately assess the benefits of importing foreign wastes, what needs to be clarified is how much of the midstream plastic conversion industry is dependent on virgin plastics, how much on recycled plastic resins, and how much resins are destined wholly to be exported to China.

Aside from the KPKT minister, other government officials have also justified the import of foreign waste into Malaysia, viewing it as a business opportunity. When queried why China banned the import and processing of waste if it was so lucrative, an interviewee opined that it

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<sup>32</sup> Chaw.K. (2019, December 16). *Netflix highlights Malaysia's plastic dumping problem in documentary*. TheStar. <https://www.thestar.com.my/lifestyle/entertainment/2019/12/16/netflix-documentary-highlights-malaysias-plastic-dumping-problem>

<sup>33</sup> Little.L. (2019, April 14). 60 Minutes: Australia's recycling lie exposed: Plastics being dumped, buried and burned in Malaysia. 9NEWS. <https://www.9news.com.au/national/60-minutes-plastic-australian-recycling-malaysia-china/e1a06745-9b35-4b15-85cb-32168ef9b440>; and 60 Minutes Australia. (2019, April 14). *Exposing Australia's recycling lie*. [Video]. YouTube. [https://www.youtube.com/watch?v=lqrIEsPoyJk&feature=youtu.be&fbclid=IwAR2wAWROd\\_sNNeElqatVim4PRg3iQfUAIOdH9T8RvdrZv2-5TkIupnXzJ2I](https://www.youtube.com/watch?v=lqrIEsPoyJk&feature=youtu.be&fbclid=IwAR2wAWROd_sNNeElqatVim4PRg3iQfUAIOdH9T8RvdrZv2-5TkIupnXzJ2I). For the response from industry associations in Australia, see Waste Management Review. (2019, April 16). *Industry associations respond to 60 Minutes recycling report*. <https://wastemanagementreview.com.au/industry-associations-respond-to-60-minutes-recycling-report/>

<sup>34</sup> BBC One. (n.a.). *War on plastic with Hugh and Anita*. [Video]. <https://www.bbc.co.uk/programmes/m0005xgz>.

was because China wanted to move up the value chain towards higher-value products.<sup>35</sup> This is inaccurate, as China imposed the ban in efforts to rehabilitate its polluted environment. The Chinese government had faced difficulties monitoring the international waste trade, facing smuggling, illegal trading of foreign waste, improper handling of trash, and serious pollution of air, land and water.<sup>36</sup>

In a formal notification to the World Trade Organization (WTO) Committee on Technical Barriers to Trade regarding the ban of 24 types of waste materials, dated 18 July 2017, the Chinese government provided the following objective and rationale for the urgent measures:

According to the Special Actions of Strengthening the Supervision and Strictly Striking of Illegal "Foreign Garbage" by the General Administration of Customs of China, Ministry of Environmental Protection of China, Ministry of Public Security of China and General Administration of Quality Supervision, Inspection and Quarantine of China, as well as the Special Actions of Striking of the Illegal Actions of Imported Solid Waste Processing and Utilizing Sectors by Ministry of Environmental Protection of China, we found that *large amounts of dirty wastes or even hazardous wastes are mixed in the solid waste that can be used as raw materials. This polluted China's environment seriously* [emphasis added]. To protect China's environmental interests and people's health, we urgently adjust the imported solid wastes list, and forbid the import of solid wastes that are highly polluted.<sup>37</sup>

This submission by the Chinese government provided strong support that the concerns of the local communities in Malaysia about the impact of plastic waste imports on human and environmental health are valid, despite the government and businesses claiming otherwise. An interviewee further supported this submission by sharing that the Chinese government had sought international assistance to curb smuggling in the illegal waste trade.<sup>38</sup> In addition to pollution, the hidden costs incurred by the government in terms of enforcement, monitoring, cleaning up and rehabilitation of polluted environments must be considered, alongside the costs to public health. Illegal businesses and smuggling activities that plague the waste trade also contribute nothing to the local economy (Sembiring, 2019).

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<sup>35</sup> Government officer, interview, Shah Alam, 14 September 2020.

<sup>36</sup> Yen Nee Lee. (2018, April 16). *The world is scrambling now that China is refusing to be a trash dumping ground*. CNBC. <https://www.cnbc.com/2018/04/16/climate-change-china-bans-import-of-foreign-waste-to-stop-pollution.html#:~:text=It%20grew%20a%20whole%20waste,country%20into%20a%20major%20polluter.&text=China's%20ban%2C%20they%20said%2C%20would,better%20manage%20their%20own%20trash>

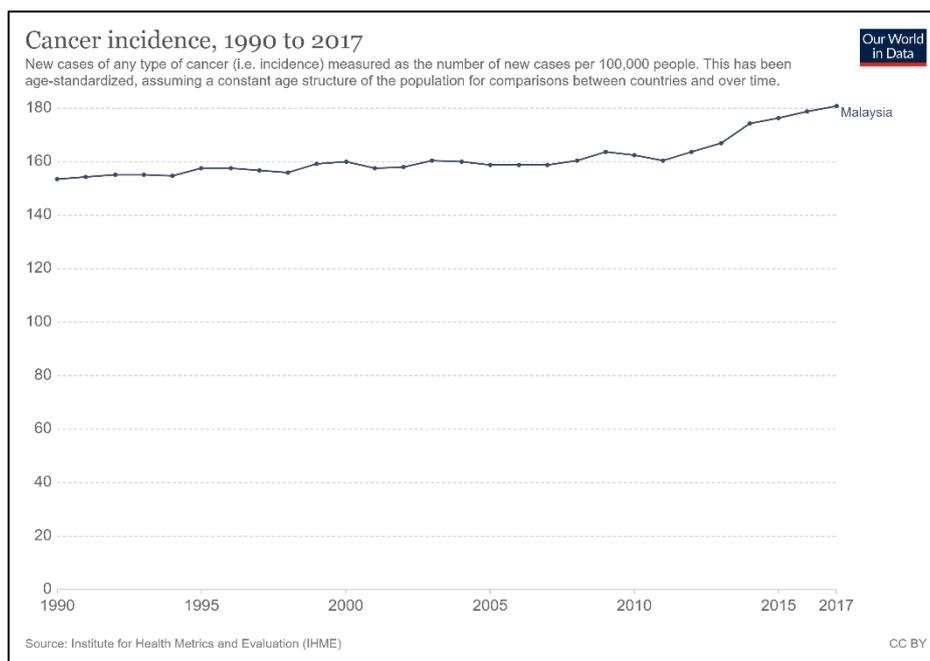
<sup>37</sup> WTO. Catalogue of Solid Wastes Forbidden to Import into China by the End of 2017 (4 Classes, 24 Kinds). Notification No. G/TBT/N/CHN/1211. 2017. Retrieved from <http://tbtime.wto.org/en/RegularNotifications/View/137356>, archived at <https://perma.cc/3CUT-LEM9>. The 24 types of materials were listed at [https://members.wto.org/cnattachments/2017/TBT/CHN/17\\_3218\\_00\\_x.pdf](https://members.wto.org/cnattachments/2017/TBT/CHN/17_3218_00_x.pdf), archived at <https://perma.cc/35G9-FGNL>

<sup>38</sup> International officer, interview, teleconference, 4 June 2020.

## Health and the climate crisis

Illicit businesses have managed to ship both recyclable plastic and contaminated household waste into Malaysia, most notably in 2018. Clean plastic would be processed into pellets or resins, which were then used to manufacture other plastic products or exported to China, while plastic scrap that was unsuitable for recycling was piled around factories in the open, or illegally dumped, or burnt, releasing toxic chemicals into the air.

Across Peninsular Malaysia, the incineration of plastic waste mostly happened at night to conceal the thick, dark smoke. Residents in the affected areas complained about the smell and reported increasing health issues such as coughing, breathing difficulties, nose bleeds, eye irritation, and skin itchiness. Investigations by PTASKL around Klang revealed that recycling facilities set up by Chinese businessmen had been set up indiscriminately in the area since 2013. This ties in with China's Operation Green Fence which began in 2013 to reduce the import of contaminated recyclable waste by increasing the inspection of waste shipments.<sup>39</sup> Anecdotal evidence from the residents reveal rising cancer cases among the community around Kuala Langat and Klang. Publicly available data shown in Figure 2.4 and Figure 2.5 also shows increasing cancer cases across Malaysia since 2013, with lung cancer being the most common.

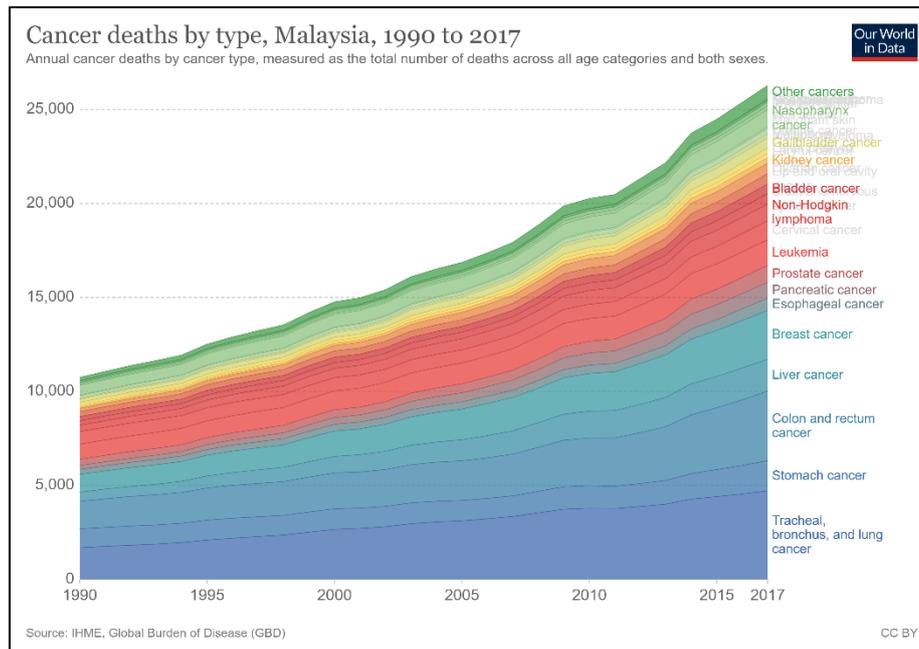


**Figure 2.4: Number of new cancer cases in Malaysia, 1990-2017**

Source: Our World in Data<sup>40</sup>

<sup>39</sup> Early, C. (2017, July 31). *China renews clampdown on waste imports*. China Dialogue. <https://chinadialogue.net/en/pollution/9954-china-renews-clampdown-on-waste-imports/>.

<sup>40</sup> Our World in Data. (n.a.). *Cancer incidence, 1990 to 2017*. <https://ourworldindata.org/grapher/cancer-incidence?tab=chart&country=~MYS>



**Figure 2.5: Number of cancer deaths according to the type of cancer, 1990 to 2017**

Source: Our World in Data<sup>41</sup>

In Sungai Petani, Kedah, PTASSP reported an increase of up to 30% in reports of respiratory diseases in Sungai Petani from 2018 to 2019.<sup>42</sup> The community resorted to purchasing hand-held Air Pollutant Index (API) monitors to get readings on the air pollution.<sup>43</sup> When questioned, a government officer responded that the data given by the community was not valid, as they had not made official reports to the district health office.<sup>44</sup> Dangerous levels of air pollution indicated in their personal API monitors were also dismissed as the official DOE API reading from a station in Sungai Petani did not capture similar data about air pollution.

While the existence of air pollution by factories' operations was difficult to prove, the physical evidence of the high volumes of plastic waste brought to Sungai Petani could not be ignored. Fires at plastic waste processing facilities have become a common occurrence with several fires occurring in plastic factories reported in the media throughout 2019 and 2020 (see

<sup>41</sup> Our World in Data. (n.a.). *Cancer deaths by type, Malaysia, 1990 to 2017*. <https://ourworldindata.org/grapher/cancer-deaths-by-type?tab=chart&country=~MYS>

<sup>42</sup> PTASSP member, interview, Sungai Petani, 29 January 2020.

<sup>43</sup> Nambiar, P. (2019, July 1). *Sungai Petani residents lodge 10 police reports over air pollution*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2019/07/01/sungai-petani-residents-lodge-10-police-reports-over-air-pollution/>

<sup>44</sup> Air pollution and its direct consequences on public health has been well documented (Mazrura Sahani et al., 2016; National Research Council, 2000; C.-M. Wong, Vichit-Vadakan, Kan, Qian, & PAPA Project Teams, 2008), but the intangible nature of air pollution and changing wind directions also cause air pollution to be extremely difficult to prove.

Table 2.1, Figure 2.6 and Figure 2.7). According to the Selangor Fire and Rescue Department, there were 14 fires at recycling plants in Selangor alone from March to June 2020.<sup>45</sup>

Plastic is easily combustible and materials recovery facilities, recycling operations, and dumpsites can lead to massive fires, releasing toxic fumes and greenhouse gasses (Hamilton et al., 2019). While the fire department noted that the main cause of fires was due to wiring and equipment failures, arson could not be ruled out. Within their communities, PTASKL and PTASSP reported insider allegations of trade wars and unscrupulous factory owners trying to dispose of waste stockpiles.

**Table 2.1: Fires at Plastic Recycling Factories Reported in Traditional and Social Media, 2019-2020**

| Date             | Factory  | Source  |
|------------------|--|---|
| 18 April 2019    | Plastic recycling factory of Green Mark Technology Sungai Petani, Kedah  | <a href="https://www.thesundaily.my/local/police-detain-ngo-member-on-suspicion-of-committing-arson-XL863099">https://www.thesundaily.my/local/police-detain-ngo-member-on-suspicion-of-committing-arson-XL863099</a>                     |
| 14 May 2019      | Plastic manufacturing factory in Setapak, Selangor   | <a href="https://www.malaymail.com/news/malaysia/2019/05/14/fire-destroys-plastic-making-factory-in-kl/1752612">https://www.malaymail.com/news/malaysia/2019/05/14/fire-destroys-plastic-making-factory-in-kl/1752612</a>                 |
| 5 July 2019      | Three factories in Pulau Indah Industrial Zone, Selangor   | <a href="https://www.thestar.com.my/news/nation/2019/07/06/seven-firemen-hurt-fighting-klang-factory-blaze/">https://www.thestar.com.my/news/nation/2019/07/06/seven-firemen-hurt-fighting-klang-factory-blaze/</a>                       |
| 28 July 2019     | Recycling factory in Jalan Ayer Hitam, close to Batu 24, Kulai, Johor  | <a href="https://www.sinarharian.com.my/article/40266/EDISI/Johor/Kilang-kitar-semula-terbakar">https://www.sinarharian.com.my/article/40266/EDISI/Johor/Kilang-kitar-semula-terbakar</a>   |
| 25 October 2019  | Plastic processing factory in Kampung Permatang Berangan, Sungai Petani, Kedah   | <a href="https://www.bharian.com.my/berita/kes/2019/10/621355/kilang-proses-barangan-plastik-musnah-terbakar">https://www.bharian.com.my/berita/kes/2019/10/621355/kilang-proses-barangan-plastik-musnah-terbakar</a>                     |
| 21 January 2020  | Factory in Bakar Arang Light Industrial Area, Sungai Petani, Kedah   | <a href="https://www.thestar.com.my/news/nation/2020/01/22/back-to-back-plastic-waste-fires">https://www.thestar.com.my/news/nation/2020/01/22/back-to-back-plastic-waste-fires</a>   |
| 1 March 2020     | Recycling factories in Pasir Gudang, Johor   | <a href="https://www.sinarharian.com.my/article/72050/BERITA/Tragedi/Kilang-kitar-semula-di-Pasir-Gudang-terbakar">https://www.sinarharian.com.my/article/72050/BERITA/Tragedi/Kilang-kitar-semula-di-Pasir-Gudang-terbakar</a>           |
| 26 March 2020    | Two plastic processing factories in Kundang, Selangor  | <a href="https://www.thestar.com.my/news/nation/2020/03/26/two-factories-in-kundang-damaged-in-fire">https://www.thestar.com.my/news/nation/2020/03/26/two-factories-in-kundang-damaged-in-fire</a>                                       |
| 3 April 2020     | Plastic processing factory in Ijok, Selangor   | <a href="https://www.thestar.com.my/news/nation/2020/04/03/plastics-factory-in-ijok-goes-up-in-smoke">https://www.thestar.com.my/news/nation/2020/04/03/plastics-factory-in-ijok-goes-up-in-smoke</a>                                     |
| 5 June 2020      | Plastic recycling factory in Taman Ria Jaya, Sungai Petani, Kedah  | <a href="https://www.hmetro.com.my/mutakhir/2020/06/586322/kilang-kitar-semula-plastik-terbakar">https://www.hmetro.com.my/mutakhir/2020/06/586322/kilang-kitar-semula-plastik-terbakar</a>   |
| 31 October 2020  | A fire in a plastic processing factory in Jalan Kampung Orang Asli Kuang contaminated Sungai Kuang in Rawang, Selangor | <a href="https://www.kosmo.com.my/2020/10/31/sungai-kuang-tercemar-akibat-sisa-kebakaran-kilang-plastik/">https://www.kosmo.com.my/2020/10/31/sungai-kuang-tercemar-akibat-sisa-kebakaran-kilang-plastik/</a>                             |
| 21 November 2020 | Plastic recycling factory in Taman Ria Jaya, Sungai Petani, Kedah  | <a href="https://www.thevibes.com/articles/news/6838/sg-petani-plastic-factory-fire-stokes-concern-about-air-pollution">https://www.thevibes.com/articles/news/6838/sg-petani-plastic-factory-fire-stokes-concern-about-air-pollution</a> |

<sup>45</sup> Ayamany.K. (2020, June 19). *Incidence of fire at recycling plants spikes during MCO, causing health hazards from toxic fumes*. theSundaily. <https://www.thesundaily.my/local/incidence-of-fire-at-recycling-plants-spikes-during-mco-causing-health-hazards-from-toxic-fumes-AY2607057>

| Date             | Factory  | Source  |
|------------------|--|---|
| 26 February 2021 | A paper and plastic recycling factory in a light industrial area in Kampung Jawa, Selangor, was destroyed by fire. | <a href="https://www.freemalaysiatoday.com/category/nation/2021/02/26/fire-destroys-recycling-factory-in-kg-jawa-shah-alam/">https://www.freemalaysiatoday.com/category/nation/2021/02/26/fire-destroys-recycling-factory-in-kg-jawa-shah-alam/</a> |

Source: Author's compilation



**Figure 2.6: Plastic waste facility on fire – Sungai Rambai, Jenjarom, Selangor, 12 January 2019**

Source: PTASSP



**Figure 2.7: Plastic waste facilities on fire – (L) Telok Panglima Garang, Selangor, 17 October 2019; (R) Sungai Petani, Kedah, 21 November 2020**

Source: PTASKL, PTASSP

Table 2.1 does not include the multiple illegal dumpsites that had caught fire throughout the country, which may or may not contain foreign plastic waste. Local communities in Sungai Petani and Jenjarom alleged that shredded e-waste is also being dumped and burnt, similar to the piles shown in Figure 2.8. While it is difficult to ascertain the exact compounds in the shredded material and whether there is WEEE, tests conducted by Greenpeace on samples of similar shredded material from a dumpsite in Sri Cheeding, Kuala Langat, revealed relatively high concentrations of metals and metalloids such as copper, lead, zinc and cadmium, as well as other persistent organic compounds such as flame retardants and plasticizers (Greenpeace Malaysia, 2020, p. 12).



**Figure 2.8: Shredded waste dumped and set on fire - Sungai Petani, Kedah, 31 January 2020**

Source: Author

In Klang, secluded industrial parks are now laden with abandoned bales and jumbo bags of plastic waste, overgrown with weeds. Journalists from a Danish television station found municipal waste from Denmark at these sites in September 2019, although their country ostensibly sends its waste to Germany for processing.<sup>46</sup> Tonnes of waste that appears to be plastic and electronic shreds have also been found at several illegal dumpsites in rural areas, some of which had been openly burnt.<sup>47</sup>

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<sup>46</sup> Herschend, S. S. (2019, September 29). *TV 2 finder dansk plastaffald på dumpingsite i Malaysia*. <https://nyheder.tv2.dk/samfund/2019-09-29-tv-2-finder-dansk-plastaffald-paa-dumpingsite-i-malaysia>

<sup>47</sup> Reuters. (2018, October 25). Alarm grows as M'sia becomes world's top dump site for plastic waste. *New Straits Times*. <https://www.nst.com.my/news/nation/2018/10/424840/alarm-grows-msia-becomes-worlds-top-dump-site-plastic-waste>

Of note is the massive dumpsite the size of six football fields, with two-storey high plastic waste piles, found in an oil palm estate in Kampung Berangan Sembilan, Bukit Teh in Penang.<sup>48</sup> Three major dumpsites were found in Kedah - Pinang Tunggal with hundreds of tonnes of plastic waste, Kampung Kemumbang with a six-acre dumpsite on the banks of the Sungai Muda river, and Kampung Belida with a three-acre mining pool full of waste, metres away from Sungai Muda and surrounded by agricultural land and a village (see Figure 2.9).<sup>49</sup>



**Figure 2.9: Illegal dumpsite in a former sand-mining site - Kampung Belida, Kedah, beside the Sungai Muda, 31 January 2020**

Source: Author and PTASSP

A government officer from then Kedah state government and another officer involved with waste management in Kedah denied that the dumpsites in Kedah are toxic, claiming that most of the wastes are construction waste, and that DOE's Water Quality Monitoring Stations show that Sungai Muda is not polluted.<sup>50</sup> The same government officers also challenged the toxicity of plastic waste, as plastic is seen as a stable and recyclable substance. While scraps of plastic packaging with foreign labels were sighted in visits to the dumpsites at Kampung Kemumbang and Kampung Belida, they challenged the findings, saying that "one or two pieces of foreign plastic packaging do not prove that people are dumping imported plastics", and "they could

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<sup>48</sup> The Straight Times. (2019, March 21). *Malaysia's illegal dumping sites pose a big challenge: The Straight Times*. <https://www.straitstimes.com/asia/se-asia/malaysias-illegal-dumping-sites-pose-a-big-challenge> and Nambiar, P. (2019, March 20). *China plastic waste dumped at Bukit Mertajam oil palm estate*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2019/03/20/china-plastic-waste-dumped-at-bukit-mertajam-oil-palm-estate/>

<sup>49</sup> Nambiar, P. (2019, May 10). *Now, world's rubbish fouling up Sungai Petani*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2019/05/10/now-worlds-rubbish-fouling-up-sungai-petani/>; Nambiar, P. (2019, July 28). *Kedah govt seals off huge illegal dumpsite along Sungai Muda*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2019/07/28/kedah-govt-seals-off-huge-illegal-dumpsite-along-sungai-muda/>; and Nambiar, P. (2020, February 3). *Sungai Muda, Kedah's source of water, under threat of pollution from e-waste dump*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2020/02/03/sungai-muda-kedahs-source-of-water-under-threat-of-pollution-from-e-waste-dump/>

<sup>50</sup> Government officers, interview, Alor Setar, 11 February 2020, and information retrieved from Chern, L. T., & Sekaran, R. (2019, July 31). *Water in Sg Muda declared safe*. TheStar. <https://www.thestar.com.my/news/nation/2019/07/31/water-in-sg-muda-declared-safe>.

have been blown over from elsewhere.” Notably, in their report, Greenpeace Malaysia (2020) furnished photographs of several pieces of plastic packaging with foreign labels. Similarly, electronic items were found, indicating the possibility of e-waste being disposed at Kampung Belida, but the officers argued that there were only plastic casings, with no electronic parts. The Kedah state officer recounted his counterarguments and questions posed to a PTASSP leader: “How do you know this is e-waste? Prove it” and “Everything can be recycled. Tell me, what cannot be recycled?” Since the government crackdown on imported waste, operators have taken to shredding waste before dumping them, complicating the identification of the type of waste.

Contrary to the statements by the state officers, research into marine plastic pollution has shown that plastic can leach toxic substances into the environment and impair the growth of microorganisms.<sup>51</sup> Another study examined increasing evidence that black plastics in consumer products contain recycled plastic housings of waste electronic and electrical equipment. These have the potential to contaminate household or food-related items with hazardous substances such as brominated flame retardants and heavy metals (Turner, 2018). Other research has indicated that workers in the plastics industry suffer higher rates of respiratory and cardiovascular disease and cancers, while plastic waste treatment facilities (collection, sorting, processing, recycling, incineration and landfill) also lead to negative health outcomes (Alabi, Ologbonjaye, & Awosolu, 2019; Dematteo et al., 2013).<sup>52</sup> In addition, investigators from Greenpeace Italy also found high levels of dangerous chemicals including heavy metals such as cadmium and lead and Benzo(a)pyrene, a carcinogen to humans, in plastic, water, and soil samples from various dumping sites in Malaysia.<sup>53</sup> These findings were corroborated by the separate study by Greenpeace Malaysia (2020).<sup>54</sup>

The continuous contestations over data related to air, water and land pollution, causing much dismay to residents not only in Kedah but also in Penang and Selangor, highlight the dire need for a more open and transparent system of governance which can garner the confidence of the public, with better processes for public participation and consultation on issues that directly affect their lives. Aside from the health and environmental risks caused by plastic pollution, a 2019 report by the Center for International Environmental Law found that the impact of plastic production on the world’s climate in 2019 was equivalent to the output of 189 coal-fired power stations. The report, *Plastic & Climate: The Hidden Costs of a Plastic Planet*, examined each

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<sup>51</sup> Studies have been conducted on the impact of plastics on photosynthetic bacteria at the bottom of the marine food web, crustaceans, barnacle larvae, and mussel embryos (Bejgarn, MacLeod, Bogdal, & Breitholtz, 2015; Gandara E Silva, Nobre, Resaffe, Pereira, & Gusmão, 2016; Lithner & Nordensvan, 2011; Tetu et al., 2019)

<sup>52</sup> The World Health Organization also warned of the health effects of dioxins, by-products of industrial processes in other forms of recycling, including smelting and chlorine bleaching of paper pulp. Retrieved from World Health Organization. (2016, October 4). *Dioxins and their effects on human health*. <https://www.who.int/news-room/fact-sheets/detail/dioxins-and-their-effects-on-human-health>

<sup>53</sup> Murgese, E. (2020, April 2). *Illegal Trafficking of Plastic Waste: The Italy–Malaysia Connection*. <https://www.iai.it/en/pubblicazioni/illegal-trafficking-plastic-waste-italy-malaysia-connection>

<sup>54</sup> More information on toxic additives in plastics and the impacts on human health can be found at Azoulay et al. (2019), and Petrik et al. (2019).

stage of the plastic lifecycle from oil and gas extraction to recycling and disposal, and forecasted that by 2030 global emissions from plastic could reach 1.3 billion tons, equivalent to 300 coal-fired power plants (Hamilton et al., 2019).

Research showed that the most common plastics, including polyethylene used in shopping bags, produce greenhouse gases such as methane and ethylene when exposed to sunlight (Royer, Ferrón, Wilson, & Karl, 2018). This is precisely the condition in which much plastics waste is kept in Malaysia, exposed to solar radiation within factory grounds, at illegal dumpsites, or in landfills, emitted noxious fumes (see Figure 2.10 and 2.11). Greenhouse gases have been proven to affect global temperatures, cause rising sea levels, degrade ecosystems, and directly lead to climate crisis (Ripple, Wolf, Newsome, Barnard, & Moomaw, 2020).



**Figure 2.10: Illegally dumped shredded waste - Telok Panglima Garang, Selangor, 12 January 2020 and Sri Cheeding, Selangor, 5 September 2020**

Source: Author



**Figure 2.11: “Cleared” illegal dumpsite still emitting toxic fumes under the sun - Kampung Sri Cheeding, Banting, Selangor, 5 September 2020**

Source: Author

## CHAPTER 3: ROLE OF THE GOVERNMENT IN GOVERNING PLASTIC WASTE

### VALUE CHAINS

#### SUMMARY

- Chapter 3 examines the role of the government in finding solutions to the plastic waste crisis in Malaysia by tracing the plastic recycling value chains and outlining related institutional and legal frameworks governing them.
- Although most of the 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.
- Several government agencies are involved in regulating the plastic recycling value chain, from the import of plastic waste to the disposal of unrecyclable waste.
- The federal government has reactively refined its policies towards the import of plastic waste, particularly introducing new conditions for import permit applications. Extensive inter-agency operations have also been carried out, as well as international negotiations due to the global nature of the plastic waste value chains.

### 3.1 Legal and institutional frameworks governing plastic recycling value chains

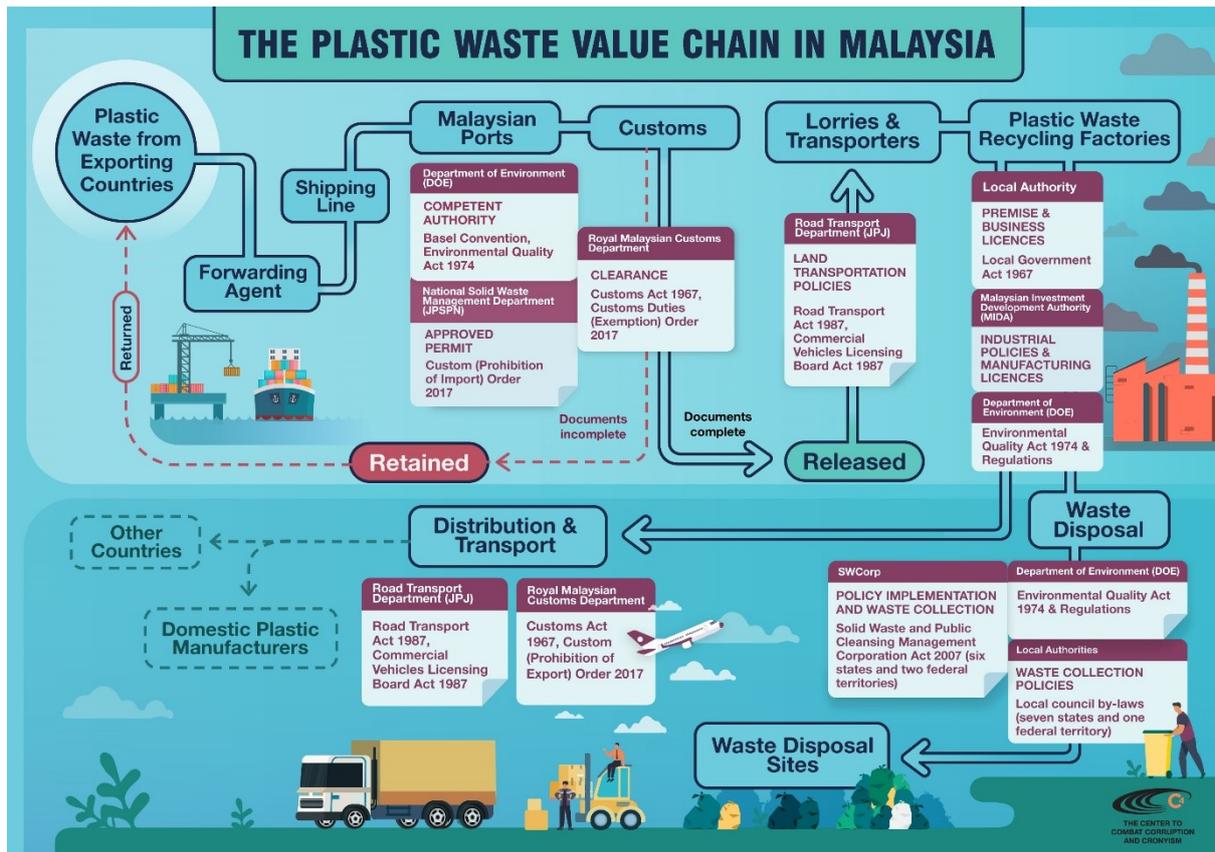
Chapter 2 discussed how the proliferation of illegal activity surrounding the import and processing of foreign plastic waste have led to serious pollution, threatening the health of communities and the environment. When pollution occurs, enforcement officers usually receive the brunt of the blame. However, it is important to go back to the root causes of the pollution, namely the factories, where industrial global value chains touch the ground. Table 3.1 and Figure 3.1 summarises the complex regulatory landscape which legitimate recyclers must navigate before going into business, engaging with various regulatory agencies across different levels of the government.

**Table 3.1: Institutions, Regulatory Areas and Legislations Governing Industrial Activity**

| Value chain  | Take: Import and transport of raw materials                                | Make: Processing  | Use: Distribution   | Throw: Disposal   |
|--|--|---|---|---|
| <b>AGENCIES</b>  | <b>REGULATORY AREAS AND LEGAL FRAMEWORK</b>                                |   |   |   |
| Department of Environment (DOE), KASA                    | <b>Import approval</b><br>Basel Convention, Environmental Quality Act 1974 | <b>Environmental impact assessment, environmental quality assessment, pollution controls</b><br>Environmental Quality Act 1974 and Regulations* |   |   |
| National Solid Waste Management Department (JPSPN), KPKT | <b>Approved permit</b><br>Custom (Prohibition of Import) Order 2017        |   |   | <b>Policymaking</b><br>Solid Waste and Public Cleansing Management Act 2007                         |
| Royal Malaysian Customs Department, MOF                  |  | <b>Clearance</b><br>Customs Act 1967, Customs Duties (Exemption) Order 2017   |   | <b>Export</b><br>Customs Act 1967, Custom (Prohibition of Export) Order 2017                        |
| Road Transport Department, MOT                           |  | <b>Land transportation</b><br>Road Transport Act 1987, Commercial Vehicles Licensing Board Act 1987   |   | <b>Land transportation</b><br>Road Transport Act 1987, Commercial Vehicles Licensing Board Act 1987 |
| Local Authority (State/KPKT)                             |  |   | <b>Premise and business licences</b><br>Local Government Act 1967 | <b>Licences</b><br>Licences and waste collection policies<br>Local council by-laws                  |
| State Investment Arms                                    |  |   | <b>Industrial policies</b>  | <b>Industrial policies</b>  |
| MIDA, MITI   |  |   | <b>Industrial policies</b><br><b>Manufacturing licences</b>       | <b>Industrial policies</b><br><b>Investment approvals</b>   |
| SWCorp, KPKT   |  |   |   | <b>Waste collection</b><br>Solid Waste and Public Cleansing Management Corporation Act 2007         |

\* Regulations can be accessed at Department of Environment. (n.d.). *Regulation*. <https://www.doe.gov.my/portalv1/en/tentang-jas/perundangan/akta-kaedah-peraturan-arahan-2/peraturan>

Source: Interviews; Malaysian Plastics Manufacturers Association and Malaysian Plastics Recyclers Association (2019, p. 10)



**Figure 3.1: The plastic waste value chain**

Source: Interviews; Malaysian Plastics Manufacturers Association and Malaysian Plastics Recyclers Association (2019, p. 10)

### 3.1.1 Doing business legally in Malaysia

All factories must apply for planning permission to the DOE and the local councils, as provided for by the EQA, the Local Government Act 1967 (LGA) and accompanying regulations. The construction of recycling plants for solid waste is subjected to the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, under Activity 14(b)(ii): Any person who intends to carry out the activity is required to submit a report on the environmental impact assessment (EIA) to the DG of Environment for consideration (section 34A). The DOE only allows premises that fully comply with the EQA to recycle plastic waste at their premises. Aside from the EIA, the EQA also requires site suitability assessment, pollution control assessment, monitoring, and self-regulation in compliance.

Once the DOE issues a letter of approval for the facility, or for the installation of incinerators, fuel burning equipment and chimneys, only then would the local authority approve licences to occupy and operate the prescribed premises and conveyances.<sup>55</sup> Prescribed premises are land, buildings or machinery that require a licence from the DOE. When

<sup>55</sup> Retrieved from <https://www.mida.gov.my/home/environmental-management/posts/>.

submitting complaints about non-compliant facilities, PTASKL expressed frustration that the local council officers appeared incapacitated, saying that once the DOE gives its approval, regardless of whether environmental standards were met, the local council is obligated to approve the licence application accordingly.<sup>56</sup> Table 3.2 provides details on the processes and procedures that businesses must go through to become a legal operator in Malaysia.

**Table 3.2: Type of Licence Applications for Businesses in Peninsular Malaysia and Related Legislation**

| Types of licences and related legislation   | Government agency  | The application process  |
|---|--|--|
| <p>Manufacturing licence</p> <p><b>Industrial Coordination Act (ICA) 1975</b></p> | <p>Malaysian Industrial Development Authority (MIDA) under the Ministry of International Trade and Industry (MITI)</p> | <p>Person(s) engaging in any manufacturing activity must obtain a licence from the Licensing Office (Secretary General of MITI) in respect of such manufacturing activity. Application for a manufacturing licence should be made to the <b>Director General of MIDA</b>.</p> <p>MIDA is a statutory body incorporated under the Malaysian Industrial Development Authority (Incorporation) Act 1965 to coordinate and drive investment into the manufacturing and services sectors in the country,</p> <p>Only manufacturing companies with shareholders' funds of RM2.5 million and above or engaging 75 or more full time employees need to apply for a licence under the ICA. Smaller operations may apply for an exemption letter.</p> <p>MIDA also evaluates the following applications for projects in the manufacturing and its related services sectors:</p> <ul style="list-style-type: none"> <li>• Tax incentives</li> <li>• Expatriate posts</li> <li>• Duty exemptions on raw materials and components</li> <li>• Duty exemptions on machinery and equipment for agricultural sector and selected services sector</li> </ul> |
| <p>No-objection letter for the location of projects</p>                           | <p>State governments</p>   | <p>All manufacturing projects are subject to the approval of the state government for the location of a project, which can be applied to the state.</p> <p>For Selangor, applications are directed to the Selangor State Investment Centre, and the letter issued must be submitted to MIDA for the issuance of the manufacturing licence.</p>   |
| <p>Land use</p> <p><b>National Land Code 1965</b></p>                             |  | <p>Checks must be made with the District and Land Office to ascertain the category of use endorsed on the title of the land, whether the land is categorised according to industrial purposes.</p>   |
| <p>Planning permission (<i>Kebenaran merancang</i>)</p>                           |  | <p>Application for planning permission to develop and use all land and buildings must be submitted to the local planning authority, namely the local council.</p>  |

<sup>56</sup> Plastic recycling industry actors, interview, Subang Jaya, 9 June 2020; state assembly representative, interview, Bukit Mertajam, 11 February 2020.

| Types of licences and related legislation   | Government agency | The application process  |
|---|-------------------|--|
| <b>Town and Country Planning Act 1976</b>   |                   |  |
| <p>Building planning approval (<i>Kelulusan pelan bangunan</i>) and Certificate of Fitness for occupation</p> <p><b>Street, Drainage and Building Act 1974 (Uniform Building By-Laws 19840)</b></p> |                   | <p>Construction of buildings including factories require the written approval of the Local Authority. Building plans, drawings or calculations must be submitted by a “qualified person” (architect, draughtsman, engineer) to the One-Stop-Centre (OSC) established at each Local Authority. OSCs were created with the aim of shortening the length of time for project approvals and help spur investments and economic growth.</p> <p>Applications for the Certificate of Fitness or Certificate of Completion and Compliance should also be made to the OSC after construction.</p> <p>The individuals, departments and agencies that take part in reviewing development applications at the OSC committee includes the local authority President, four local councillors, the DOE, the police, the fire department, the Public Works Department, various departments within the local authority, et cetera.</p> <p>All local councillors under each local authority must attend ordinary meetings (Mesyuarat Biasa Majlis) once a month where they would be informed of the OSC decisions.</p> |
| <p>Business-related licences</p> <p><b>Local Government Act 1976 (Licensing of trades, businesses and industries by-laws)</b></p>   |                   | <p>Applications are required to be made to the local council for factory premises, advertising signage, storage and canteen.</p>   |
| <p>Approval from the DOE</p> <p><b>Environmental Quality Act 1974</b></p>   |                   | <p>Industrial activities require the following approvals from the DOE:</p> <ul style="list-style-type: none"> <li>• EIA reports (for prescribed activities)</li> <li>• Site suitability evaluation (for non-prescribed activities)</li> <li>• Written permission to construct any building or carry out any work that may result in a new source of effluent or discharge</li> <li>• Written approval for installation of incinerator, fuel burning equipment and chimney</li> <li>• Licence to use and occupy prescribed premises.</li> </ul> <p>Guidelines are provided in the “Environmental Essentials for Siting of Industries in Malaysia” (Department of Environment Malaysia, 2017).</p>   |
| <p>Approval from the DOSH</p>   |                   | <p>Manufacturers required the following approvals from the DOSH to:</p>  |

| Types of licences and related legislation | Government agency | The application process  |
|---|-------------------|--|
| <b>Factories and Machinery Act 1967</b>   |                   | <ul style="list-style-type: none"> <li>• Obtain design approval of “certified machinery”, i.e steam boilers, unfired pressure vessels and hosting machines such as cranes and lifts.</li> <li>• Obtain a “Certificate of Fitness” prescribed for “certified machinery”.</li> <li>• Serve written notice to the nearest Inspector of Factories and Machineries of the intention to take occupancy of the factory and operate the machines.</li> </ul> |

Source: Author’s compilation from interviews and retrieved from [https://www.pkfz.com/wp-content/uploads/2015/06/Types\\_Of\\_Licenses.pdf](https://www.pkfz.com/wp-content/uploads/2015/06/Types_Of_Licenses.pdf).

In general, a plastic recycling business may be considered illegal if the business:

- has no import permit from JPSPN to import and process foreign plastic scrap - **Customs (Prohibition of Imports) Order 2017; Customs Act 1967**
- has no manufacturing licence or exemption letter issued by MIDA - **Industrial Coordination Act 1975**
- is not registered with the Companies Commission of Malaysia (CCM) as a business - **Companies Act 2016**
- has no business licence from the local authority, subject to approval from:
  - the local authority Licensing Department - **Licensing of trades, businesses and industries by-laws; Local Government Act 1976**
  - the Department of Occupational Safety and Health Malaysia (DOSH) – **Occupational Safety and Health Act 1994 and Regulations; Factory and Machinery Act 1967**
  - the Fire and Rescue Department (letter of support or fire certificate) – **Fire Services Act 1988**
  - the DOE (letter of approval) – **Environmental Quality Act 1974 and Regulations**

### 3.1.2 International regulatory framework: The Basel Convention

Aside from complying with Malaysian laws, plastic waste importers would need to comply with international regulations in 2021. The 1992 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) is the main multilateral agreement to regulate the transportation of waste across countries in order to protect human health and the environment, with a ban against the transfer of toxic materials. The key aim of the Convention is to prevent the dumping of waste by developed countries in developing countries and to ensure that measures are taken to manage the wastes at the place of disposal, even if it has been moved across boundaries. The Basel Convention did not regulate solid plastic waste, which is considered non-hazardous.

When China's ban on the import of waste came into effect, plastic waste stockpiles began accumulating in developing countries, flooding countries with no capacity to deal with the waste. This prompted Norway to propose an amendment to the Basel Convention, to implement a legally binding structure to improve the transparency and regulation of the global trade in plastic waste. This proposal was accepted at the Conference of the Parties in 2019.<sup>57</sup> Plastic waste is now categorised into three legal categories: "hazardous waste" (A3210, under Annex VIII); "other waste" requiring special consideration (Y48 under Annex II including mixed household waste and HS 3915 plastics); and "non-hazardous waste" (B3011, under Annex IX).<sup>58</sup>

Deliveries of plastic waste scheduled under Annexes II and VIII would be subjected to the Convention's regulation system, where trade must be based on prior informed consent (PIC) from importing countries.<sup>59</sup> The whole value chain involving dealers and processors would need to include regulation on environmental management, with compulsory wrapping, marking, and transport necessities, information relating to transmission requirements, and also the duty to re-import should environmental standards in the place of disposal not be met. Only clean, homogeneous, and readily recyclable non-halogenated polymers (commonly used ones are polyethylene [PE], polypropylene [PP], and polyethylene terephthalate [PET]), cured resin or condensation product, or specific fluorinated polymer wastes, will be allowed to be traded globally without PIC (Annex IX), provided that the waste is almost free from contamination and destined for recycling in an environmentally sound manner. Malaysia is a signatory of this Convention and the DOE is the competent authority of the Basel Convention.<sup>60</sup>

### 3.2 Governance and policies to address the plastic waste crisis

The executive arm of the Government of Malaysia is made up of three levels: federal government, state government and local government. At the top two tiers, the federal Cabinet and the state-level Executive Councils are led by elected representatives. At the lowest tier, the local council is the legislative and policymaking made up of part-time local councillors, who are political appointees of the state government, and a President (Yang Di-Pertua) or Mayor who is a civil servant, also appointed by the state government. The local government includes the local council, and the administrative or bureaucratic departments staffed by full-time civil servants, or the local authority. Local governments are distinguished from the districts which

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<sup>57</sup> Basel Convention. (n.d.). Overview: Actions for addressing plastic waste under the Basel Convention. <http://www.basel.int/Implementation/Plasticwaste/Overview/tabid/8347/Default.aspx>

<sup>58</sup> Basel Convention. (n.d.). *Questions and answers related to the Basel Convention Plastic Waste Amendments*. <http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/FAQs/tabid/8427/Default.aspx>

<sup>59</sup> Picheta, R., Dean, S. (2019, May 11). *187 countries -- not including the US -- agree to restrict global plastic waste trade*. CNN World. <https://edition.cnn.com/2019/05/11/world/basel-convention-plastic-waste-trade-intl/index.html>

<sup>60</sup> Retrieved from [https://www.researchgate.net/publication/293820586\\_Implementation\\_of\\_Basel\\_Convention\\_in\\_Malaysia](https://www.researchgate.net/publication/293820586_Implementation_of_Basel_Convention_in_Malaysia).

are for land administration purposes and administered by the District and Land Office (Pejabat Daerah dan Tanah) headed by a District Officer.<sup>61</sup>

The local council is made up of various standing committees, including a planning committee or One-Stop-Centre for project approvals, while the local authority consists of several departments including licensing, health, engineering, building and more. Each local government have slightly different structures. Responsibilities of the local government include overseeing planning and development, creating and enforcing local by-laws, granting licences and permits, collecting taxes, providing basic amenities, and in some states, collecting and managing solid waste. The important role played by the local government in protecting the right to a healthy environment was brought to fore in this crisis. All complaints made by the communities to the Chief Minister's Office, JPSPN, or to the DOE were often referred to the local government (see Appendix A). The local government is under the purview of the state government particularly the exco for local government, except for those in the Federal Territories. Although a federal ministry, KPKT also plays a role in providing guidelines to coordinate and channel funds to local governments throughout the country, through the Local Government Department.<sup>62</sup>

While the local government deals with issues on the ground, both the Local and state governments are subject to policies made by the federal government. Table 3.3 presents major announcements made by the federal government to deal with the influx of plastic waste, with the changing stance on APs observed between October to November 2018, while Table 3.4 summarises the roles of various institutions, legislation and mechanisms adopted by the government to address the plastic waste issue across federal, state and local levels. The following Chapter 4 (and Appendix B and C) will discuss the governmental actions in detail.

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<sup>61</sup> The local government may or may not be consistent with district boundaries. In general, for Peninsular Malaysia, a district is a subdivision of a state, while a mukim is a subdivision of a district. There are also precincts in Putrajaya, and divisions in Sabah and Sarawak.

<sup>62</sup>KPKT has controversially allocated RM2.6 million in end-2020 for its Penggerak Komuniti Tempatan (PeKT) initiative in three opposition-led states of Selangor, Penang and Negeri Sembilan. Penggerak Komuniti Negara is an NGO comprising former PKR supporters linked to KPKT minister. When the federal and state governments are from opposing coalitions, political tussles over control of the local government is not uncommon. In 2019, then PH federal government established the Village Community Management Council (MPKKP) in opposition states to disseminate information on the federal government's programmes as the original Village Community Management Councils (MPKK) were found to be involved in opposition political activities despite being funded by the federal government. See Tan, T., Carvalho, M., & Rahim, R. (2020, November 11). *Over RM2.6mil allocated to controversial community activist group PeKT for Sept-Dec*. TheStar. <https://www.thestar.com.my/news/nation/2020/11/11/over-rm26mil-allocated-to-controversial-community-activist-group-pekt-for-sept-dec>; Sean, O. H. (2019, October 30). *Change in village management*. TheStar. <https://www.thestar.com.my/metro/metro-news/2019/10/30/change-in-village-management>

**Table 3.3: Key Policy Decisions Taken by the Federal Government**

| Date              | Government Action   |
|-------------------|---|
| 23 July 2018      | <ul style="list-style-type: none"> <li>• KPKT revoked APs on the import of HS Code 3915 plastic waste for 114 factories for three months.</li> <li>• JPSPN would form a task force to review the procedures on the import of items under this code, chaired by the DG and consist of the DOE, Customs, MIDA and SWCorp.</li> </ul>  |
| 16 August 2018    | <ul style="list-style-type: none"> <li>• KPKT agreed to lift the suspension of APs for HS Code 3915 plastic waste (homogenous, clean waste) for facilities at free trade zones (FTZ) and licenced manufacturing warehouse (LMW)-status plants, with immediate effect, after appeals from importing companies.</li> </ul>  |
| 25 September 2018 | <ul style="list-style-type: none"> <li>• KPKT minister chaired a coordination meeting at MDKL on the issue of illegal factories.</li> <li>• AP holders were discovered to have rented out their import licences to other parties including illegal factories that processing plastic waste without proper equipment, which was admitted by the businessmen to the government.</li> <li>• The government will impose a levy of RM15 per tonne on the import of plastic waste by local industry players beginning next month.</li> <li>• There were 54 plastic waste factories in Kuala Langat. 13 factories were legalised by the state government and given licences. 17 were ordered to close. Among future plans was to relocate plastic waste processing factories to heavy industrial zones.</li> </ul> |
| 16 October 2018   | <ul style="list-style-type: none"> <li>• Establishment of a Joint Ministerial Committee to tackle the issue - KPKT (chair), KATS, MITI and MESTECC.</li> <li>• KPKT froze the import of plastic waste with HS Code 3915.</li> <li>• MESTECC froze licence issuance for plastic recycling factories. The import of all non-recyclable mixed solid waste will be banned.</li> <li>• The government has closed more than 30 factories in Kuala Langat.</li> <li>• Confiscated plastic waste from illegal factories to be auctioned to legal players. Contaminated and non-recyclable wastes to be landfilled.</li> </ul>   |
| 26 October 2018   | <ul style="list-style-type: none"> <li>• KPKT announced a permanent stop on the issuance of APs for contaminated plastic waste after a Joint Ministerial Committee meeting, where MPMA shared their views.</li> <li>• APs would still be approved for the import of clean, quality plastic under strict conditions. Only eight companies comply with the current eight criteria.</li> <li>• The local plastic industry was encouraged to stop dependency on materials from abroad. The country would phase out the import of all types of plastic including “clean” plastic within three years.</li> </ul>  |
| 17 October 2018   | <ul style="list-style-type: none"> <li>• MESTECC launched the Roadmap Towards Zero Single-Use Plastics 2018-2030. The Malaysia Plastics Pact was proposed, as an industry-driven multi-stakeholder initiative towards a circular plastics economy.</li> </ul>   |
| 1 November 2018   | <ul style="list-style-type: none"> <li>• KPKT proposed that APs for the import of plastic waste be resumed for companies that fulfil certain AP conditions, which will be increased and made more stringent.</li> </ul>   |
| 15 November 2018  | <ul style="list-style-type: none"> <li>• KPKT told Parliament that a committee had been set up within the ministry to check all 114 plastic recycling factories with approval to carry out plastic waste imports.</li> <li>• KPKT sent a circular to all local authorities to shut down illegal factories.</li> <li>• Applications by factories for business licences to process plastic waste will require a consent letter from KPKT, which will only be approved once the applicants meet the new 18 conditions stipulated.</li> </ul>   |
| 5 January 2019    | <ul style="list-style-type: none"> <li>• KPKT had yet to approve any APs since July 2018.</li> </ul>  |

| Date            | Government Action  |
|-----------------|--|
|                 | <ul style="list-style-type: none"> <li>• 114 companies held APs for plastic waste but only 54 were active. 8 complied with previous conditions stipulated. All must reapply for the AP according to the new procedures. 19 companies have applied.</li> </ul>  |
| 15 January 2019 | <ul style="list-style-type: none"> <li>• Town hall session on plastic waste with MPMA and PTASKL, among others. KPKT will train customs officers to identify clean plastic from mixed plastic waste.</li> <li>• 19 out of 114 plastic waste AP holders passed the requirements to import plastic scrap into the country.</li> </ul>  |
| 8 June 2019     | <ul style="list-style-type: none"> <li>• 62 Malaysian companies thus far held APs to import and process plastic waste.</li> <li>• These companies are continuously monitored to ensure that the regulations are followed.</li> <li>• A company based in Johor which imported contaminated plastic waste and made a false declaration in import documentation to evade checks by the authorities had its permit suspended. JPSPN warned that subsequent offences could lead to revocation of the permit.</li> </ul> |
| 4 January 2020  | <ul style="list-style-type: none"> <li>• MESTECC had shut down the operations of 170 plastic recycling factories for violating the Environmental Quality Act 1974.</li> </ul>  |

Sources: Various news articles<sup>63</sup> and DOE, July 2020

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- <sup>63</sup> Bernama. (2018, July 24). *Permits to import plastic waste for 114 factories revoked*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2018/07/24/permits-to-import-plastic-waste-for-114-factories-revoked/>
- The Malaysian Insight. (2018, August 16). *Ministry lifts suspension of permits for plastic waste imports: The Malaysian Insight*. <https://www.themalaysianinsight.com/s/88517> ; The Star Online. (2019, November 28). *Govt to ban import of all non-recyclable waste*. <https://www.thestar.com.my/news/nation/2018/10/17/govt-to-ban-import-of-all-nonrecyclable-waste/>
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- Chow, M. D. (2018, November 15). *Plastic waste a RM30 billion industry, Dewan Rakyat told*. <https://www.freemalaysiatoday.com/category/nation/2018/11/15/plastic-waste-a-rm30-billion-industry-dewan-rakyat-told/>
- The Star Online. (2019, November 28). *Zuraida: Ministry yet to approve plastic waste AP*. <https://www.thestar.com.my/news/nation/2019/01/05/zuraida-ministry-yet-to-approve-plastic-waste-ap>
- Aiman, A. (2019, January 15). *Customs, immigration officers to be trained to identify plastic waste*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2019/01/15/customs-immigration-officers-to-be-trained-to-identify-plastic-waste/>

**Table 3.4: Inter-Agency Cooperation to Solve the Plastic Waste Crisis**

| Government Action   | Mechanism   |
|---|---|
| Ministerial-level taskforce   | <b>Joint ministerial committee:</b><br>KPKT (chair), KATS, MITI, MESTECC  |
| Inter-ministry coordination (ports)   | <b>JPSPN, KPKT:</b><br>Grant or reject Approved Permits for HS Code 3915 plastics.<br><br><b>Customs, MOF:</b><br>Allow or stop foreign cargo from entering the country.<br><br><b>DOE, MESTECC/KASA:</b><br>Ensure compliance with the Basel Convention. Organise government-to-government arrangements to repatriate dirty municipal plastic waste.   |
| Inter-ministry and federal-state-local governmental regulation of licensing for premises and businesses (factories) | <b>MIDA, MITI:</b><br>Standards-setting and policymaking for the whole country.<br><br><b>DOE, MESTECC/KASA:</b><br>Ensure compliance with environmental laws and environmental impact assessments (EIA) before giving approval for the factory.<br>Monitoring of compliance with environmental laws.<br><br><b>State Executive Councils:</b><br>Policymaking for the state. Decisions on freezing or allowing the approval of licences to plastic recycling facilities.<br><br><b>Local Government Committee (Jawatankuasa Kerajaan Tempatan):</b><br>The exco for local government meets with the Yang diPertua (YDP) or presidents of local councils in the state several times a year to enhance policy implementation and coordination.<br><br><b>Local Authority:</b><br>Approval of licensing for premises and businesses. Enforcement against unlicensed operators. |
| Federal-state-local governmental committee to continuously monitor the issue  | <b>District Development Action Committee (Jawatankuasa Tindakan Pembangunan Daerah, JTPB):</b><br>The district officer meets monthly with members of parliament, state assembly representatives, state exco, the police, and officers from local branches of federal agencies. This is the main problem-solving body at the district level, coordinated by the Majlis Tindakan Pembangunan Negara (National Development Action Council) as part of the national policy implementation coordination mechanism.   |

- Bedi, R. S. (2019, November 28). *Few factories complying with plastic waste regulations*. TheStar. <https://www.thestar.com.my/news/nation/2019/01/16/few-factories-complying-with-plastic-waste-regulations>
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- The Sun Daily. (n.d.). *Mestecc: 40 achievements unlocked in 18 months*. <https://www.thesundaily.my/local/mestecc-40-achievements-unlocked-in-18-months-CM1853884>.

| Government Action | Mechanism  |
|-------------------|--|
|                   | <p><b>Meeting of Environment Ministers and State Executive Councillors Responsible for the Environment (MEXCOE):</b><br/> The environment minister meets with the excos for environment from all states to heighten and facilitate enforcement activities against environmental pollution.</p> |

Source: Author's compilation from interviews and selected articles and websites including <https://www.penang.gov.my/index.php/info-korporat/fungsi-bahagian-unit/248-bahagian-kerajaan-tempatan> and <https://www.malaymail.com/news/malaysia/2019/11/02/selangor-aims-to-improve-recycling-practice/1806250>.

The complexity of finding solutions to the problem can be seen in the variety of responses that different stakeholders have to the government's policies. Several politicians interviewed, regardless of political affiliation, opined that the key to stopping the problem was to ban all imports of HS Code 3915 plastic waste, some going to the extent of directly chastising the KPKT minister. This point of view was clearly supported by the communities affected by the pollution, while enforcement officers on the ground were also frustrated by the continuous discovery of undeclared containers of wastes. Meanwhile, businessmen in the recycling sector praised the KPKT minister for being an astute leader.<sup>64</sup> Legal operators stressed that they did not import municipal waste, only homogenous recyclable plastics, and that they had also fallen victim to the activities of smugglers and illegal facilities which tarnished the reputation of the legal recyclers. They lamented that the government crackdown on plastic waste imports had led to much uncertainty and changing regulations, as well as higher costs for legitimate plastic recyclers, but they were willing to comply.<sup>65</sup>

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<sup>64</sup> Various interviews with political representatives, civil servants, and recycling industry stakeholders, 2020.

<sup>65</sup> Plastic recycling industry stakeholders, interview, Subang Jaya, 9 June 2020, and see Mok, O. (2019, June 20). *Bad for environment, economy to ban all plastic recycling in Malaysia, say makers and recyclers*. Malay Mail. <https://www.malaymail.com/news/malaysia/2019/06/20/ban-for-environment-economy-to-ban-all-plastic-recycling-in-malaysia-say-ma/1763956>.

## CHAPTER 4: SORTING THROUGH PLASTIC WASTE...

### SUMMARY

- Chapter 4 assesses in-depth the policy and enforcement actions taken by the government throughout the recycling value chains - at the ports, at factories, and at dumpsites - to address the influx of imported plastic waste.
- The government has taken extensive steps across all levels of government to increase enforcement efforts at the ports and at factories to ensure that the importation and processing of HS Code 3915 plastic waste is not abused.
- While the plastic waste crisis clearly highlighted weak compliance, monitoring and enforcement of laws in Malaysia, and the ease with which loopholes could be exploited, this issue also raises questions about poor industrial planning and development throughout the country.

#### 4.1 Regulation, enforcement, and challenges

This chapter provides an in-depth discussion of enforcement actions taken by the government within the institutional and legal frameworks outlined in Chapter 3. Three stages of the value chain are particularly important in the regulation of imported plastic waste recycling - arrival of imported materials at the ports, processing at factories, and waste disposal.

#### 4.2 At the ports: Entry into Malaysia

For the mountains of municipal waste to end up in Jenjarom, a massive volume of containers filled with mixed or contaminated plastic waste had to first pass through the ports and be transported to the facilities. From January to June 2018, the ease with which the imported plastic waste passed through the various levels of regulatory authorities is a cause for concern. The PH administration had taken several steps to address the loopholes in enforcement mechanisms.

##### *Stricter criteria for approval of import permits (AP) for HS 3915 plastics*

Plastic waste traded under HS Code 3915 is divided into four main groups. In Malaysia, hazardous plastic waste is regulated separately and coded as scheduled waste (code SW 410) under the Environmental Quality Act 1974 (EQA), Pesticides Act 1974 and Poisons Act 1952 (Greenpeace Malaysia, 2018, p. 9). The containers declared under HS Code 3915 must not contain hazardous waste or household waste, but rather only recyclable clean plastic waste.

The importation of plastic wastes to Malaysia is only allowed with an AP from JPSPN under KPKT, and upon the release of a compliance letter from the DOE for the receiving factory. This import permit was first issued by MITI, but it was transferred to JPSPN in 2015. To obtain an AP, which is free of charge, an application must first be made to JPSPN to register the company. An application form and the relevant documents must be submitted to the department in hard copies. The department will then open a file, record the data based on the application and manually process the application. Visits will be made to the factories to check for compliance with environmental and other regulations, and a report will be prepared for the approval of the KPKT minister.

Once all the paperwork and procedures are in order, JPSPN will issue a letter of approval for the import licence or AP, which must be renewed annually. The permit will contain details regarding the import quota for the facility for each month. After obtaining the AP, the importer would still have to submit applications for e-permits through the uCustoms system. This e-permit is valid for six months and applications must be made for each consignment, within the limits of the allowable monthly quota. As long as the e-permit is in order, Customs will allow the consignment or the containers to clear the ports.<sup>66</sup>

Before October 2018, APs were approved based on only the first eight conditions in Table 4.1. After the surge of plastic waste imports, KPKT revised and strengthened the criteria to a total of 19 as of July 2020, including proper indoor storage facilities for their “raw materials”, before the AP would be approved. Applicants must also furnish statements from the last three months on the total import, total usage, and total output of plastic waste, as well as the Licenced Manufacturing Warehouse (Gudang Pengilangan Berlesen, LMW)<sup>67</sup> from Customs for the past three months (or an official letter from the company if this is not available). They must also get the approval of MIDA<sup>68</sup> and provide latest photographs of the factory premises including storage facilities and processing areas. AP holders will be deemed to have committed an offence if the plastic waste imported was found to be stored and processed at other premises not approved by JPSPN. This is however a challenge to monitor.

In addition, APs are now required to be shown by at the port of loading before containers are loaded and shipments are made. Previously, the shipments would have already arrived at the ports in Malaysia before applications for e-permits are submitted, and this led to scores of unclaimed containers at the ports when the authorities began cracking down on plastic waste imports. The importers also must comply with the Factory Operation Rules and Plastic Waste Storage Guidelines by the DOE. The KPKT minister floated the idea of a national quota to

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<sup>66</sup> JPSPN officer, interview, Putrajaya, 1 July 2020, and retrieved from <https://jpspn.kpkt.gov.my/index.php/pages/view/145>.

<sup>67</sup> The LMW is a warehouse licence under the provision of the Customs Act 1967 to offer Customs duty exemption for raw materials and equipment used in the manufacturing of products whereby more than 80% of the total value of finished goods for 12 months would be exported.

<sup>68</sup> Muthiah, W., Loh, A., Zainal, F. and Bedi, R. (2018, September 26). *Levy for plastic waste imports*. The Star. <https://www.thestar.com.my/news/nation/2018/09/26/levy-for-plastic-waste-imports-more-countries-looking-to-offload-material-in-msia-after-ban-in-china>

ensure that Malaysia does not see any sudden surges in plastic waste imports, but this has not been implemented.<sup>69</sup>

**Table 4.1: Criteria to Import HS Code 3915 Plastic Waste**

| No. | Criteria   |
|-----|--|
| 1.  | Submit a clear photograph of actual plastic waste imported and its category.   |
| 2.  | Submit DOE approval letter for the factory premises.   |
| 3.  | Submit approval letter for exporter (supplier) along with ISO 14000 certificate for exporter and importer.                                 |
| 4.  | The exporter must be approved/registered to carry out the export of plastic waste by an authority/accreditation body or certified body.    |
| 5.  | Submit legal business licence issued by the Local Authority.   |
| 6.  | Submit invoice that is stamped and signed.   |
| 7.  | Practice good housekeeping in the factory.   |
| 8.  | Have proper storage area in the factory such as a covered area and concrete flooring.  |
| 9.  | Have approval from the DOSH for the installation and operation of machinery.   |
| 10. | Submit verification of actual capacity of processing machines as certified by SIRIM.   |
| 11. | The ratio of imported plastic waste is capped at 70% of the factory's full capacity to encourage the processing of domestic plastic waste. |
| 12. | Only plastic waste generated by industrial factories and homogenous and clean post-consumer plastics are allowed.                          |
| 13. | Submit location of waste disposal site for waste generated by the factory.   |
| 14. | Submit list of buyers for end-product (resin).   |
| 15. | Submit list of factories owned by the company.   |
| 16. | Restrictions on the import of plastic waste from developing countries.   |
| 17. | The location of the plastic waste factory must be suitable and within an industrial zone.  |
| 18. | Make fee payment for waste imports.*   |
| 19. | Submit bank guarantee for imported waste.*   |

\*The importer will be charged a fee of RM50.00 for every tonne of plastic waste imported.

Source: JPSPN, July 2020

Although JPSPN assured that APs are only approved after physical checks had been carried out, and non-compliance could lead to the APs being revoked, factories can still be seen flouting regulations. A large plastic recycling factory in Sungai Petani was confirmed to have an AP to import plastic waste.<sup>70</sup> However, by February 2020, they still had not met condition no.8, which was that storage area for waste or raw materials must be covered, with concrete flooring (see Figure 4.1).

<sup>69</sup> Rashid, H. R. (2018, November 1). *Proposal to resume plastic waste APs with conditions*. New Straits Times. <https://www.nst.com.my/news/nation/2018/11/427327/proposal-resume-plastic-waste-aps-conditions>

<sup>70</sup> Malaysiakini. (2019, September 22). *Five companies in Kedah issued with APs to import plastic waste - ministry*. <https://www.malaysiakini.com/news/492872>



**Figure 4.1: Facility of a company with AP to import plastic waste - Sungai Petani, 30 January 2020**

Source: PTASSP

JPSPN only has jurisdiction to take action against AP holders for non-compliance with the criteria for the issuance of APs. For factories that do not hold APs but appear to store and process imported plastic, the jurisdiction for enforcement action appeared to lie with the DOE and local authority. However, when the community groups submitted complaints to the DOE regarding factories which had no APs but appeared to be dealing with imported scrap, the DOE referred them to JPSPN, who then said they had no powers of enforcement on non-AP holders.

JPSPN also has no jurisdiction over the import and processing of other types of waste, as its power to issue import permits as provided for by the Customs (Prohibition of Imports) Order is limited to plastic scrap. Box 4.1 and 4.2 offers further details on the import of other types of waste – electronic waste and paper waste. SIRIM, the standards-setting body under MITI, is now tasked to handle import permits for paper waste. Interestingly, the import of paper waste was said to be outside the purview of JPSPN because the solid waste department informed MITI that it only deals with domestic waste, not industrial waste.<sup>71</sup> However, under the Solid Waste and Public Cleansing Management Act 2007, and the Solid Waste and Public Cleansing Management (Scheme for Commercial, Industrial and Institutional Solid Waste) Regulations 2018, JPSPN clearly has jurisdiction over industrial waste. A question to ask is why the DOE and JPSPN who have the expertise and powers are not tasked with approving paper waste import permits.

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<sup>71</sup> MITI officer, phone interview, 1 March 2021.

#### **BOX 4.1: What governs the import of scrap metal and WEEE?**

The Customs (Prohibition of Imports) Order 2017, Third Schedule, Part 1, lists the goods which are prohibited to be imported into Malaysia except under certain manner of import.

Under the Third Schedule, Part 1, “metal and metal-bearing wastes” are considered toxic and hazardous waste and importation must be accompanied by a letter of support issued by the DG of Environmental Quality (p. 145). This includes scrap metal (aluminium, copper, iron, or steel), waste of batteries, and waste from electric and electronic assemblies containing various components (p.147). These do not require inspection by a Competent Authority.

According to the “Guideline on the Import of Scrap Metal”, the tariff codes for used scrap metal are:

- HS Code 7204: Ferrous waste and scrap; remelting scrap of ingots of iron or steel
- HS Code 7404: Copper waste and scrap
- HS Code 7602: Aluminium waste or scrap

The import of these items requires a letter of support from the Ministry of Home Affairs. While no approval from the DOE is needed, importers are required to obtain a letter of support from the DOE stating that the scrap metal being imported is not classified as scheduled or hazardous waste under the Basel Convention. The e-waste content in each shipment of scrap metal must not exceed 0.3% of the total weight of the imported items.

WEEE or e-waste is classified as hazardous waste under the Basel Convention, and as scheduled waste (code SW 110) under the Environmental Quality (Scheduled Wastes) Regulations 2005. The current policy of the DOE as the Competent Authority of the Basel Convention is that all import of WEEE is completely banned. However, industry insiders and local communities have noted a rise in the smuggling of WEEE into the country and the illegal dumping of its waste post-processing.

#### **BOX 4.2: What governs the import of paper wastes?**

The Customs (Prohibition of Imports) Order 2017, Third Schedule, Part 1, lists the goods which are prohibited to be imported into Malaysia except under certain manner of import.

Under the Third Schedule, Part 1, “pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard” (Chapter 47) requires an import permit by the DG of Department of Malaysian Quarantine and Inspection Services (MAQIS) under the Malaysian Quarantine and Inspection Services Act 2011, and subject to inspection and approval by MAQIS. MAQIS is under the Ministry of Agriculture

For Sabah and Sarawak, these items require an import permit by the Director of Agriculture of Sabah or Sarawak under the Plant Quarantine Regulations 1981, subject to inspection and approval by the Department of Agriculture of Sabah and Sarawak (pp. 167-168).

MITI, JPSPN, and SIRIM are reportedly in discussions on how to better regulate the import of wastepaper as raw material for recycling.

It is highly probable that factories around Malaysia are still processing imported waste despite not having the necessary import permits. As of May 2019, only 62 companies had APs to import plastic waste, while there are thousands of plastic manufacturers in Malaysia. When PTASKL requested from MDKL a list of licenced plastic recycling factories in the district, they were furnished with a list of 15 companies and the business activities for which they were licenced. None were listed as being involved in plastic recycling, but manufacturing of plastic products. Since residents began taking notice of fraudulent practices, factories, several of which have no signages, began boarding up their premises or covering up their raw materials (see Figure 4.2).



**Figure 4.2: Facility of a company without AP - Sungai Petani, 30 January 2020**  
Source: PTASSP

When queried on about waste piles within the compound of a factory that does not hold an AP (see Figure 4.3), which poses a clear health hazard for residents living about 100 metres away from the site, a DOE officer explained that he could not divulge any further information as he was bound by section 50 of the EQA which states that:<sup>72</sup> Any person who discloses any information obtained by him in connection with the administration or execution of this Act or the regulations made thereunder in relation to any manufacturing process or trade secret used in carrying on any particular trade, industry or process shall, unless the disclosure was made for the purposes of this Act or of any criminal proceedings under this Act or with the consent of the person carrying on that trade, industry or process, be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a period not exceeding five years or to both.

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<sup>72</sup> DOE officer, interview, Kedah, 30 January 2020.



**Figure 4.3: Facility owned by a subsidiary company of an AP-holder - Sungai Petani, Kedah, February 2020**

Source: PTASSP

### *Interception and return of containers containing municipal waste*

Enforcement officers in JPSPN worked closely with the DOE and Customs to streamline enforcement procedures at ports nationwide for the import of plastic waste. Joint enforcement efforts were carried out and the agencies collaborated extensively to train Customs officers to identify unrecyclable or contaminated plastic waste. A new regulation was put in place that all containers declared under the HS Code 3915 must be put through electronic scanners before being approved by Customs and released by the port management. In June 2019, there were 397 containers filled with plastic waste from 12 different countries stranded at the North Butterworth Container Terminal (NBCT) in Penang. The containers were either imported by 11 companies without APs, were declared under wrong codes, or were simply unclaimed by companies to avoid enforcement actions. Customs initiated legal action against companies that could be traced, but compounds were only at RM1,000 per container.<sup>73</sup> Each 40-foot container can carry 10 to 15 tonnes of goods. As of February 2021, more than 200 containers were still stuck at NBCT, incurring more costs for Penang Port.<sup>74</sup>

Using the Basel Convention, MESTECC successfully negotiated the return of waste to countries of origin at no cost to the Malaysian government. Table 4.2 shows data furnished by the DOE on the amount of plastic waste returned to countries of origin – 225 containers and about 4,727 tonnes of waste. This number increased to **254 containers** and 5,512 tonnes by

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<sup>73</sup> Mok, O. (2019, June 14). *Penang now has nearly 400 containers of imported plastic waste, says Customs*. Malay Mail. <https://www.malaymail.com/news/malaysia/2019/06/14/penang-now-has-nearly-400-containers-of-imported-plastic-waste-says-customs/1762170>

<sup>74</sup> Hilmy, I. H. (2021, February 27). *Malaysia still saddled with foreign waste cargo*. TheStar. <https://www.thestar.com.my/news/nation/2021/02/28/malaysia-still-saddled-with-foreign-waste-cargo>

December 2020.<sup>75</sup> Five thousand tonnes of plastic waste was returned compared to almost 1.7 million tonnes of waste officially imported (refer Figure 2.3). In February 2020, MESTECC launched a “National Action Plan on Enforcement on the Import of Plastic Waste” and targeted a total of 30,000 enforcement actions in 2020, compared to 18,314 enforcement actions in 2019 and 7,194 in 2018.<sup>76</sup> In addition, the ministry also launched the “Guidelines on the Import of Scrap Metal” for the benefit of importers to prevent the import of contaminated, non-homogenous, low quality metal. As of 30 September 2020, the DOE revealed that 17,445 inspections on various premises had been carried out under the EQA since 1 January.<sup>77</sup>

**Table 4.2: Return of Containers with Contaminated Plastic Waste as of June 2020**

| No.   | Port                          | Origin              | No. of Containers | Weight (kg) |
|-------|-------------------------------|---------------------|-------------------|-------------|
| 1     | Port Klang, Selangor          | United Kingdom (UK) | 1                 | 22,000      |
|       |                               | Bangladesh          | 1                 | 20,710      |
|       |                               | Spain               | 10                | 237,220     |
|       |                               | Australia           | 3                 | 68,440      |
|       |                               | Singapore           | 1                 | 22,000      |
|       |                               | Japan               | 5                 | 390,770     |
|       |                               | United States (US)  | 1                 | 28,000      |
|       |                               | Belgium             | 7                 | 152,820     |
|       |                               | Germany             | 2                 | 45,360      |
|       |                               | Taiwan              | 1                 | 21,050      |
|       |                               | Poland              | 1                 | 18,900      |
|       |                               | South Korea         | 2                 | 30,790      |
|       |                               | Hong Kong           | 14                | 290,788     |
|       |                               | China               | 3                 | 58,000      |
|       |                               | Sri Lanka           | 1                 | 21,284      |
| 2     | Senari Port, Kuching, Sarawak | US                  | 31                | 429,760     |
|       |                               | France              | 48                | 991,373     |
|       |                               | Singapore           | 3                 | 71,886      |
| 3     | Penang Port                   | US                  | 17                | 334,103     |
|       |                               | Vietnam             | 2                 | 38,195      |
|       |                               | Portugal            | 3                 | 73,647      |
|       |                               | Canada              | 11                | 189,201     |
|       |                               | Lithuania           | 1                 | 20,300      |
|       |                               | Saudi Arabia        | 1                 | 22,300      |
|       |                               | UK                  | 46                | 981,278     |
|       |                               | Hong Kong           | 9                 | 147,000     |
| Total |                               |                     | 225               | 4,727,175   |

<sup>75</sup> Malay Mail. (2021, February 17). *Environment minister says Malaysia returned 5,512 metric tonnes of plastic waste to sources last year.* <https://www.malaymail.com/news/malaysia/2021/02/17/environment-minister-says-malaysia-returned-5512-metric-tonnes-of-plastic-w/1950643>

<sup>76</sup> Mestecc launches national action plan on enforcement against plastic waste imports. (2020, February 10). *The Sun Daily.* <https://www.thesundaily.my/local/mestecc-launches-national-action-plan-on-enforcement-against-plastic-waste-imports-CA1992073#:~:text=Mestecc%20launches%20national%20action%20plan%20on%20enforcement%20against%20plastic%20waste%20imports,-10%20Feb%202020&text=The%20plan%2C%20also%20known%20as,said%20in%20a%20statement%20today>

<sup>77</sup> Yunus, A., & Hana Naz Harun and Teh Athira Yusof. (2020, November 4). *Drop it! 61 premises charged over water pollution.* *New Straits Times.* <https://www.nst.com.my/news/nation/2020/11/637913/drop-it-61-premises-charged-over-water-pollution>

Source: DOE, July 2020

Despite implementing one of the best efforts in the region to tackle the imported plastic waste crisis, loopholes still exist to be exploited. The KPKT minister informed Parliament in November 2018 that “the plastic that come are the homogenous and pellet types. We are controlling this (plastic waste import) very thoroughly, to ensure the plastic waste that comes is of good quality, and processed to be used by consumers”.<sup>78</sup> In January 2019, she reiterated at a town hall that the government had never approved the import of plastic rubbish, but rather clean plastic scrap.<sup>79</sup> However, Australian journalists easily intercepted a container full of mixed waste, as shown in Figure 4.4. When queried, the factory owner receiving the container revealed that he could easily access supplies of mixed plastic waste from smugglers. Aside from dealing with the smuggling of mixed plastic waste, the government is increasingly faced with the smuggling of WEEE into the country, as shown in Table 4.3. Industry insiders revealed that a prominent businessman is involved in WEEE and scrap smuggling throughout the industrial areas surrounding Port Klang.<sup>80</sup>



**Figure 4.4: Australian journalists intercepting a mixed waste container - Pulau Indah, Selangor, 15 March 2019**

Source: PTASKL

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<sup>78</sup> Chow, M. D. (2018, November 15). *Plastic waste a RM30 billion industry, Dewan Rakyat told*. <https://www.freemalaysiatoday.com/category/nation/2018/11/15/plastic-waste-a-rm30-billion-industry-dewan-rakyat-told/>

<sup>79</sup> Bedi, R. S. (2019, July 29). *Zuraida: Imports of clean, recyclable plastic allowed, never plastic 'rubbish'*. TheStar. <https://www.thestar.com.my/news/nation/2019/01/15/zuraida-imports-of-clean-recyclable-plastic-allowed-never-plastic-rubbish>

<sup>80</sup> PTASKL member, phone interview, 30 July 2020.

**Table 4.3: Enforcement Action Against the Smuggling of E-Waste into Malaysia**

| Date             | Incident  |
|------------------|---|
| 6 June 2020      | Tip-off from the Basel Action Network (BAN).  |
| 7 June 2020      | DOE and Customs intercepted one container of WEEE at Port Klang.  |
| 18 June 2020     | The container was confirmed to carry WEEE. The consignee who imported the items was found to have also imported three containers of WEEE from the US on 16 April, 14 May and 3 June. All containers were detained by Customs.   |
| 26 June 2020     | Two out of four containers were returned to the country of origin. Notice has been given to the consignee as well as two liner companies shipping the containers. From 1 January to 26 June 2020, the DOE and Customs successfully intercepted 23 cases of illegal importation of scheduled wastes. |
| 10 November 2020 | Penang DOE and Customs seized two containers filled with WEEE (SW 110) mixed with crushed plastic and metal waste from Japan which was brought in through the North Butterworth Container Terminal (NBCT).  |

Source: DOE Press Release (1 July 2020) and news reports<sup>81</sup>

### *The illicit transboundary trade in plastic waste*

The difficulty in clamping down on the import of mixed waste stems from a larger, global problem. The transboundary plastic waste trade has come under the radar of enforcement agencies across the world. In 2018, the plastics recycling industry in the United Kingdom was investigated for suspected abuse and fraud within the export system. There were complaints that organised criminals and firms were abusing the system.<sup>82</sup> Meanwhile, INTERPOL held Operation 30 Days at Sea 2.0, a global operation involving 61 countries and regional law enforcement partners to identify illicit activities behind severe marine pollution in 2019. An operational command centre was hosted in Singapore to focus on the cases of illegal export or import of plastic waste.<sup>83</sup> INTERPOL subsequently released a report titled Strategic Analysis Report: Emerging criminal trends in the global plastic waste market since January 2018 to highlight this issue (INTERPOL, 2020).

According to the report, fraudulent documents and the false declaration of waste are common in waste crime and have increased in frequency and complexity in recent years. Mixed or contaminated wastes would be falsely declared as non-hazardous (Annex IX of the Basel

<sup>81</sup> Department of Environment. (n.d.). *Kenyataan Media*. <https://www.doe.gov.my/portalv1/wp-content/uploads/formidable/5/Kenyataan-Media-JAS-Status-Illigal-Shipment-Amerika-Ewaste-eddit-pro.pdf>; Malay Mail. (2020, November 12). *Penang DOE seizes two shipping containers full of waste at Butterworth Terminal, says state exco*. <https://www.malaymail.com/news/malaysia/2020/11/12/penang-doe-seizes-two-shipping-containers-full-of-waste-at-butterworth-term/1922064>

<sup>82</sup> The Guardian. (2018, October 19). *UK plastics recycling industry under investigation for fraud and corruption*. <https://www.theguardian.com/environment/2018/oct/18/uk-recycling-industry-under-investigation-for-and-corruption>

<sup>83</sup> T. J., Goble, P., & Reich, R. (2019, December 17). *Marine Pollution: Thousands Of Serious Offenses Exposed In Global Operation*. Eurasia Review, Saag, Foundation. <https://www.eurasiareview.com/17122019-marine-pollution-thousands-of-serious-offenses-exposed-in-global-operation/>.

Convention), or misdeclared as raw material. Contaminated plastic waste could also be concealed in the container behind clean plastic waste. According to an authoritative figure with the port, it costs RM400 to empty each container of its contents for inspection.<sup>84</sup> There could also be misdeclaration of the destination of plastic waste shipments, using several transit countries. INTERPOL also noted the infiltration of organised criminal groups in the illegal trade of plastic waste (p. 6).

More evidence was provided by Greenpeace Italy in early 2020 which revealed that the Italy-Kuala Lumpur route appeared to be the centre of a major illegal trafficking of plastic waste operations. 3,500 tonnes of plastic waste worth EUR660,000 were found to be sent from Italy to Malaysia between August and December 2018, after Malaysia had ostensibly cracked down on illegal recycling plants, and withdrew APs and licences pending re-assessment.<sup>85</sup> However, an officer with JPSPN responded that Greenpeace Italy may have misinterpreted the data.<sup>86</sup> E-permits for import consignments are valid for a period of six months. Although the Malaysian government banned the import of plastic waste in October 2018, they could not stop prior arranged agreements from going ahead. Plastic waste imports have indeed decreased in Malaysia overall since the government crackdown, as shown in the earlier Figure 2.3.<sup>87</sup>

Nevertheless, investigations by Greenpeace Italy also revealed other discrepancies. In the first nine months of 2019, 43 out of 65 direct shipments of Italian plastic waste to Malaysia totalling 1,300 tonnes were found to be received by companies operating illegally.<sup>88</sup> The factories were found by field investigators to either not have legal authorisation to operate, or did not have the proper equipment to process plastic scrap. Plastic waste exporters were found to use companies to broker the shipments through Hong Kong on paper, while sending the cargo directly to Malaysia.<sup>89</sup>

If the illicit transboundary trade and the false declaration of plastic waste are not addressed, the effectiveness of the Basel Convention amendments would be severely constrained, as acknowledged by Article 9 of the Convention which touches on illegal trafficking. The ASEAN Joint Declaration on Hazardous Chemicals and Wastes Management also endorsed the need to “enhance coordination in information exchange on preventing the illegal traffic of chemicals

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<sup>84</sup> Port staff, interview, Penang, 21 November 2019.

<sup>85</sup> Murgese, E. (2020, April 2). *Illegal Trafficking of Plastic Waste. The Italy–Malaysia Connection*. <https://www.iai.it/en/pubblicazioni/illegal-trafficking-plastic-waste-italy-malaysia-connection>

<sup>86</sup> JPSPN officer, interview, Putrajaya, 1 July 2020.

<sup>87</sup> However, US and UK exports of plastic waste to Malaysia have increased again from January to June 2020. See Staub, C. (2020, August 12). *Plastic exports drop 18% in first half of 2020*. <https://resource-recycling.com/plastics/2020/08/12/plastic-exports-drop-18-in-first-half-of-2020/>

<sup>88</sup> Greenpeace. (n.d.). *Traffico illecito di rifiuti tra Italia e Malesia*. Cosa abbiamo scoperto. <https://www.greenpeace.org/italy/storia/6874/traffico-illecito-di-rifiuti-tra-italia-e-malesia-ecco-cosa-abbiamo-scoperto/>.

<sup>89</sup> Patterson, J. (2020, November 1). *Asia's New Dumping Ground: Italy Is Shipping Its Plastic Waste To Malaysia*. <https://www.ibtimes.com/asias-new-dumping-ground-italy-shipping-its-plastic-waste-malaysia-2919966>

and wastes.”<sup>90</sup> Combatting illegality and corruption at the ports must remain a priority of the government to ensure successful implementation of policies and laws for environmental protection.

### 4.3 At the factories: Manufacturing in Malaysia

#### *Tackling illegal plastic recycling factories*

To clamp down on illegal plastic recycling facilities, joint enforcement operations were carried out across many states involving federal agencies, state governments and Local Authorities. These involved much coordination among multiple agencies. Table 4.4 shows the information on enforcement action as compiled by the DOE since 2019. In mid-2019, two plastic recycling factories in Selangor were charged in court and fined a total of RM120,000 for processing plastic waste without DOE approval, failure to install air pollution control systems, and failure to install systems to manage industrial effluents.<sup>91</sup> This could be considered a slap on the wrist as processing waste without DOE approval is punishable with a maximum of RM500,000 fine, or a maximum five-year jail term, or both under the EQA.

**Table 4.4: DOE Operations Against Illegal Factories**

| Year                   | No. of Operations | Enforcement Action |           |                                 |                   |                             | Overall Actions |
|------------------------|-------------------|--------------------|-----------|---------------------------------|-------------------|-----------------------------|-----------------|
|                        |                   | Notice of Orders   | Compounds | Seizure of Operating Facilities | Prohibition Order | Investigation Papers Opened |                 |
| 2019                   | 275               | 119                | 86        | 186                             | 11                | 74                          | 476             |
| 2020<br>(1 Jan-17 Jul) | 41                | 17                 | 66        | 18                              | 1                 | 7                           | 109             |
| Total                  | 316               | 136                | 152       | 204                             | 12                | 81                          | 585             |

Source: DOE, July 2020

In Selangor, a special task force with monthly meetings was formed to solve the plastic waste problem, co-chaired by the Environment, Green Technology and Consumer Affairs Committee chairman Hee Loy Sian and the Local Government, Public Transportation and New Village Development Committee chairman Ng Sze Han, and involving representatives from local councils, the DOE, the District and Land Office, the police force, and the Immigration Department.<sup>92</sup> On occasion, Tenaga Nasional Berhad (with approval from the Energy

<sup>90</sup> ASEAN Joint Declaration on Hazardous Chemical and Wastes Management. [https://asean.org/storage/2017/11/Annex-2\\_Joint-Declaration-HCWM-Adopted-by-AMME.pdf](https://asean.org/storage/2017/11/Annex-2_Joint-Declaration-HCWM-Adopted-by-AMME.pdf)

<sup>91</sup> Lim, I. (2019, May 17). *Court fines two Selangor factories RM120,000 for illegal plastic recycling*. Malay Mail. <https://www.malaymail.com/news/malaysia/2019/05/17/court-fines-two-selangor-factories-rm120000-for-illegal-plastic-recycling/1754010>

<sup>92</sup> Chan, D. (2019, February 23). *Selangor gets tough on illegal factories [NSTTV]*. New Straits Times. <https://www.nst.com.my/news/nation/2019/02/462869/selangor-gets-tough-illegal-factories-nsttv>

Commission of Malaysia),<sup>93</sup> Air Selangor, National Water Services Commission (Suruhanjaya Perkhidmatan Air Negara, SPAN), and Customs would join the operations where the supply of utilities to the factories would be disconnected. The DOE has successfully brought legal action against several plastic recycling operations for violating the Environmental Quality Act, as shown in Appendix D.

Actions to close illegal factories were taken according to by-laws under local councils, for example, the Kuala Selangor District Council took action under the Licensing of Trades, Businesses and Industries Kuala Selangor District Council 2007 by-law which state that all such activities must have a licence issued by the Council. From 2018 to 2020, action was taken against 113 factories in Klang alone, with 37 shut down, while another 34 illegal factories in Jenjarom, Kuala Langat, were closed.<sup>94</sup> Similar actions were taken in Penang and Kedah, with the Kedah state government stopping all issuance of business licences for plastic recycling in 2019. This left certain businesses who had invested in building new facilities in a quandary.<sup>95</sup>

Seberang Perai, Penang also reportedly had as many as 404 plastic recycling facilities and factories, with 14 found to be operating without licence.<sup>96</sup> However, there has been no major outcry from residents in Penang regarding the open burning of waste. While plastic waste storage facilities with no signages were sighted around Bukit Mertajam's industrial zones, local residents alleged that the facilities in Penang were only used for sorting and formed a part of value chains which extended to Sungai Petani.<sup>97</sup> As of October 2020, 11 illegal plastic recycling factories had been identified in Seberang Perai, out of 102 plastic recycling factories in total.<sup>98</sup>

When conducting field visits among illegal plastic recycling factories, an observable trend in Klang (Selangor), Seberang Perai (Penang) and Sungai Petani (Kedah) were the availability of factory or industrial lots. Many plots have been left empty or derelict (see Figure 4.5 and 4.6), which explains the ease with which illegal plastic recyclers found space for their operations and managed to set up without any signages. Land or factory owners jumped at the economic opportunity when the demand for their premises spiked, with businessmen from China willing to pay high rentals, allegedly up to RM8,000 per month. The existence of these neglected development projects alongside plans to degazette forest reserves for further

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<sup>93</sup> Rajendra, E. (2019, November 28). *MPK cuts off electricity supply at illegal plastic waste processing plant*. TheStar. <https://www.thestar.com.my/metro/metro-news/2019/06/24/mpk-cuts-off-electricity-supply-at-illegal-plastic-waste-processing-plant>

<sup>94</sup> Martin Vengadesan & Low Choon Chyuan. (2020, August 20). *The Selangor gov't and scourge of plastic waste*. <https://www.malaysiakini.com/news/539196>

<sup>95</sup> Kedah state officer, interview, Alor Setar, 11 February 2020.

<sup>96</sup> Chern, L. T. (2019, July 29). *Illegal plastic factories booming*. TheStar. <https://www.thestar.com.my/news/nation/2019/05/18/illegal-plastic-factories-booming/>

<sup>97</sup> Resident, interview, Bukit Mertajam, 31 January 2020. This resident also said that the Penang exco for environment is known as the "rubbish king" and protected certain factories from enforcement action. This was denied by the exco when queried, who said that he maintained a distance from all businessmen.

<sup>98</sup> Dermawan, A. (2020, October 15). *11 plastic recycling factories operating illegally in Seberang Prai*. New Straits Times. <https://www.nst.com.my/news/nation/2020/10/632538/11-plastic-recycling-factories-operating-illegally-seberang-prai>

construction raises serious questions about the sustainability and efficacy of planning and development in Malaysia.



**Figure 4.5: Industrial lots - Klang, Selangor, 12 January 2020**

Source: Author



**Figure 4.6: Industrial lots - Bukit Mertajam, Penang, 14 February 2020**

Source: Author

### ***Problems with development planning***

The imported plastic waste crisis merely amplified these existing problems of buffer zones, category of land use, and compliance in general. Physical development or land use is a heavily

contested issue governed by the Town and Country Planning Act 1976, which contains the roles and responsibilities of various government agencies, namely the National Physical Planning Council, Town and Country Planning Department (JPBD or PLANMalaysia) at the federal level and its DG, JPBD at the state level, the State Planning Committee, Local Planning Authorities, and Regional Planning Committees. The National Development Policy consists of several levels of planning framework – National Physical Plan (federal or national level), State Structure Plan (state level), and Local Plan (district level). Development is controlled via Development Plans and planning permission is ostensibly granted or refused with reference to the Development Plans. The JPBD, the DOE and the local authority are required to work closely to ensure physical development of land do not lead to conflicts or cause harm.

A recurring and significant problem for residents is the lack adequate buffer zones between industrial areas and residential areas. In Sungai Petani, the Bakar Arang Industrial Estate blends seamlessly with schools and residential areas which were constructed after the industrial area was developed, with no buffer zones. While the “Guidelines for the Siting and Zoning of Industries and Residential Areas (2012)” by DOE stated that for heavy industries a buffer zone of at least 300 metres is required, the “Environmental Essentials for the Siting of Industries in Malaysia (ESSIM)” (Department of Environment Malaysia, 2017) was significantly weakened, and did not stipulate any distance for the buffer zone. The document only referenced that JPBD has specific guidelines on zoning and buffer specifications, reportedly between 50 to 500 metres, and that the buffer zone should adhere to Local Plans issued by Local Authorities.<sup>99</sup> This change was made taking into account technological advancements in managing pollutants. At the same time, it appears almost impossible for the DOE to have a complete system that can effectively protect public health from industrial pollutants, especially when considering violations and law evasion by operators.

In Selangor, the Selangor State Planning Guidelines and Standards Manual (Manual Garis Panduan dan Piawaian Perancangan Negeri Selangor, 2016) set the minimum distance between heavy industry and housing at 300 metres, while local plans may differ; for example, the Kuala Langat Local Plan 2030 (p. 6-28) stated that heavy industries should have a 500-metre buffer from residential settlements.<sup>100</sup> In official plan documents and during interviews with government officers, it was clear that no one agency has taken, or indeed, can take responsibility for the setting of buffer zones, a jurisdiction vaguely shared between the DOE, JPBD, and the local council.

The category of use on land titles and zoning in Local Plans is another long-standing problem. Heavy industrial activity has been allowed on land categorised for other use in land titles and in the Local Plans, For example, the Kuala Langat Local Plan 2030 categorised

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<sup>99</sup> Adnan, A. S. (2019, July 2). *Govt prepared to study extending industry-residential buffer zone parameters*. New Straits Times. <https://www.nst.com.my/news/government-public-policy/2019/07/500952/govt-prepared-study-extending-industry-residential>

<sup>100</sup> Wahab, M. F. (2020, October 29). *Separation anxiety*. TheStar. <https://www.thestar.com.my/metro/metro-news/2020/10/30/separation-anxiety>.

economic activities according to classes – C1 for light industries, C2 for medium industries and C3 for heavy industries (see Table 5.5: Classification of Industry According to Class, Activity or Type, p. 5-14 – 5-18). Plastic recycling factories are classified as C3 (no. 30: Manufacturing of synthetic resin, plastic products and imitation fibres except glass). This has not stopped the DOE nor the MPKL from providing approval for plastic recycling facilities situated in zones that were set aside for light or medium industries.

Since 2006, the Selangor state government had run a Compliance and Enforcement Programme (program “Pematuhan Syarat dan Penguatkuasaan Kilang Tanpa Kebenaran”, also known colloquially as the “whitening” process) for illegal factories operating on agricultural land. Illegal factories that were not involved in illegal activities or causing pollution were given leeway to take appropriate measures within a limited time frame (supposedly) before enforcement action would be taken against them. These operators may have Temporary Operating Licences (TOL) and merely do not have business licences due to technical conditions such as land status, zoning or planning permission.

Between July 2006 and December 2015, 630 factories had undergone the “whitening” process, acquiring approvals for necessary land, building and planning terms. In early 2019, the state government revealed that there were more than 1,000 factories illegally built on agricultural land, yet to undergo “whitening” where the government would help to change the land status from “agriculture” to “industrial”.<sup>101</sup> The Selangor state government decided to continue with this programme from 1 October 2019 to 30 September 2020, with an extension until 31 December 2020. As of November 2020, 5,589 factories remain unlicensed in the state with 869 located near rivers.<sup>102</sup> The government is reluctant to take harsher actions to protect the jobs created by these unlicensed factories. The Penang state government adopts a similar approach to encourage the legalisation of buildings, hawker stalls and temples built and set-up illegally before 2008.<sup>103</sup> These are legacy issues from the BN administration which still have not been solved by the current PH administration, after a decade of taking over the state governments of Selangor and Penang.

With the change of land-use for factories in Selangor as such, the siting of these facilities may not be in accordance with existing Local Plans. This “whitening” process brings much anxiety to residents due to concerns of unchecked pollution close to their homes. Residents lamented the misuse of TOLs, where some of the illegal plastic recycling facilities waste were given TOLs to assist them in legalising their operation (Appendix A) despite the state government’s assertion that 200 illegal plastic recyclers were shut down and that no factory

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<sup>101</sup> Malay Mail. (2019, March 22). *Selangor govt to continue enforcement programme on illegal plants*. <https://www.malaymail.com/news/malaysia/2019/03/22/selangor-govt-to-continue-enforcement-programme-on-illegal-plants/1735521>

<sup>102</sup> Retrieved from <https://www.theedgemarkets.com/article/5589-unlicensed-factories-found-operating-selangor>.

<sup>103</sup> Basyir, M. (2017, August 16). *Penang illegal factory: Phee to 'tell all' on Monday*. New Straits Times. <https://www.nst.com.my/news/nation/2017/08/268610/penang-illegal-factory-phee-tell-all-monday>

causing pollution would be allowed to join the compliance programme.<sup>104</sup> The problem extends beyond plastic recycling operations. Even as authorities have seized illegal imports of WEEE at the ports, local communities have begun complaining to PTASKL of metal smelters around their agriculture farms. The local community complained about the facility shown in Figure 4.7, and enforcement operations were carried out against the facility twice. However, the factory continued to operate and was observed with the lights on in July 2020.<sup>105</sup>



**Figure 4.7: Smelting facility on agriculture land - Rasa, Hulu Selangor, 23 May 2020 (L) and 11 July 2020 (R)**

Source: PTASKL

Adherence to Local Plans does not appear to feature prominently in the decision-making processes of the authorities nationwide. The state of Penang has never had any Local Plans, although Local Plans for Seberang Perai and Penang Island were to be rolled out in 2020. For Sungai Petani, Kedah, there was a Kuala Muda District Local Plan 2020, replaced by the Kuala Muda District Local Plan 2035. The importance of the Local Plan was outlined by the Selangor Appeal Board, case LR SEL. (256) MBPJ/05/2012 (*The Ordinary Company Sdn. Bhd v. Majlis Bandaraya Petaling Jaya*), where it decided that, firstly, land condition on land titles should not override the land use zoning of a Local Plan. Secondly, where there is a variance between the use condition in a land title and the land use zoning in a Local Plan, the land title should conform to the Local Plan. As further stated in the Selangor Appeal Board Law Reports:

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<sup>104</sup> Palansamy, Y. (2020, November 4). *Selangor exco: Illegal factories, polluters absolutely barred from legalisation programme*. Malay Mail. <https://www.malaymail.com/news/malaysia/2020/11/04/selangor-exco-illegal-factories-polluters-barred-from-legalisation-programm/1919309>

<sup>105</sup> Throughout the year, the Hulu Selangor District Council has carried out several enforcement operations against facilities, occasionally at night. All facilities were found with no pollution controls. News media reported operations against aluminium smelting, plastic waste recycling, WEEE recycling, and scrap metal processing. See Muhammad, A. (2020, May 14). *MDHS sita dua kilang operasi tanpa lesen*. Sinar Harian. <https://www.sinarharian.com.my/article/83554/EDISI/Selangor-KL/MDHS-sita-dua-kilang-operasi-tanpa-lesen>; Oriental Daily. (行动管制) 非法洋垃圾厂偷运作业者遭罚款充功机器。 [https://www.orientaldaily.com.my/news/central/2020/05/09/339854?fbclid=IwAR0QKVwPBvZ-Tt\\_5\\_XH2P836C7udx0lc6-Iz7HUYQ6DIQsrBolWFnQS3dSE](https://www.orientaldaily.com.my/news/central/2020/05/09/339854?fbclid=IwAR0QKVwPBvZ-Tt_5_XH2P836C7udx0lc6-Iz7HUYQ6DIQsrBolWFnQS3dSE); Sin Chew. 滥用执照回收塑料。叻思工厂遭取缔。 [https://www.sinchew.com.my/content/content\\_2272562.html](https://www.sinchew.com.my/content/content_2272562.html); Sin Chew. (2020, April 11). 过滤系统差冒浓烟。叻思2熔金厂被取缔。 [https://www.sinchew.com.my/content/content\\_2370752.html](https://www.sinchew.com.my/content/content_2370752.html).

Preparation of the Local Plan is not an optional or voluntary exercise for the local planning authority. It is a mandatory plan prescribed by the TCPA [s.12 (2)]... only the Local Plan is of sufficient detail and exactness to be able to show the permissible use for every lot of land and, therefore, to be employed in development control. The Local Plan is, therefore, the definitive land use plan... the Local Plan is a development tool of the state as well as a regulatory plan, requiring the compliance of both the authority charged with its execution and the citizenry residing or owning propriety within its jurisdiction. Where the land title protects the rights of the individual, the Local Plan protects the rights of the community (Selangor State Town and Country Planning Department and Selangor Appeal Board, 2014, pp. 9-11).<sup>106</sup>

### *Environmental regulations*

The local authority plays a crucial role in protecting and promoting the right of local residents to a healthy living environment, but the local government is not empowered to carry out the monitoring of environmental pollution. This falls solely under the DOE, which is not present in every district and often only have a handful of investigation officers. One key problem raised by PTASKL regarding environmental laws in Malaysia was the provision for Guided Self-Regulation and self-reporting by factories.<sup>107</sup> For the release of effluents to waterways, factories are expected to update the status of their effluents through the Online Environmental Reporting (OER) system. Scheduled waste is monitored through the Electronic Scheduled Waste Information System (eSWIS).<sup>108</sup> Thus far, self-monitoring and reporting, with testing carried out by third parties appointed by factories themselves, appear insufficient to ensure compliance.

Meanwhile, for air quality monitoring, the DOE has developed the Integrated Remote Monitoring System (i Remote) and Continuous Emission Monitoring System (CEMS) to monitor air pollutants from factories such as palm oil refineries, cement factories, and petrochemical factories, but this system is not required for recycling factories. Besides that, the capacity of the CEMS to monitor hazardous organic compounds such as dioxins and heavy metal, which are carcinogenic and present in plastic and WEEE recycling, is uncertain, as the system only captures data on compounds such as carbon monoxide, sulfur dioxide and nitrogen dioxide, among others.<sup>109</sup> Other air quality parameters that cannot be captured by the CEMS are required by environmental regulations to be periodically reported; this again cannot ensure

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<sup>106</sup> This case was subsequently brought to court and upheld in *The Ordinary Co Sdn Bhd v Lembaga Rayuan Negeri Selangor & Anor* [2014] 7 MLJ. 705

<sup>107</sup> PTASKL member, interviews, 2020.

<sup>108</sup> See *Mesyuarat Kedua, Penggal Ketiga Parlimen Keempat Belas 2020*. (2020, August 17). (Question 15). <https://www.parlimen.gov.my/files/jindex/pdf/JDR17082020.pdf>

<sup>109</sup> Department of Environment. (2009, November). *Guideline for the Installation and Maintenance of Continuous Emission Monitoring Systems (CEMS) for Industrial Premises / Facilities*. <https://www.doe.gov.my/portalv1/wp-content/uploads/2014/07/Volume-I-Guideline-for-the-Installation-Maintenance-of-Continuous-Emission-Monitoring-Systems-CEMS-Version-6.pdf>

compliance as factories have been known to turned off pollution controls in attempts to push down costs.

Conversely, recyclers said that the long time-period (six months to a year) and complexity of the requirements under the EIA led to high costs and large capital investments. They said that stringent environmental regulations as set out in the ESSIM are among the factors that led small and medium businesses to opt to remain illegal, paying the necessary bribes or fines only if caught.<sup>110</sup> Indeed, past experiences have proven that loopholes in the law are likely to be exploited by businesses of all sizes to keep overheads low.

Decades of lax enforcement have led to a trend of law-breaking in Malaysia, evident in all the criminal activities and non-compliance related to plastic waste recycling documented in this report. The imported plastic waste recycling boom was led by businessmen from China, but they were enabled by Malaysian business partners and emboldened by Malaysian enforcement officers. Self-regulation in compliance and the self-reporting of emissions and effluent discharge must come hand-in-hand with stringent enforcement and monitoring by the enforcement authorities. In cases where operators cannot meet compliance regulations, and as the “whitening” programmes for factories in Selangor and Penang appear to be floundering, other multi-stakeholder solutions need to be developed.

#### **4.4 At the dumpsites: Waste disposal in Malaysia**

Plastic waste is categorised as solid waste and not scheduled waste, hence it does not require special disposal methods. However, it has to be ascertained firstly, whether the plastic scrap that is imported is not contaminated with scheduled waste, and secondly, whether the chemicals used to process the plastic scrap and the wastes generate in the process contain scheduled waste. The management and disposal of scheduled or hazardous waste is under the purview of the DOE which will licence contractors for waste collection.

According to Greenpeace Malaysia (2019), once imported plastic waste arrives in Malaysia, the material is sorted into low-grade and high-grade plastics - high-grade for recycling, low-grade for burning or landfills. The low-grade plastics mainly consist of single-use plastics, but much of the higher-grade plastics also end up in the dumps or being burnt. If the imported wastes are poorly sorted and exposed to sunlight, which they often were, recovery rates could drop to 30 to 40% according to a legal recycling facility owner. This leaves Malaysia with a lot of unrecyclable solid waste to deal with.

In Kedah, waste management is handled by SWCorp. SWCorp is a statutory body under JPSPN. SWCorp only has jurisdiction over eight areas which have agreed to be party to the Solid Waste and Public Cleansing Management Act 2007 (SWPCMA) – Kuala Lumpur,

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<sup>110</sup> Plastic recycling industry actors, interview, Subang Jaya, 9 June 2020; state assembly representative, interview, Bukit Mertajam, 11 February 2020.

Putrajaya, Pahang, Johor, Negeri Sembilan, Malacca, Perlis, and Kedah. This act was established to standardise solid waste management (including household, commercial, construction, industry et cetera) and public cleansing across all local authorities regardless of income levels. The costs would be covered by the federal government with contributions from local authorities.

States which have not surrendered their powers over waste management to the federal government are Selangor, Penang, Perak, Sabah, and Sarawak, as well as the federal territory of Labuan. The differing waste management systems in the other states have hindered efforts to institute nationwide reforms for waste management. A DOE officer observed that while JPSPN is in charge of approving APs for the import of plastic waste nationwide, the department did not need to deal the consequences of their policy in states that are not under their jurisdiction.<sup>111</sup>

JPSPN's role focused on policymaking for solid waste management, while SWCorp executes the policies, oversees waste management concessions, conducts investigations on illegal dumping and enforces the regulations in the SWPCMA, and also educates the public on waste management issues. SWPCMA essentially privatised waste management to private concessionaires. Alam Flora Sdn Bhd is in charge of Kuala Lumpur, Putrajaya and Pahang. SWM Environment Sdn Bhd is responsible for Johor, Malacca, and Negeri Sembilan. Environment Idaman Sdn Bhd is the main contractor for Kedah and Perlis. These concession holders would then sub-contract various services to other companies.

In Penang, waste management is under the state government's Solid Waste Management Unit in the Local Government Department. This unit is tasked with policymaking and planning for the effective collection, transportation, treatment, and disposal of solid waste, and coordination across the local authorities. For Selangor, waste management is regulated under the garbage collection, discard and disposal by-laws under each Local Authority. A new Selangor enactment has been drafted on waste management and handed to the federal government for review in early 2020. The Selangor Government believed that it could better control solid waste management in the state as it is more familiar with the challenges faced with managing a highly industrialised and densely populated state. Waste management in 11 local authorities has been privatised and acquired from the local authorities by a state government-linked company, KDEB Waste Management Sdn Bhd, which runs a materials recovery facility in Klang for recyclable waste. Only the Shah Alam City Council is currently still in charge of its own waste management programmes.

Fly-tipping and the existence of illegal dumpsites has been a problem in Malaysia for decades. But when mixed plastic waste from all over the world was brought into the country, the problem of illegal dumping escalated to a scale previously unseen. Regardless whether waste management is under the federal government or state governments, all areas have been

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<sup>111</sup> DOE officer, telephone interview, 4 June 2020.

negatively affected by the import or smuggling of mixed plastic waste. Several dumpsites are found on agricultural land and beside rivers, potentially causing serious contamination of land and water resources.

To deal with illegal dumpsites, the Selangor state government served Notice 7A of the National Land Code to landowners for wrongful use of land on agricultural plots, instructing them to dispose of the waste and revert the land to their original status. Notice 7B could then be served as a reminder to act, while Notice 8A enables the state government to seize the land, with the entire process taking six to 12 months.<sup>112</sup> The monitoring of this process, however, has been lacking. While waste piles had been removed, the topsoil of many plots of land around Kuala Langat and Klang remain covered with micro pieces of shredded plastic. According to lorry drivers from the local community, some waste in Kuala Langat was sent to ResourcesCo Asia Sdn Bhd in Ipoh to be made into processed engineered fuel for cement factories, as recommended by JPSPN, while others were dumped in illegal dumpsites elsewhere, including some which were stopped by residents in Jenjarom.<sup>113</sup> Several dumping grounds in Penang and Kedah also remain covered with rubbish more than a year after being discovered. state governments appear reluctant to invoke the National Land Code and seize private land, as they would then be straddled with the costs of cleaning up.

The penalties for the pollution of soil under the section 24(3) of the EQA could see perpetrators fined not exceeding RM100,000 or imprisonment for a period not exceeding five years or both. For SWCorp, under section 71(1) of the SWPCMA, those found guilty of illegal dumping in court could be fined a minimum of RM10,000 and not exceeding RM100,000, or imprisonment for not more than six months, not more than five years, or both, for both perpetrators and landowners. Throughout 2019, 852 joint operations were carried out related to illegal dumping in the states under the SWPCMA. 33 cases were charged in court and fined a total of RM398,000 while one perpetrator was imprisoned. Up until June 2020, 695 operations had been carried out (Dewan Rakyat, 2020). For local authorities, notices can be issued under respective rubbish collection, disposal and discharge by-laws. The penalties that can be meted out under the local authority by-laws are extremely paltry, with fines not exceeding RM2,000 or imprisonment not exceeding one year, or both. A continuing offence can be fined various sums, for example RM25 for each day which the offence is continued after conviction.

Illegal dumping and burning of shredded wastes continue to take place (see Figure 4.8), likely from recycling operators due to the nature of the waste. The Penang state government also identified over 10 recycling centres carrying out the burning and dumping of waste in Machang Bubok.<sup>114</sup> Since the crackdown on plastic waste imports by Malaysian authorities,

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<sup>112</sup> Chan, D. (2019, February 23). *Selangor gets tough on illegal factories [NSTTV]*. New Straits Times. <https://www.nst.com.my/news/nation/2019/02/462869/selangor-gets-tough-illegal-factories-nsttv>

<sup>113</sup> PTASKL member, interviews, 2020.

<sup>114</sup> Bernama. (2020, October 09). *Penang plans power, water cuts on factories dumping waste*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2020/10/09/penang-plans-power-water-cuts-on-factories-dumping-waste/>

the nature of the dumped contents (excluding the usual household waste and construction waste) has changed from foreign municipal waste to shredded material that communities alleged are the waste products of WEEE recycling.



**Figure 4.8: What appeared to be shredded e-waste set on fire - Banting, Selangor, 11 October 2020**

Source: Community members

## CHAPTER 5: ...FINDING RECYCLED PROBLEMS AND POTENTIAL PROBLEMS WITH RECYCLING

### SUMMARY

- Chapter 5 briefly examines case studies of how poorly planned industrial projects have affected residents' right to healthy environments, based on interviews with affected residents.
- This report began with a focus on foreign plastic waste recycling, but the issues of illegality and non-compliance that arose were found to be apparent across industries.
- The cases were frustratingly similar, where residents live next to factories which had caused pollution which affected their health. When complaints were made, the residents had to wade through a maze of bureaucratic agencies and go up against a state apparatus that lacks transparency and appeared unable to mediate between industrial and public interest.
- The issues arising from the plastic waste issue were not limited to illegal operations. Even ostensibly legal operations have brought much consternation to local communities. A recurring point of conflict was the siting and zoning of industrial and residential areas, which has caused unending contestations between residents, industries, and the authorities.
- The increasing illicit activity and non-compliance in waste recycling for materials other than plastic, including electrical and electronic equipment (WEEE), scrap metal, and paper, poses another problem.

### 5.1 Case studies of threats to the right to a healthy environment

The following cases were compiled based on interviews with affected parties and related documentation furnished by them, including letters of complaints, test results, and police reports. Most of these cases had been widely reported in the media and the communities had received assistance from various NGOs. The companies were not approached in the process of data collection, while local authorities did not respond to interview requests. The purpose of illustrating these cases is to highlight that what happened with the plastic waste crisis – the setting up of factories so close to residents, unchecked pollution, unheeded complaints to the authorities – was not new, it was merely scaled up due to the massive volumes of waste entering

the country.<sup>115</sup> The cases below also indicate that, whether the status of factories is illegal or legal, unlicensed or licensed by the local authority, the problems of business compliance and law enforcement by the authorities persist. All the companies in the cases below are large foreign-owned entities bringing foreign direct investment into the country, except the one in Sungai Petani.

## 5.2 Bukit Mertajam, Penang

In Bukit Mertajam, Penang, the re-zoning of land was undertaken on a large scale, where formerly agricultural land was re-categorised as industrial areas. For example, the Bukit Minyak Industrial Estate was created from Kampung Permatang Tok Suboh.<sup>116</sup> Original residents were either evicted with compensation, while those who owned land titles could continue keeping their land. If landowners wished to convert their private land from “agriculture” to “industrial”, the costs must be borne by the landowners themselves at current market values, which was beyond the ability of the original landowners.<sup>117</sup> This led to a mix of agriculture and industrial activity, with agriculture land on which produce was still planted being surrounded by heavy industrialisation.

One such landowner had the misfortune of having a screw coating factory built less than 100 metres from his family home on agriculture land, as shown in Figure 5.1. The factory operates 24 hours a day, creating sound and air pollution late into the night. When he observed the health of his family, animals and farmed produce negatively impacted by emissions from the factory, which began operations in 2014, he proceeded to lodge complaints with various government agencies, including with the MACC.<sup>118</sup> He alleged that the factory only installed chimneys after his complaints, and that due to powerful connections between the factory directors and politicians, several government officers met him and apologetically informed him that there was nothing they could do.

This complainant engaged an independent consultant to conduct an air quality test, but the results were not accepted by the government. The Penang state government put together a multi-agency task force to investigate the factory and found that the factory met emission standards in the Environmental Quality (Clean Air) Regulations 2014.<sup>119</sup> The complainant alleged that the factory stopped operations whenever government officers visited, hence the positive results in emissions tests. Finally, the state government invited the complainant for a

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<sup>115</sup> Other well-known industry-resident conflicts include objections against the rare earth plants Lynas Malaysia and Asia Rare Earth (Consumers' Association of Penang, 1993)

<sup>116</sup> Sue-Chern, L. (2017, January 22). *New life for folk of Permatang Tok Suboh*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2017/01/22/new-life-for-folk-of-permatang-tok-suboh/>

<sup>117</sup> Resident, interview, Bukit Mertajam, 31 January 2019.

<sup>118</sup> Dermawan, A. and Mohamed Basyir. (2017, August 16). *Resident goes to MACC over another factory in Bukit Mertajam*. New Straits Times. <https://www.nst.com.my/news/nation/2017/08/268350/resident-goes-macc-over-another-factory-bukit-mertajam>

<sup>119</sup> Mohamed Basyir. (2017, August 16). *Actions taken; DOE confirmed Bukit Minyak factory complied with law: Bukit Mertajam MP*. New Straits Times. <https://www.nst.com.my/news/nation/2017/08/268638/actions-taken-doe-confirms-bukit-minyak-factory-complied-law-bukit>

meeting, but the complainant was too afraid to attend for fear of being intimidated or manipulated.<sup>120</sup> Today, his family is living in a rented premise instead of their home for the sake of their health, while other neighbours around the area have left.<sup>121</sup> While the facts of the case regarding pollution are unclear, what was clear was the negative impact of a non-consultative model of development on peoples' lives and the high level of distrust of the authorities.<sup>122</sup>



**Figure 5.1: Screw coating factory next to family home - Bukit Mertajam, Penang**

Source: *New Straits Times* (August 16, 2017)

### 5.3 Sungai Petani, Kedah

In Sungai Petani, Kedah, a factory has encroached on a piece of agricultural land next to residential areas. The residents in Sungai Petani recounted their long struggle since early 2017 against this scrap metal recycling factory set up right next to their homes, with large container haulage trucks passing their street daily. PTASSP collected soil samples to be tested and was chased by gangsters in the process. Test results showed heavy metals such as cadmium, lead, and zinc found present in high quantities. The residents also complained of the factory owner's cordial relationship with the local authority and Kedah state government exco members, and

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<sup>120</sup> Nambiar, P. (2016, May 26). *'Poisonous smell' from Penang factory harmless, says exco*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2016/05/26/poisonous-smell-from-penang-factory-harmless-says-exco/>

<sup>121</sup> Resident, interview, Bukit Mertajam, 31 January 2020.

<sup>122</sup> Consumers' Association of Penang. (n.d.). *Odour pollution: An environmental pollution that must be abated – government should serve people not corporations*. <https://consumer.org.my/odour-pollution-an-environmental-pollution-that-must-be-abated-government-should-serve-people-not-corporations/>

alleged that the factory staff approached the local authority to appeal against eviction despite clear violations of the law. The residents questioned the impunity that people caught running illegal operations seemed to have.

Finally, the factory was sealed by the authorities on 11 July 2019. However, residents reported that operations went on as usual the next day. On 15 July 2019, the local authority sealed more than 20 machines in the factory.<sup>123</sup> PTASSP was dissatisfied as the premises were still in operations and organised a protest in front of the factory in August. In September, the Sungai Petani Municipal Council (MPSPK), which is the local authority in charge of administering the town of Sungai Petani in the Kuala Muda district, ordered the factory to move out within 14 days. In a letter sighted by PTASSP, the company appealed for an extension to December 2019.<sup>124</sup> When enquires were made to Kedah government officers in early 2020 regarding the developments related to this factory, they laughed, noted that this was a famous factory, and said that the factory had been closed. An aquaculture project was to be developed in its place.

In February 2020, a resident living metres away from the factory noticed thick dark smoke being emitted from the factory compound. She decided to lodge complaints with the authorities, but finally gave up, bemoaning in frustration that:

We are being kick [*sic*] here there like a ball. First I informed one of the *pegawai* (officer) SWCorp that I know. He advised me to call JAS (DOE) and report it. Then I called up JAS. JAS told me to call up the fire department. Called up the fire department, they asked to call JAS.<sup>125</sup>

The facility continued to operate throughout the COVID-19 pandemic movement restrictions in 2020, to the despair of local residents. Figure 5.2 and 5.3 captured the factory's activities as shared by residents, where unidentifiable waste was seen being stockpiled and burnt on land categorised as agricultural land, right next to a residential area.

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<sup>123</sup> Simon Ooi Tze Min. (2019, July 15). *Operasi bersepadu JAS, MPSPK, PDRM di kilang kitar semula logam yg tidak berlesen di Taman Songket Indah*. [Image attached]. Facebook. <https://www.facebook.com/oitzemin/posts/10157438457111834>.

<sup>124</sup> PTASSP also furnished CCM records that linked the owners of the plastic recycling company involved in assault in Sungai Petani to this scrap metal recycling factory.

<sup>125</sup> Sungai Petani resident, phone interview, 16 February 2020.



**Figure 5.2: Factory processing scrap metal – Sungai Petani, Kedah, 14 June 2020**

Source: Residents



**Figure 5.3: Open burning by the same factory as documented by nearby residents – Sungai Petani, Kedah, 19 October (left) and 8 November 2020 (right)**

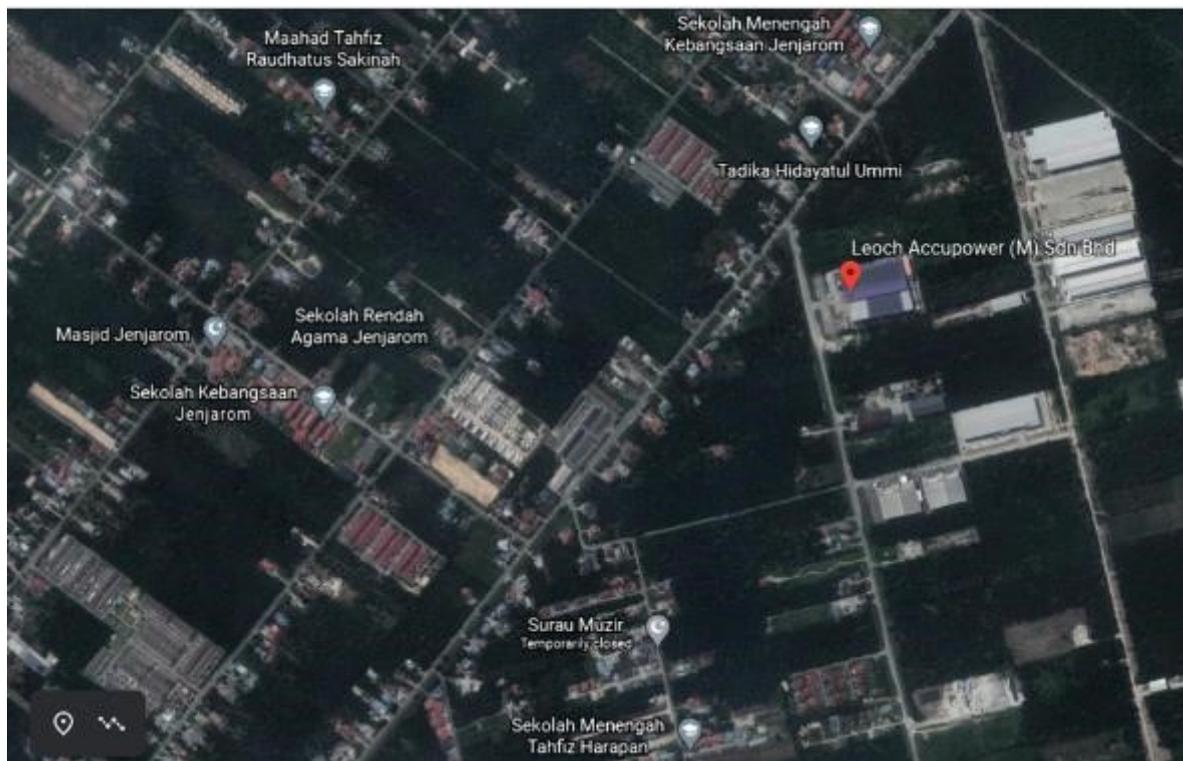
Source: Residents

#### **5.4 Jenjarom and Olak Lempit, Selangor**

In Jenjarom, Selangor, another factory threatened the peace of residents because planning permission was given indiscriminately by the local authority. This was a battery factory which began operating in 2014 on land within the zoning of medium industry instead of heavy industry, within a village, and close to schools (Figure 5.4). As with the first two cases, the residents together with PTASKL and other environmental groups mounted a long-drawn struggle against the factory, beginning in October 2018. Letters of complaints were sent to the authorities – the DOE, MDKL, and the Chief Minister’s Office – after the residents noticed something amiss about water discharge from the factory into nearby drains. They tested the

water and found it to be acidic. In February 2019, the factory management invited the residents for a dialogue. The residents refused to meet the factory, while wondering how the factory operator found out who made a complaint against them.

The residents' investigations led them to allege that the factory was found to be melting lead and recycling batteries, when the CCM report of this company showed that the nature of business is the manufacturing and trading of batteries. Finally, in March a dialogue session was held between the factory representatives, the authorities including local councillors, and the community. MDKL announced that it was revoking the business licence of the factory. However, after that the residents continue to observe ongoing operations in the factory. They then tested the water from the drains six times and found the readings to contain high levels of lead. They also tested soil samples as well as hair samples from 12 individuals, including factory workers. Hair samples from the factory workers and residents living close to the factory showed high levels of lead content, indicating lead exposure.



**Figure 5.4: The battery factory and schools in the vicinity**

Source: Google Earth (2020)

In April 2019, the Selangor exco for the environment visited the factory and then explained that the pollution occurred around the factory due to a fire incident in 2017. In June, the DOE provided a letter of support to the factory to commence operations. The factory then resumed operations under a TOL, to the dismay of the residents. Suspicions further arose when they allegedly observed the Member of Parliament for that area entering the factory alone. They then managed to collect more evidence that the factory was still melting lead and organised a

protest in front of the factory. In the following months, individuals from the Ministry of Home Affairs and the National Security Council reached out to the residents ostensibly to discuss about security and public peace, but the residents did not engage with them as they were fearful.

At the end of August, six agencies (DOE, DOSH, Selangor Health Department, Selangor Water Management Authority [LUAS], Minerals and Geoscience Department, Drainage and Irrigation Department [DID]) carried out investigations on whether the activities of the factory caused environmental pollution.<sup>126</sup> The report has not been made available to the residents despite their requests. Finally, in December 2019, the Selangor Economic Action Council (MTES) made the decision to revoke the business licence of the company. The factory was given a temporary operating licence for six months until end-April 2020 to move out, with only office administration allowed to be carried out.

As of November 2020, the factory has not moved out and checks with MACC revealed that an earlier report made with MACC and subsequent investigations found no elements of corruption. It was also revealed on 18 November 2020 that MPKL has received a new application from another company in October regarding the same premises. This company requested for approval to carry out operations related to battery manufacturing, and directors involved in the previous company were found to be involved in the new company.<sup>127</sup> Under the Kuala Langat Local Plan 2030, battery manufacturing is classified as heavy industry under C3 and should have a 500-metre buffer with residential areas. Instead of rejecting the application outright, MPKL requested that the company engage with the local community, the media and the DOE, as well as allow MPKL to carry out a site visit to monitor compliance with factory regulations. As of March 2021, the DOE has rejected any applications from the company, in a rare victory for residents.

Further upstream from Jenjarom, along the Sungai Langat, another community has been similarly plagued by pollution, but had been less successful in their struggle. A few hundred kilometres from their homes, a refinery carries out heavy industrial activity, situated in an industrial area demarcated for light and medium industry. The residents' complaints to the DOE began in 2015, and the complainants were informed that inspections by the DOE to the factory showed no violation of environmental laws. Nevertheless, checks with the DOE website showed that said company was fined in court in 2018 for not having proper air pollution controls.<sup>128</sup> The residents attempted to organise a protest but was warned by the police not to do so. One complainant also shared that he has been intimidated in various ways, with items

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<sup>126</sup> Bernama. (2019, April 23). *Selangor Exco: Battery factory to shift elsewhere if found causing pollution in Jenjarom*. New Straits Times. <https://www.nst.com.my/news/nation/2019/04/482303/selangor-exco-battery-factory-shift-elsewhere-if-found-causing-pollution>

<sup>127</sup> Document furnished by a resident, 20 November 2020.

<sup>128</sup> Department of Environment. (n.d.). Court case report for May 2018. <https://www.doe.gov.my/portalv1/en/info-laporan/paparan-kes-mahkamah/laporan-kes-mahkamah-bagi-bulan-mei-2018/323257>

thrown at his home, strange vehicles parking outside his house, police investigation into his complaints as a nuisance, and repeated offers made to purchase his house.

## 5.5 Proliferation of paper recycling factories

With a historical record of having questionable industrial projects approved,<sup>129</sup> it is not surprising that the communities in Kuala Langat are increasingly worried about massive new projects involving waste paper recycling. The Chinese government have signalled a likely all-out ban on the import of old corrugated containers (OCC) and almost all fiber grades in 2021, on top of the mixed paper ban in 2018.<sup>130</sup> Five pulp and paper giants from China have expanded their operations to Malaysia, with their investments and planned output summarised in Table 5.1.

**Table 5.1 Foreign Chinese Investment into Waste Paper Recycling in Malaysia**

| Company in China   | Company/Investment in Malaysia   | Details  |
|--|--|--|
| <b>Nine Dragons Paper (Holdings) Limited</b>   | <b>ND Paper (Malaysia) Sdn Bhd</b>   | <b>Kawasan Perindustrian Bentong, Pahang</b><br>- RM1.2 billion<br>- 480,000 tonne/year of deinked pulp  |
|  | <b>ND Paper Malaysia (Selangor) Sdn Bhd (NDP)</b>  | <b>Banting Industrial Park, Mukim Tanjung Dua Belas, Kuala Langat, Selangor</b><br>- RM4.2 billion<br>- 600,000 tonne/year of dry pulp board<br>- 1,460,000 tonne/year of high-strength packaging paper                                |
| <b>Shan Ying International Holdings Co Ltd</b><br>- Third largest paper and board company in China | Memorandum of Understanding signed with the <b>Sarawak State Economic Development Corporation</b> , witness by chief minister of Sarawak                   | <b>Samalaju Industrial Park, Bintulu, Sarawak</b><br>- USD1.8 billion (RM7.4 billion) investment<br>- 2,000,000 tonne/year containerboard mill   |
| <b>Lee &amp; Man Paper Manufacturing Ltd</b><br>- Second largest paper conglomerate in China       | <b>Lee &amp; Man Pulp Manufacturing (Malaysia) Sdn Bhd</b><br>- Senior representatives met with former MITI minister during his working visit to Hong Kong | <b>Selangor</b><br>- HK\$5.1 billion investment<br>- 550,000 tonne/year pulp mill<br>- 700,000 tonne/year containerboard mill  |
|  | <b>Best Eternity Recycle Technology Sdn Bhd (BERT)</b><br>- 100% owned by Grand Fortress Global Ltd, which is 100% owned by Lee & Man                      | <b>Mahkota Industrial Park, Banting, Selangor</b><br>- RM300 million investment (Phase 1)<br>- RM800 million investment (Phase 2)<br>- 800,000 tonne/year of wet pulp board<br>- 1,400,000 tonne/year of high-strength packaging paper |
| <b>Zhejiang Jingxing Paper Co, Ltd</b>   | <b>Jingxing Holdings (M) Sdn. Bhd (JXM)</b> signed with Lion Group, witnessed by Invest  | <b>Banting Industrial Park, Mukim Tanjung Dua Belas, Kuala Langat, Selangor</b><br>- USD299.4 million (RM1.3 billion) investment   |

<sup>128</sup> See also Bernama. (2020, September 27). *942 industrial premises polluted environment*. New Straits Times. <https://www.nst.com.my/news/nation/2020/09/627579/942-industrial-premises-polluted-environment>

<sup>130</sup> Staub, C. (2019, December 18). *Signals point to all-out recycled fiber ban in China - Resource Recycling*. <https://resource-recycling.com/recycling/2019/12/03/signals-point-to-all-out-recycled-fiber-ban-in-china/>

| Company in China   | Company/Investment in Malaysia   | Details  |
|--|--|--|
|  | Selangor and Selangor exco for investment.   | - 800,000 tonne/year pulpboard<br>- 600,000 tonne/year packaging paper   |
| <b>Zhejiang Element Holding Co., Ltd</b><br>- Part of Zhejiang Xinshengda Holding Group Co. Ltd.<br>(Zhejiang XSD) | Memorandum of Understanding signed with Invest Kedah Berhad, witnessed by former chief minister of Kedah and former exco for investment. | <b>Bukit Selambau Industrial Area, Kuala Muda, Kedah</b><br>- RM1.6 billion investment<br>- 700,000 tonne/year of craft liner board -<br>300,000 tonnes/year of wood pulp - 300,000 tonnes/year of special paper |

Source: Various news articles and EIA reports<sup>131</sup>

### *Banting, Selangor*

Three out of the seven factories listed in Table 5.1 are located close to each other, and Appendix E compiles information accessed from the EIA reports of these three factories on areas that residents are concerned about, as members of the public with no technical expertise in the area of paper waste recycling. All three factories have waste incinerators on-site, burning coal, sludge and other waste to generate power. All draw water from and discharge effluents to a section of the same river, Sungai Langat. The amount of wastepaper that needs to be imported to feed these factories is also a cause for concern.

Kuala Langat is now a municipality, and the population is only expected to keep growing. Within Kuala Langat, there are new major townships being developed – Bandar Saujana Putra, Gamuda Cove, Bandar Rimbayu and Eco Sanctuary. Figure 5.5 and 5.6 show the locations of three recycled paper mills in Banting alone. The construction of BERT’s facilities appear almost complete. JXM’s EIA report was approved in end 2020, while the EIA report of NDP is under review by the DOE. Figure 5.7 shows the land use map around these three factories,

<sup>131</sup> *Chinese Investment Flocks To Malaysia*. (2019, May 1). China Paper Online.

<http://en.chinapaperonline.com/news/2019/201905010910923022.html>;

Paper, E. P. (2019, September 27). *Nine Dragons to grow containerboard business in Malaysia*.

[https://www.euwid-paper.com/news/singlenews/Artikel/nine-dragons-to-grow-containerboard-business-in-malaysia.html?fbclid=IwAR0MeDtLSvQh15WXz\\_6CuG8C9zxjRwztpRlylNhpMxptJtG6uFm9Adoll70](https://www.euwid-paper.com/news/singlenews/Artikel/nine-dragons-to-grow-containerboard-business-in-malaysia.html?fbclid=IwAR0MeDtLSvQh15WXz_6CuG8C9zxjRwztpRlylNhpMxptJtG6uFm9Adoll70);

Paper, E. P. (2019, January 28). *Zhejiang XSD to build cartonboard mill in Malaysia*. <https://www.euwid-paper.com/news/singlenews/Artikel/zhejiang-xsd-to-build-board-mill-in-malaysia.html>;

Paper, E. P. (2019, September 27). *Nine Dragons to grow containerboard business in Malaysia*.

<https://www.euwid-paper.com/news/singlenews/Artikel/nine-dragons-to-grow-containerboard-business-in-malaysia.html>;

Paper, E. P. (2018, October 30). *Lee & Man to build new packaging paper mill in Malaysia*. <https://www.euwid-paper.com/news/singlenews/Artikel/lee-man-to-build-new-packaging-paper-mill-in-malaysia.html> ;

Ministry of International Trade and Industry. (2019, January 16-18). *Media Release*.

[https://www.miti.gov.my/miti/resources/Media%20Release/Media\\_Release\\_-\\_YB\\_Datuk\\_Darell\\_Leiking\\_Minister\\_of\\_International\\_Trade\\_and\\_Industry\\_Malaysia\\_Working\\_Visit\\_to\\_Hong\\_Kong\\_Special\\_Administrative\\_Region\\_and\\_Participation\\_in\\_the\\_3rd\\_Edition\\_of\\_the\\_Economic\\_Times\\_Asian\\_Busines.pdf](https://www.miti.gov.my/miti/resources/Media%20Release/Media_Release_-_YB_Datuk_Darell_Leiking_Minister_of_International_Trade_and_Industry_Malaysia_Working_Visit_to_Hong_Kong_Special_Administrative_Region_and_Participation_in_the_3rd_Edition_of_the_Economic_Times_Asian_Busines.pdf);

[YB Datuk Darell Leiking, Minister of International Trade and Industry Malaysia Working Visit to Hong Kong Special Administrative Region and Participation in the 3rd Edition of the Economic Times Asian Business.pdf](https://www.miti.gov.my/miti/resources/Media%20Release/Media_Release_-_YB_Datuk_Darell_Leiking_Minister_of_International_Trade_and_Industry_Malaysia_Working_Visit_to_Hong_Kong_Special_Administrative_Region_and_Participation_in_the_3rd_Edition_of_the_Economic_Times_Asian_Busines.pdf);

Invesk. (2020, February 11). *Kedah continues its investment momentum*.

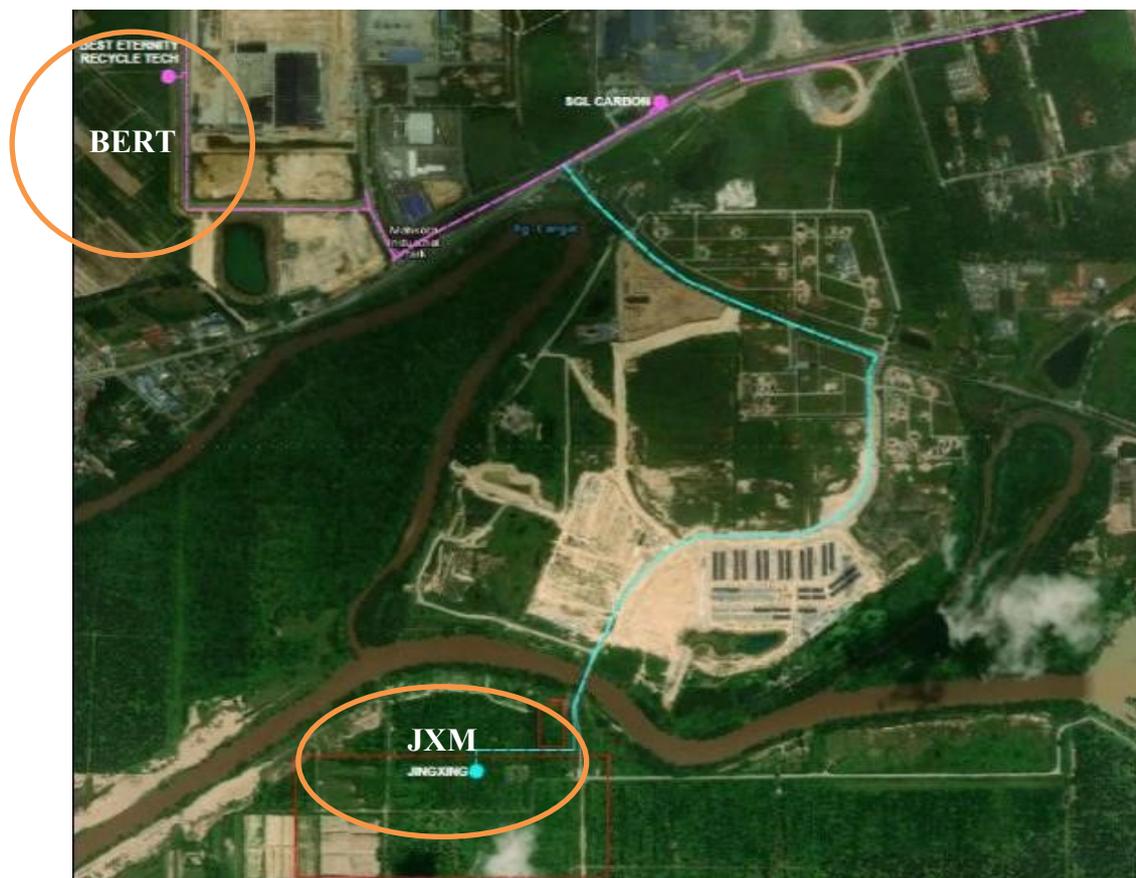
<https://www.investkedah.com.my/wp/kedah-continues-its-investment-momentum/> ;

Wahab, M. F. (2020, August 31). *Paper factory cuts short peace of neighbourhood*. TheStar.

<https://www.thestar.com.my/metro/metro-news/2020/08/31/paper-factory-cuts-short-peace-of-neighbourhood> ;

Prime Minister’s Office of Malaysia Official Website. (2021, March 2). *China's Nine Dragons Paper committed to increasing investment by RM5.4 bln in Malaysia - PM*. <https://www.pmo.gov.my/2021/03/chinas-nine-dragons-paper-committed-to-increasing-investment-by-rm5-4-bln-in-malaysia-pm/>

with residences, villages, schools and more, situated along the Sungai Langat. The government has yet to respond to public fears of the impact of these industries on the natural ecosystem and aquaculture activities in the river estuary of the Sungai Langat, as well as on the Labohan Dagang Water Treatment Plant.<sup>132</sup> Despite consecutive EIA reports showing that the river can handle effluent discharge from all the factories, the experiences of residents in Selangor in relation to water cuts throughout 2020 indicates that the authorities have yet to convincingly regulate river pollution.



**Figure 5.5: Locations of BERT and JXM**

Source: EIA report on DOE Website<sup>133</sup>

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<sup>132</sup> Discussions with local anglers and boatmen reveal that the fish stocks in Sungai Langat have been steadily declining in numbers and sizes over the past decade while freshwater prawns have almost disappeared due to pollution, as observed through the presence of oil layers and mucus-like substances in the river. See Ahmad Fariz Mohamed, Wan Zuhairi Wan Yaacob, Mohd Raihan Taha, and Abdul Rahim Samsudin (2009), S. Ahmad Fariz Mohamed, Chamhuri (2001, January 21-25) and Ahmed Minhaz Farid, Alam Lubna, Choo, Mohamed Che Abd Rahim, and Mokhtar Mazlin (2016) for scientific studies of the Langat basin.

<sup>133</sup> BERT EIA Report (2019), Figure 5.5.14, p. C5-38. [https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2020/01/13\\_Chapter\\_5-Project-Description.pdf](https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2020/01/13_Chapter_5-Project-Description.pdf).



**Figure 5.6: Proposed location of NDP south of JXM**

Source: EIA report on DOE website<sup>134</sup>

<sup>134</sup> ND Paper EIA Report Executive Summary (2020), p. 2. [https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2020/10/NDP-Executive-Summary\\_Infographic\\_compressed.pdf](https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2020/10/NDP-Executive-Summary_Infographic_compressed.pdf).



**Figure 5.7: Land use of 5-kilometre radius around NDP**

Note: Circles are not scaled to size of production plants

Source: EIA report on DOE website<sup>135</sup>

As with all the cases examined in this chapter, the residents living in the vicinity of BERT have been mounting a publicly reported fight against the factory since mid-2019, after BERT's EIA report was approved, without an official response to objections submitted by PTASKL in March and April 2019. The residents have been affected by BERT's sound, air and water pollution. As with the other factories, BERT did not adhere to any guidelines for a buffer zone. As a factory situated within an area under the zoning of heavy industry, the factory walls are only 40.6 metres from a school and a housing area as measured by residents (see Figure 5.8), which is clearly in violation of the Kuala Langat Local Plan 2030.

Attempts had been made to consult the public. MPKL organised a townhall meeting in May 2019 to meet residents who signed a petition against the factory in March. During this townhall, the residents were informed that the EIA report had been approved by DOE. They were also informed that once the DOE and other external departments approve the project, MPKL would process the legal approval unless there are major flaws. Another meeting was held in July 2020,

<sup>135</sup> ND Paper EIA Report Executive Summary (2020), p. 10. [https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2020/10/NDP-Executive-Summary\\_Infographic\\_compressed.pdf](https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2020/10/NDP-Executive-Summary_Infographic_compressed.pdf)

but the situation remains at an impasse. The community groups' main grouses on the lack of a buffer zone from the wall of the factory and the existence of an incinerator in the plant remain unaddressed, and the authorities and the factory representatives insist that they have gone by the book.

BERT was found to have violated environmental regulations in Malaysia and has been charged in court (see Table 5.2). They were also found by MPKL to be housing foreign workers in illegal squatters with squalid conditions, in a joint sting operation with the police, the Immigration Department, DOE, Kuala Langat Land and District Office, Tenaga Nasional Bhd and Air Selangor.<sup>136</sup> In addition, trial runs of production have begun, and workers alleged that the conditions of some of the raw materials imported are of poor quality (see Figure 5.9). Despite the promising action taken by the DOE in pressing charges against BERT, the local authority taking action against the illegal squatters, and actions taken by the factory to deal with noise and odour pollution, it remains a reality that residents are forced to live extremely close to a hazardous heavy industry. They also continue to report foul odours and noise pollution past midnight.



**Figure 5.8: Distance between heavy industry and a school**

Source: Residents

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<sup>136</sup> Two notices were issued under the Road, Drainage and Building 1974 Act and Trade, Business and Industry MDKL 2007 by-law. Wahab, M. F. (2020, August 31). *Paper factory cuts short peace of neighbourhood*. TheStar. <https://www.thestar.com.my/metro/metro-news/2020/08/31/paper-factory-cuts-short-peace-of-neighbourhood>

**Table 5.2: Court Cases and Offences by BERT under the EQA**

| Details   | Offence   | Sentence  |
|---|---|---|
| <p>Date of verdict:<br/>18 September<br/>2020</p> <p>Date of offence:<br/>20 August 2019</p> <p>Regulation:<br/>Section 31(1)<br/>dan section<br/>37(1), EQA<br/>1974</p> | <p><b>Charge 1: Failure to comply with Item 3.1 in Notice of Order Ref. No. (B) B 34/110/190/458 Jld. 1(10) dated 20 August 2019</b></p> <p>Land works and construction in the project site commenced although the Environmental Management Plan (EMP) report had not been approved by the DOE Selangor.</p> <p><b>Charge 2: Failure to comply with Item 3.4 in Notice of Order Ref. No. (B) B 34/110/190/458 Jld. 1(10) dated 20 August 2019</b></p> <p>Environmental Monitoring Report (EMR) has not been submitted to the DOE Selangor.</p>  | <p>Charge 1:<br/>Section 31:<br/>RM20,000/6-month<br/>imprisonment</p> <p>Charge 2:<br/>Section 37:<br/>RM1,000/1-month<br/>imprisonment</p> <p>Total: RM21,000</p>   |
| <p>Date of verdict:<br/>3 June 2020</p> <p>Date of offence:<br/>15 August 2019</p> <p>Regulation:<br/>Section 34A(7),<br/>EQA 1974</p>                                    | <p><b>Failure to fully comply with Conditions for the Approval of EIA Ref. No. JAS 341/110/000/098 issued on 12 April 2019.</b></p> <p>Condition No. 54: commenced land works and construction before obtaining EMP approval from the DOE Selangor.</p> <p>Condition No. 16: did not prepare surface runoff controls, erosion controls and sediment controls as stipulated in the EMP and failure to adhere to Guidelines on Land Disturbing Pollution Prevention and Mitigation Measures (LD-P2M2).</p> <p>Condition No. 62: did not submit Environmental Audit Report to the DOE Selangor every four months during construction from the starting date until the construction work is completed.</p> <p>Condition No. 63: did not submit Form EIA1-18 (Project Status Information Form), Form EIA2-18 (EIA Approval Conditions Compliance Reporting Form) dan Environmental Monitoring Report (EMR) every three months from the starting date of land works until project completion.</p> | <p>Charge 1:<br/>RM50,000/3-month<br/>imprisonment</p> <p>Charge 2:<br/>RM50,000/3-month<br/>imprisonment</p> <p>Charge 3:<br/>RM50,000/3-month<br/>imprisonment</p> <p>Charge 4:<br/>RM50,000/3-month<br/>imprisonment</p> <p>Total: RM200,000</p> |

Source: DOE website<sup>137</sup>

<sup>137</sup> Retrieved from <https://www.doe.gov.my/portalv1/wp-content/uploads/2020/10/Laporan-Mahkamah-September-2020.pdf> and <https://www.doe.gov.my/portalv1/wp-content/uploads/2020/07/Laporan-Mahkamah-Jun.pdf>



**Figure 5.9: Raw materials allegedly spotted in the compound of paper recycling facility – Banting, Selangor, 30 September 2020**

Source: Residents

It should be clarified that the residents are not against industrial development, much less the pulp and paper industry, but rather the fact that heavy industry was approved so close to them, and that the factories are dealing with waste products that have high risks of contamination. Fears centre on whether these recycling industries would end up generating even more waste and pollution, as proven by the situation in China. The case of BERT raised two important policy contradictions.

First, the KPKT minister mentioned that plastic waste imports should be allowed and that recycling facilities would be situated in heavy industrial zones. What good would that do if heavy industrial zones or factories involved in heavy industrial activities are situated next to, and even within, residential areas? Second, a certain percentage of contamination is allowable in the imported raw materials of these paper recycling factories, up to as high as 20%. The EIA reports explained that metals would be sent for recycling, while plastic would be used to produce refuse-derived fuel for thermal treatment plants or waste-to-energy incinerators. This begs the question of whether mixed plastic waste would be brought into the country under the guise of mixed paper, when the KPKT minister and former MESTECC minister had said that those materials are banned.

The increasing proposals for waste incinerators to be built is also questionable. In the past, residents in Kepong<sup>138</sup> and Broga<sup>139</sup> in Selangor had strongly objected to incinerators being built. Are the proposed incinerators mean for the disposal of domestic waste, or are they in preparation for imported waste?<sup>140</sup> That the EIA reports of the factories have been made

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<sup>138</sup> Malaysiakini. (2021, January 4). *Govt calls off incinerator plan in Kepong, examines other locations*. <https://www.malaysiakini.com/news/557541>

<sup>139</sup> Loong, M. Y and Cheah, R. (2007, July 6). *Broga incinerator project called off*. The Star. <https://www.thestar.com.my/news/nation/2007/07/06/broga-incinerator-project-called-off>

<sup>140</sup> See Khor, Y. (2019, June 03). *Incinerator Plans May Soften Malaysia's Approach on Waste Plastics*. <https://www.khor-reports.com/blog/2019/6/3/incinerator-plans-may-soften-malaysia-approach-on-waste-plastics>

available to community groups and this is a step in the right direction. More information must be forthcoming on development projects that will affect the people, especially if the projects are beside their homes. More consistent and effective public engagement with an independent panel of scientific experts trusted by all parties would help to alleviate public fears, as would more consistent enforcement efforts against those to violate the law.

China's ban on 24 types of waste in 2018 not only includes the ban of plastic waste, but also mixed paper waste.<sup>141</sup> Mixed paper waste was a cause of pollution as admitted by the Chinese government. In addition, in Vietnam where BERT's parent company Lee & Man had been located since 2016 (*Saigon Times*, 3 April 2017)<sup>142</sup> and Nine Dragons since 2008, the Vietnamese government announced that the country will no longer allow the import of mixed paper beginning 2022.

Since 2018, Vietnam has cracked down on the import of mixed paper from the US, reducing from 102,000 short tons in 2017 to 74,000 short tons in 2018 and 45,000 in 2019.<sup>143</sup> It is indeed worrying that Malaysia, with the complexities and challenges inherent in its monitoring and enforcement framework, is welcoming industries that bring in waste materials that strong centralised states like China and Vietnam have decided to ban, with the basis of the bans being the difficulty of controlling the smuggling of mixed waste into their countries and ensuing pollution.

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<sup>141</sup> Yiu, P. (2017, September 28). *China ban on waste imports leads to piles of paper abroad, surging prices in China*. Reuters. <https://www.reuters.com/article/us-china-hongkong-paperrecycling-idUSKCN1C30GR>

<sup>142</sup> Chanh, T. (2017, April 3). *Vietnam Lee & Man admits causing environmental pollution*. The Saigon Times. <https://english.thesaigontimes.vn/53262/vietnam-lee-man-admits-causing-environmental-pollution.html>

<sup>143</sup> Staub, C. (2020, November 3). *Another Asian country bans imports of mixed paper*. Resource Recycling. <https://resource-recycling.com/recycling/2020/11/03/another-asian-country-bans-imports-of-mixed-paper/>

## CHAPTER 6: SHARED PROSPERITY, WHOSE RESPONSIBILITY?

### SUMMARY

- The experiences of the local communities point to weak enforcement and likely abuses of power and corruption, which enabled illegal and criminal activity to take place around plastic recycling. Subsequently joined by other segments of society including the civil service, they had mounted an admirable fight not only against plastic pollution, but also against corruption, complacency, crime, and the climate crisis.
- Recommendations:
  - Continue the implementation of the National Anti-Corruption Plan (NACP) 2019-2023.
  - Enact a Right to Information Act and strengthen the Whistleblower Protection Act 2010.
  - Reintroduce local government elections.
  - Increase penalties for environmental pollution, enhance monitoring and enforcement efforts, and target anti-corruption measures among enforcement agencies.
  - Stop the importation of waste when the regulatory system is not prepared.
  - Develop a National Action Plan on Business and Human Rights.
  - Align economic planning and development more substantively with the Sustainable Development Goals.
  - Empower and embrace public participation and engagement in all aspects of governance to protect and promote the right to safe, clean, healthy, and sustainable environment.

### 6.1 Good governance and the right to a healthy environment

This report set out to explore the imported plastic waste crisis. The plastic recycling value chains were examined to assess the institutional and legal frameworks governing the chains as well as actions taken by the authorities. Drawing from a framework of good governance and

the right to a safe, clean, healthy, and sustainable environment, the findings of this report clearly illustrate that public sector capability and management, democratic accountability towards citizens, legal framework for development, information and transparency, and public confidence in state institutions are crucial not only to prevent corruption and facilitate sound business policies, but also to protect the right of people to a healthy environment. This report also highlights the interconnected nature of the economy, the environment and public health, and the need for more holistic and democratic governance in the country.

The Appendices at the end of this report provide comprehensive (but not exhaustive) accounts of actions taken by the local communities and the government to solve the plastic waste crisis. The effort put in by the people on a voluntary basis to carry out investigations, submit complaints, and follow up with the complaints deserves the highest commendation. Despite a slow start, the government had also gone to great lengths to seek solutions. When enquired what she thought if the BN administration had not lost federal power in 2018, an activist from PTASKL, despite being furious with the slow response to complaints, declared, “we would all be dead”.<sup>144</sup>

Government officers in Putrajaya and the state government officers interviewed observed that the problem has largely been addressed. They shared that other ASEAN countries had praised Malaysia in the handling of the issue, and the United Nations Environment Programme had awarded the DOE for their success in curbing the illegal trade of plastic waste at the 5<sup>th</sup> Asia Environmental Enforcement Awards. Nevertheless, ongoing complaints by the communities of open burning and air pollution indicate that the underlying problems which led to the plastic waste crisis remain.<sup>145</sup> In addition, more legal and illegal recycling factories of other types of waste such as hazardous WEEE and scrap metal are reported. The existence of illegal recycling facilities and the ease with which smuggling occurred (and continues to occur through false declarations of containers, according to industry insiders and enforcement officers) were enabled by several compounding factors.

### **6.1.1 Corruption and allegations of graft**

First were the elements of institutionalised petty corruption that enforcement agencies in Malaysia continue to be mired in. While documented evidence of money changing hands is difficult to obtain, stories and experiences abound of parties forced to cough up “duit kopi”. 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. PTASKL alleged that the DOE and MDKL officers were protecting the businesses, as many of their complaints were either faced with no action taken, or admission that facilities were unlicensed, with Temporary Operating Licences proceeded to be given to

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<sup>144</sup> PTASKL member, interview, Jenjarom, 12 January 2020.

<sup>145</sup> Meanwhile more illegal factories have been discovered. See Noor, Z. M. (2021, February 16). *Tiga syarikat buka kilang haram di Gurun*. Utusan Malaysia. <https://www.utusan.com.my/berita/2021/02/tiga-syarikat-buka-kilang-haram-di-gurun/>

the businesses. On more than one occasion, business owners contacted PTASKL and PTASK after complaints were made in confidence to the DOE regarding the polluting factories. This has also been experienced by other community groups in Kuala Langat.

Up north in Sungai Petani, a PTASSP member alleged that he was approached by a person linked to KPKT to stop opposing the import of foreign wastes, and to instead share the spoils in kickbacks of up to RM1 million paid by importers in exchange for AP approvals to import plastic waste.<sup>146</sup> Likewise, Greenpeace Malaysia reported “illicit flows of money to people in key positions and difficulties to get necessary AP without paying higher prices”, citing an anonymous and disgruntled solid waste sales manager (Greenpeace Malaysia, 2018, p. 20). In reality, there are no charges for the applications for APs according to a KPKT officer in Putrajaya, unless brokers were hired to prepare the relevant documentation and to submit hard copies to KPKT for approval.<sup>147</sup>

Implicating another politician and furnishing photographic evidence, PTASSP alleged that the CEO of a major plastic recycling company is the corporate advisor of the Sungai Petani Member of Parliament (MP). This company also provided in-kind donations such as school bags for the MP’s community outreach programme. When queried about his relationship with the CEO, the member of parliament said that he accepts advice and in-kind donations from all parties, declaring that “if anyone has evidence of me being involved in corruption, they can take me to court”.<sup>148</sup>

This CEO and the company have had their fair share of controversy. PTASSP alleged that this company is part of a syndicate of plastic recyclers with ties to businessmen from China. In 2017, the CEO was charged for harbouring undocumented migrant workers.<sup>149</sup> In 2019, Canadian journalist from CBC’s Marketplace went undercover in Sungai Petani as plastic waste exporters with a fake company.<sup>150</sup> Their footage captured workers processing plastic with no protective equipment. The said CEO offered to buy dirty plastics from the undercover journalists, encouraging them to lie on shipping labels. He admitted to receiving kickbacks for helping other companies to import the materials, as his company held an AP. No action has been taken against him thus far.

The issues faced by the residents amidst the flood of plastic waste imports are common grouses of petty corruption against local governments and law enforcement agencies. A state assembly representative shared that small businesses often refused to legalise their operations

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<sup>146</sup> PTASSP member, interview, Sungai Petani, 22 November 2019. Attempts were made to meet with the KPKT minister to seek clarifications on this but her office did not respond.

<sup>147</sup> KPKT officer, interview, Putrajaya, 1 July 2020.

<sup>148</sup> MP for Sungai Petani, interview, Sungai Petani, 17 February 2020.

<sup>149</sup> Ahmad, M. R. (2017, October 25). *Recycling company manager fined RM70,000 for harbouring 14 illegal immigrants*. New Straits Times. <https://www.nst.com.my/news/nation/2017/10/294989/recycling-company-manager-fined-rm70000-harbouring-14-illegal-immigrants>

<sup>150</sup> Szeto, E., Pedersen, K., Common, D. & Denne, L. (2019, September 27) *'Canadians would be highly shocked': Marketplace poses as fake company to expose illegal overseas recyclers*. CBC News. <https://www.cbc.ca/news/world/plastics-recycling-waste-overseas-marketplace-1.5292512>

due to high costs, and simply because it was cheaper to pay off enforcement officers whenever they conduct inspections.<sup>151</sup> While PTASKL accused local authorities of malfeasance and abuse of power, particularly in licensing and enforcement, PTASSP provided detailed examples of graft. Another PTASSP member shared that runners were collecting payments from the factories, up to RM10,000 to RM20,000 per month, and distributing the collections among various law enforcement agencies. Institutionalised corruption of this sort is not uncommon in Malaysia, and past investigations had revealed the prevalence of corruption within different government agencies, including the Kedah police station.<sup>152</sup>

In addition, PTASSP shared that several raids by authorities found factories devoid of activity, indicating that the operators could have been tipped off in advance. In February 2020, a raid was conducted on an illegal recycling plant deep inside an oil palm plantation in Bedong, a town close to Sungai Petani. Authorities had been gathering evidence on this factory since 2019. However, the place was found empty, with only some laundry that was hung out to dry.<sup>153</sup> Another similar case was reported in Klang in 2019.<sup>154</sup> In fact, a member of PTASKL claimed that foreign workers believed to be working in the plastic recycling factories were found playing basketball in her village on the day of a joint operation by the government. The workers said that they were told not to go to work.

Aside from the existence of illegal facilities, the PH administration was aware of other forms of unlawful conduct surrounding the industry. Plastic waste was being smuggled into the country. The ports were filled with shipping containers which held goods falsely declared as clean plastic which did not require APs, but in reality held plastic waste which should be declared under the HS Code 3915, requiring an AP.<sup>155</sup> The government also admitted that some

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<sup>151</sup> State Assembly representative, interview, Bukit Mertajam, 11 February 2020.

<sup>152</sup> The practice of businesses, legal or illegal, paying “fees” to enforcement officers has been reported by the press. *Malaysiakini* had ran reports on Road Transport Department officers soliciting bribes from transport companies (see Lu Wei Hoong. (2020, February 13). Institutionalised corruption in RTD grips logistics industry, turns clean firms dirty. *Malaysiakini*. <https://www.malaysiakini.com/news/510634>). In August 2020, a whistleblower complained about police and local council protection for illegal online gambling dens, leading to arrests of enforcement officers (see Anis, M. N. (2020, August 14). *MACC arrests MBSA director over alleged bribery*. *TheStar*. <https://www.thestar.com.my/news/nation/2020/08/14/macc-arrests-mbsa-director-over-alleged-bribery>). Prior to that, *The Star* exposed corruption among border officers and policemen involved in wildlife smuggling (see Yee, E., Shah, A., & Koonlachoti, C. (2019, September 25). *EXCLUSIVE: R.AGE undercover investigations expose international smuggling ring for endangered pangolins*. *TheStar*. <https://www.thestar.com.my/news/nation/2019/09/25/corruption-at-the-border>), and revealed that since 2012, three Malaysian policemen have been arrested for smuggling pangolins across the Malaysia-Thailand border including one officer who was arrested twice. Incidentally, all three policemen arrested had worked, or are still working, at the same police station, the Kedah state police headquarters, where illegal plastic recycling operations have taken root (see Trafficked to Extinction. (n.d.). <https://globalstory.pangolinreports.com/#malaysia-thai-border>).

<sup>153</sup> Sin Chew Daily. (2020, July 2). *藏油棕园内暗中操作·非法洋垃圾厂被查封*. [https://www.sinchew.com.my/content/content\\_2212643.html?fbclid=IwAR3jgpc\\_j87f1cW061VOFvApxBwCfRl4nDtrfZjsluxKjKoldgpJneSCMeQ](https://www.sinchew.com.my/content/content_2212643.html?fbclid=IwAR3jgpc_j87f1cW061VOFvApxBwCfRl4nDtrfZjsluxKjKoldgpJneSCMeQ)

<sup>154</sup> Chan, D. (2019, June 3). *MPK, DoE shut down illegal plastic waste plant in Teluk Gong [NSTTV]*. *New Straits Times*. <https://www.nst.com.my/news/nation/2019/06/493628/mpk-doe-shut-down-illegal-plastic-waste-plant-teluk-gong-nsttv>

<sup>155</sup> Yusof, A. (2019, April 23). *We will send back plastic waste smuggled into Malaysia: Environment minister*. *CAN News*. <https://www.channelnewsasia.com/news/asia/malaysia-send-back-smuggled-plastic->

of the 95 companies which had permits to import plastic waste in 2018 were subcontracting the foreign waste to unlicensed factories as they lacked the capacity to recycle such high volumes of plastic waste.<sup>156</sup> Table 6.1 provides a summary of the allegations that have arisen.

**Table 6.1: Summary of allegations of malfeasance and corruption related to plastic recycling in Malaysia**

| Allegations of poor monitoring and enforcement   | Allegations of corruption  |
|--|--|
| Smuggling of plastic waste into the country using various means such as the false declaration of goods.  | RM1 million paid by plastic waste importers to get APs.  |
| Main AP holder importing plastic waste and sending it to other factories to process (tonnage imported exceeds limit allowed under AP licensing).                     | Collusion of enforcement authorities at the port cannot be ruled out.  |
| Syndicates from China operating waste recycling value chains, Malaysians as local partners.  | Local enforcement agencies paid off to turn a blind eye to illegal activities, on occasion tipping off factories before raids. Bribes were allegedly offered to politicians not to conduct raids in Selangor. RM10,000 – RM20,000 were allegedly collected by runners from factories to distribute among enforcement agencies so as not to take action in Sungai Petani. |
| Factories operating without licences, proper health and safety regulations or pollution controls (open burning).   | Linkages between politicians and factories, including allegations that politicians are protecting factories with the excuse of generating economic opportunities.  |
| Factories resuming operations after getting raided and sealed. Use of generator/groundwater in factories that had their utilities cut during enforcement operations. |  |
| Factories involved in illegal dumping.   |  |
| Authorities slow to respond to complaints and reports  |  |

Source: Author’s compilation from interviews and news articles

There have been few publicly reported MACC investigations into how unlicensed operators set up their facilities with ease.<sup>157</sup> The only tell-tale sign that indicated the government’s awareness of petty corruption was the change of DOE directors at state and local branches

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[waste-yeo-bee-yin-11471454](https://www.malaysiakini.com/news/473494) and Bernama. (2019, April 24). *24 containers of dirty plastic from Spain smuggled into Port Klang*. <https://www.malaysiakini.com/news/473494>

<sup>156</sup> Ananthalakshmi, A., & Chow, E. (2018, October 25). *Swamped with plastic waste: Malaysia struggles as global scrap piles up*. Reuters. <https://www.reuters.com/article/us-malaysia-waste/swamped-with-plastic-waste-malaysia-struggles-as-global-scrap-piles-up-idUSKCN1MZ0P4>.

<sup>157</sup> A report was lodged in 2018 on the alleged illegal operation of a plastic recycling plant at Jenjarom, Kuala Langat but the Malaysian Anti-Corruption Commission (MACC) found no elements of corruption. Another man was arrested for receiving bribes related to the establishment of a recycling plant but the outcome of the investigation is unknown. (Bernama. (2019, June 9). *Customs to crack down on illegal plastic waste entry at ports*. <https://www.malaysiakini.com/news/478956>) Both PTASSP and PTASKL shared that they attempted to lodge reports with MACC. PTASKL was rejected by the MACC officers, saying they had no case, while PTASSP went through an NGO and did not hear from them.

across the country in 2019.<sup>158</sup> Thus far, no government officer has been held accountable for the devastating pollution and irreparable damage to environmental and human health caused by the high volume of imported plastics into the country. Corruption, with the exchange of money, is extremely difficult to prove without the assistance of informants or whistleblowers. This report can only compile allegations and anecdotal evidence.

This draws attention to the urgent need for effective whistleblower protection policies in Malaysia, if institutionalised corruption is to be seriously addressed. Besides that, the lack of transparency and availability of information impedes the efforts of the public to report on law-breaking behaviours. Even when the environmental action groups documented acts of pollution and reported them to the authorities, response letters often stated that the factories were found to be compliant with environmental laws, but provided no further information. The culture of secrecy surrounding public administration in Malaysia has also impeded the proper execution of the duties of the civil service.

The lack of engagement and openness between the government and the public have led to widespread distrust of official data and of government officers themselves. When public engagement sessions were held, the communities often bemoaned that the government sided with the businesses. On the other hand, the government (both political actors and civil servants) have been on the receiving end of so many brickbats that they tended to be demoralised by public perception of the government or held suspicions that community groups have ulterior motives. This culture of secrecy and suspicion needs to be addressed.

One area of not addressed in this report is the political-business nexus in Malaysia and the impact of these opaque business deals on the environment. This is an area of work that would require further research, as there have been several corroborated allegations of politicians visiting factories but not meeting the residents.

### **6.1.2 Complacency in monitoring and enforcement**

Next, the complex regulatory framework and multiple agencies across various levels of government have led to a lack of accountability among the public service. In this issue of plastic waste, the DOE said that “we can only act if there are elements of pollution, JPSPN is in charge of giving out APs”. JPSPN and local councils mentioned “as long as DOE provides the approval, we have to grant the licence/permit.” Meanwhile, Customs noted that “as long as the companies have an AP, we have to release the containers,” while the port management correctly noted “we are just in charge of running the port. Once Customs clears the shipment, we have to release it”.<sup>159</sup>

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<sup>158</sup> This information was revealed when attempts were made to secure interviews with DOE officers at state and local branches, and also shared by local communities. Petty or administrative corruption refers to everyday corruption or the abuse of power by public officials when interacting with citizens, such as bribery linked to law enforcement.

<sup>159</sup> Compiled from various interviews, 2019-2020.

Aside from that, an officer with MITI said, “our job is to bring in foreign direct investments. It is the duty of the DOE to protect the citizens from environmental harm. If the DOE finds a problem with the project, they should not approve it”,<sup>160</sup> while the DOE said, “we must approve the EIA reports sooner or later. The factories will just keep on applying.”<sup>161</sup> While the existence of multiple agencies allows checks and balances, the complex system also creates space for the passing of responsibility. For a project to commence, many levels of approvals are needed across various agencies. Yet, questionable projects such as the cases discussed in Chapter 5 were approved. An interviewee aptly said, “civil servants have been trained not to make mistakes, instead of to take the initiative.”<sup>162</sup>

The government, particularly the DOE, actively urges all to make official complaints about pollution, dumping, or burning incidences, while the MACC urges the public to submit complaints about corruption. However, community groups lament the lack of response from the authorities after complaints were made.<sup>163</sup> One activist claimed that there were standard responses given by the DOE despite complainants submitting videos or photographs of black smoke or questionable operations - “*tiada kesan pencemaran* [no traces of pollution]”, or “*kilang didapati ada lesen* [the factory is licenced]”.<sup>164</sup> Both PTASKL and PTASSP also reported that factories sealed by the authorities in enforcement operations continue to operate; this has been admitted by the authorities.<sup>165</sup>

In addition, the important role played by the local government in protecting the wellbeing of residents looms large over this issue. For this research, several attempts were made to contact various departments at the local councils of Sungai Petani, Kuala Langat, and Seberang Perai. Contact was also attempted with the offices of the presidents of local councils, as well as with some local councillors. In the end, all requests for interviews for the purpose of this research were ignored. Residents also shared that local councillors had said they were helpless against the illegal plastic factories, cementing the public perception of local councillors as corrupted political appointees who were subservient to politicians and businesses instead of representing the people.<sup>166</sup>

The capacity, capability, and competence of the public sector cannot be emphasised enough. While penalties for pollution can be increased in federal legislation and local government by-laws, if coordination and enforcement efforts are not enhanced, the legislations would not account for much. Where enforcement is lax, then the planners must step up and implement stringent standards when approving projects. A more sustainable model of development must

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<sup>160</sup> Government officer, interview, telephone, 1 March 2021.

<sup>161</sup> Government officer, interview, Sepang, 29 December 2020.

<sup>162</sup> Government officer, interview, teleconferencing, 3 February 2021.

<sup>163</sup> See Appendix A1 for PTASKL’s experience submitting complaints to the authorities and the responses received.

<sup>164</sup> PTASKL member, phone interviews, 2020.

<sup>165</sup> A. Ananthalakshmi & Emily Chow. (2018, October 25). *Swamped with plastic waste: Malaysia struggles as global scrap piles up*. Reuters. <https://www.reuters.com/article/us-malaysia-waste/swamped-with-plastic-waste-malaysia-struggles-as-global-scrap-piles-up-idUSKCN1MZ0P4>

<sup>166</sup> PTASKL member, phone interviews, 2020.

be developed for Malaysia. Even as the activists who exposed the plastic waste crisis received accolades globally, they remained under-recognised by the Malaysian government. Collaborative, consultative and truly participative models to enhance the monitoring and compliance of factories are absent, and government officers remain distant from the community groups they ostensibly serve. This pitting of the community against the government and business, the environment against the economy, is problematic and not sustainable.

### 6.1.3 Criminality and intimidation of activists

Weak law enforcement often leads to a proliferation of criminal activity. In Selangor, the community activists faced intimidation from gangsters; after the secretary of PTASKL brought journalists to investigate a factory which was believed to be processing imported plastic waste without an AP, she received death threats and had red paint splashed on her home. The perpetrators were identified as gang members and were arrested and charged in court,<sup>167</sup> but the person who hired the gangsters was never revealed. Media offices and Greenpeace Malaysia were also reportedly intimidated during the height of the plastic waste issue.<sup>168</sup>

PTASKL also faced gangster intimidation in Klang.<sup>169</sup> When driving around the factories, their members were harassed by men on motorcycles. When bringing journalists around Klang, the residents-turned-activists reported that workers at a recycling facility snatched their car keys while the boss warned and threatened them not to return. The same person later resorted to offering bribes so that investigations would cease (Greenpeace Malaysia, 2019, p.19).<sup>170</sup>

As with Selangor, gangsterism appeared rife among recycling operators in Sungai Petani. The plastic recycling company CEO from Sungai Petani who was captured in CBC Marketplace's footage was implicated in a massive fire which occurred at its factory in early 2019. In another tussle between the people, plastic recycling operators, and law enforcement officers, individuals linked to PTASSP were arrested one night over charges of arson.<sup>171</sup> PTASSP maintained that the individuals arrested were innocent and that the arrests made that night were forms of intimidation against the vocal group. It is also of note that, while only five companies in Kedah had been issued APs to import plastic waste as of September 2019, illegal dumpsites of all sizes had been discovered around Sungai Petani, including within factory

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<sup>167</sup> Chan, D. (2019, December 5). *Undeterred by threat, Pua calls for continued action to protect the environment*. New Straits Times. <https://www.nst.com.my/news/nation/2019/12/544970/undeterred-threat-pua-calls-continued-action-protect-environment>

<sup>168</sup> See Skuad Khas Harian Metro. (2019, June 28). *Gengster dah kacau*. MyMetro. <https://www.hmetro.com.my/utama/2019/06/469883/gengster-dah-kacau>, and Mohd Jamilul Anbia Md Denin dan Amirul Aiman Hamsuddin. (2020, July 04). *Upah samseng*. MyMetro. <https://www.hmetro.com.my/mutakhir/2020/07/596367/upah-samseng>

<sup>169</sup> PTASK member, interview, Kuala Lumpur, 2 January 2020.

<sup>170</sup> See also *Channel News Asia* (30 December 2019), (Mahmud, A. H. (2021, February 4). *Malaysia moves to reap the benefits of processing global plastic waste*. CNA News. <https://www.channelnewsasia.com/news/asia/malaysia-world-plastic-waste-recycling-china-11048810>

<sup>171</sup> Tan, G. (2019, November 28). *Activist nabbed over alleged arson*. TheStar. <https://www.thestar.com.my/news/nation/2019/05/12/activist-nabbed-over-alleged-arson>

grounds in industrial zones, where massive stockpiles of jumbo bags filled with plastic waste were clearly visible in the compounds of several factories.<sup>172</sup>

In another case, a factory owner in Sungai Petani was beaten up by illegal recycling plant operators after he filmed them continuing their operations even after their factory was sealed by the Local Authorities. The same people also threatened the then president of PTASSP to stop opposing the factories.<sup>173</sup> Even government officers are not spared, as revealed by SWCorp. Enforcement officers were often threatened when patrolling illegal dumpsites as the site operators are believed to be linked to gangsters and secret societies.<sup>174</sup>

The problems enumerated above are not new - smuggling, illegal factories, institutionalised corruption, complacent local authorities, gangsterism, political-business nexus and a lack of public access to information. Nevertheless, there is a key difference between the plastic waste crisis and other forms of petty corruption or malfeasance. In this case, there are direct consequences on human and environmental health. Corruption and/or complacency enabled this illicit transboundary trade of plastic waste, which have negative impacts on peoples' health and should the pollution continue unchecked, hold dire consequences for the climate.

The whole experience from 2018 to 2020 has deepened the trust deficit between the affected communities and the government. While the communities are quick to accuse the government of self-gratification and collusion with businessmen and gangsters at the expense of the environment, health and public interest in general, the government chastises the community groups as minority extremist voices with political motives, and of over-exaggeration and wrongful blaming of the government. This issue highlights the urgent need for the Malaysian government to implement the necessary law reforms and to institute a culture of openness instead of the culture of secrecy, towards good governance and the prevention of corruption.

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<sup>172</sup> Malaysiakini. (2019, September 22). *Five companies in Kedah issued with APs to import plastic waste - ministry*. <https://www.malaysiakini.com/news/492872>.

<sup>173</sup> A factory manager and driver pleaded guilty and were fined RM1,500 by the magistrate court for causing injury to the victim. They were also ordered to pay RM1,000 each as compensation to the victim (see The Sun Daily. (n.d.). *Factory manager, driver fined RM1,500 for causing injury to plant owner*. <https://www.thesundaily.my/local/factory-manager-driver-fined-rm1-500-for-causing-injury-to-plant-owner-JC1105193>). A third person, a security guard, was subsequently arrested (see Bernama. (2019, July 16). *Another suspect detained in factory manager assault case*. New Straits Times. <https://www.nst.com.my/news/crime-courts/2019/07/504710/another-suspect-detained-factory-manager-assault-case>). Gangsterism surrounding plastic recycling operations were recurring problems that informants from both Selangor and Kedah experienced. In Sungai Petani, the C4 Center team stopped by outside a factory that was allegedly operating without proper permits or pollution controls. Another vehicle soon pulled up and a man claiming to be the caretaker of the factory approached the team. This man was later identified by a resident as a member of a gang who consistently intimidated residents living around the factory. When surveying other factories in an industrial park, a man on a motorcycle holding a walkie talkie soon began tailing the vehicle. These incidences were informed to an officer from the Kedah state government, who defended the right of the factories to hire security personnel in response (Kedah state government officer, interview, Alor Setar, 11 February 2020).

<sup>174</sup> The Star Online. (2020, June 23). *SWCorp in battle against secret societies and gangsters*. <https://www.thestar.com.my/news/nation/2020/06/23/swcorp-in-battle-against-secret-societies-and-gangsters>

## 6.2 Recommendations towards just and sustainable development

The illegal waste trade is extremely difficult to monitor and control. The capacity of enforcement agencies in a developing country like Malaysia is clearly limited. This is where the international community plays a crucial role. In particular, western developed countries must take responsibility for the solid waste generated by their people and stop the export (legal or illegal) of non-recyclable or hazardous plastic waste. A complete ban on the export and import of mixed plastic waste should be considered. If a ban is not feasible, at the very least, exporting countries should institute controls that will only allow the export of waste with a maximum of 0.5% contamination rate, according to the Basel Convention. Allowing the continuous exports of mixed, contaminated waste will only lead to pollution in importing countries.

The role of the government in an economy and public sector management are complex issues that will require negotiation and renegotiation between multiple stakeholders over a long period of time. In Malaysia, several important legal reforms had been recommended in the past which the government had not undertaken. The significance of these reforms to protect the right of citizens to a healthy environment, and in fact the right to life, have increased over the years in the face of a climate crisis.

### 1. Combating corruption

Malaysia has been a signatory to the United Nations Convention Against Corruption (United Nations Office on Drugs and Crime, 2004) since 2003, which aims to:

- a) promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b) promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and
- c) promote integrity, accountability and proper management of public affairs and public property.

In line with its international commitments, the PH administration launched the National Anti-Corruption Plan (NACP) 2019-2023. The plan showed that the second highest public sector prone to corruption was enforcement, with 23.9% of the total complaints to the MACC from 2013 to 2018 related to enforcement officers. The Yang Di-Pertuan Agong emphasised the importance of anti-corruption efforts despite the change in administration of the country,<sup>175</sup> while the Perikatan Nasional government promised to continue implementing the NACP.<sup>176</sup>

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<sup>175</sup> Malaysiakini. (2020, May 18). *King urges new gov't to continue with anti-corruption plan*. <https://www.malaysiakini.com/news/526198>

<sup>176</sup> Idris, A. N. (2020, July 16). *PM Muhyiddin: Five Cabinet ministers yet to declare assets*. The Edge Markets. <https://www.theedgemarkets.com/article/pm-muhyiddin-five-cabinet-ministers-yet-declare-assets>

In November 2020, the Special Cabinet Committee on Anti-Corruption (JKKMAR) made promising progress in the government's commitment to improve good governance and integrity and combat corruption as outlined in the NACP. JKKMAR agreed with the recommendations by Customs to implement the Authorised Economic Operator (AEO) programme to improve industry compliance, security and trade facilities at the border involving export and import matters. To increase the effectiveness of disciplinary action in the civil service, the meeting also agreed for discussions to be held between the MACC with the Chief Secretary to the Government and the Attorney General's Chambers to enable reports by the MACC and Enforcement Agency Integrity Commission (EAIC) to be used as evidence in disciplinary proceedings.<sup>177</sup>

Greenpeace Malaysia (2020) called for a reactivation of the environmental corruption initiative by the Malaysian Anti-Corruption Commission (MACC). In the face of the increasing risk of pandemics and climate crisis brought upon by environmental destruction, recognising the impact of corruption on the environment and taking necessary measures are more important than ever (Dinh, 2012; Terekhova, 2012). In 2017, the MACC reportedly set up the Environmental Protection and Anti-Corruption Caucus with NGOs and environment experts,<sup>178</sup> while in end-2019, the MACC announced the development of a comprehensive strategy to address lapses in enforcement in relation to environmental issues.<sup>179</sup> The progress of these initiatives are unknown, but it is imperative that the MACC revive them.

Corrupt practices undermine all progress made in terms of legislative reforms or monitoring and enforcement mechanisms. Similarly, at the global level, if the illicit transboundary trade and the false declaration of plastic waste are not tackled, the effectiveness of the Basel Convention amendments would be severely constrained, as Article 9 of the Convention acknowledges. Malaysia must lead ASEAN in combating illegality and corruption, through the ASEAN Cooperation on Environment and the ASEAN Working Group on Chemicals and Waste, to ensure successful implementation of their policies.

### *Empowering citizens' right to information and protecting whistleblowers*

Tackling corruption must come hand-in-hand with enabling legislations to empower all stakeholders to speak up against corrupt practices. Widiastuti, Simons, Noorlander, and Randhawa (2007) made important recommendations in their book, *A haze of secrecy: Access*

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<sup>177</sup> Pejabat Perdana Menteri Malaysia Laman Web Rasmi. (2020, November 19). *Kenyataan Media mengenai Mesyuarat Jawatankuasa Khas Kabinet Mengenai Antirasuah (JKKMAR) Siri 13*. <https://www.pmo.gov.my/ms/2020/11/kenyataan-media-mengenai-mesyuarat-jawatankuasa-khas-kabinet-mengenai-antirasuah-jkkmar-siri-13-2/> and Bernama. (2020, November 19). *JKKMAR agrees to establishment of Code of Duties and Functions of Polsecs - PMO*. <https://bernama.com/en/general/news.php?id=1903262>

<sup>178</sup> Bernama. (2017, April 3). *MACC sets up EPACC to tackle corruption, abuse of power involving environment*. New Straits Times. <https://www.nst.com.my/news/2017/04/226969/macc-sets-epacc-tackle-corruption-abuse-power-involving-environment>

<sup>179</sup> Lee, S. (2019, September 28). *MACC shifts to natural resources*. TheStar. <https://www.thestar.com.my/news/nation/2019/09/28/macc-shifts-to-natural-resources>

*to environmental information in Malaysia*, namely the need for: An access to information law and a revision of secrecy legislations to promote a culture of openness and transparency; a whistleblower protection legislation to encourage people to speak up against corruption and demand accountability; and improved environmental legislation with stronger disclosure provisions. The book also called for improved EIA practices and public education on pollution and natural disasters.

Greenpeace Malaysia (2020) also made similar recommendations on the right to information, and also called for an inclusive rehabilitation plan for the polluted sites by KASA and health impact studies by the Ministry of Health. The outcomes of these actions must also be made publicly available. While many ministries have a Chief Information Officer, the role of said officer remains unknown. A transparent regulatory regime is the key to building confidence in public institutions and creating an evidence-based approach to decision-making, whereby the evidence can be trusted by the government, businesses, and the people.

## ***2. Overcoming complacency with local government elections***

The plastic waste crisis highlighted the need for local government elections to empower policymaking and decision-making at the lowest tier of government to increase accountability. With the current model of politically appointed part-time local councillors, instead of being directly accountable to the people they serve, the councillors are accountable to the people who appointed them. A larger cause for concern is the avenues for graft that a local councillor is exposed to, as one responsible for the approval of planning permissions without the need to be accountable to voters.

Based on the experiences of the communities, local councillors had been unwilling or unable to take any concrete action against illegal plastic recycling activities. This was despite the local authorities holding the power to approve business licences, to stop nuisances to the public, and even to enter premises for inspection, according to the Local Government Act 1967. This serves to disempower local communities from actively engaging with the local government. Nevertheless, there exists one key impediment to the powers of the local authorities. Section 104 of the Act states that “a local authority may, by by-law, rule or regulation prescribe for the breach of any by-law, rule or regulation a fine not exceeding two thousand ringgit or a term of imprisonment not exceeding one year or to both...”. This limit must be increased to empower local governments in carrying better law enforcement.

Based on the experience of the plastic waste crisis, Malaysia should not allow the import of waste for processing when the regulatory frameworks and enforcement mechanisms are clearly not ready. While a complex regulatory framework increases red tape for businesses, the government must walk a fine line between regulating industry and promoting a business-friendly environment, between protecting public interest and ensuring that the multitude of regulations do not lead businessmen to evade the law. A Selangor state officer admitted that

industry subsidises residential areas when it comes to the running of a local government.<sup>180</sup> Even so, the residents should not be asked to put their health on the line to accommodate industrial development.

### *3. Tackling environmental crimes and pollution*

In February 2020, the former environment minister announced that the government hoped to amend the EQA within the year, which may result in a new act to monitor pollution more systematically and to ensure that punishment for environmental crime is commensurate with the crime committed.<sup>181</sup> The current minister reiterated that amendments to the EQA would see higher compounds and fines against those who caused pollution, and for those found guilty to bear the costs of cleaning up, and the amendments would be tabled in Parliament in 2021. The proposed amendments include increasing fines from RM100,000 to RM10 million for those responsible for water pollution and to increase the prison sentence to 15 years from one year under the Water Industry Act, and from RM500,000 to RM10 million under the EQA.<sup>182</sup>

KASA has formed a dedicated task force comprising the DOE, SPAN, the Biosafety Department, and the police to investigate environmental-related crimes and expedite action against perpetrators. The task force empowers the police with the power to act through the EQA, the Water Services Industry Act and the Biosafety Act.<sup>183</sup> Importantly, the task force must be trained to recognise various forms of pollution. More stringent penalties must also be instituted against the illegal dumping of waste on land. The DOE should also take into account the loading capacity of rivers when approving industrial projects. This is particularly important around the Sungai Langat where the three massive paper recycling factories are located, downstream from a steel factory.

Industry players in plastic recycling was engaging with the former federal government to push for better collection of recyclable waste through separation-at-source policies, as well as for Extended Producer Responsibility (EPR) to better regulate and accurately attribute the costs of waste management. Due to the change of federal government, the future of the law reforms and policy regarding plastic waste is uncertain.

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<sup>180</sup> Selangor State exco, interview, Shah Alam, 14 September 2020.

<sup>181</sup> Devi, V. (2020, February 23). *Yeo: Govt hopes to amend Environmental Quality Act by this year*. TheStar. <https://www.thestar.com.my/news/nation/2020/02/23/yeo-govt-hopes-to-amend-environmental-quality-act-by-this-year>

<sup>182</sup> Yunus, A., & Hana Naz Harun and Teh Athira Yusof. (2020, November 4). *Drop it! 61 premises charged over water pollution*. New Straits Times. <https://www.nst.com.my/news/nation/2020/11/637913/drop-it-61-premises-charged-over-water-pollution>, and Bernama. (2020, October 13). *Tabling of Amendment to Environmental Quality Act before year-end. - Tun Ibrahim*. Astro Awani. <https://www.astroawani.com/berita-malaysia/tabling-of-amendment-to-environmental-quality-act-before-year-end-tuan-ibrahim-263318>

<sup>183</sup> Anis, M. N. (2020, September 14). *Environmental criminals beware*. TheStar. <https://www.thestar.com.my/news/nation/2020/09/15/environmental-criminals-beware>

#### 4. Mitigating climate change: Sustainable development, business, human rights

The Government of Malaysia has expressed commitment to the Sustainable Development Goals (SDGs), of which Goal 16 focuses on promoting “peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”<sup>184</sup> The SDG targets particularly relevant for environmental governance and anti-corruption are:

- a) Target 16.5 – Substantially reduce corruption and bribery in all their forms.
- b) Target 16.6 – Develop effective, accountable and transparent institutions at all levels.
- c) Target 16.7 – Ensure responsive, inclusive, participatory and representative decision-making at all levels.
- d) Target 16.10 – Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

In addition, under the late Liew Vui Keong, Minister in the Prime Minister’s Department (Law and Parliamentary Affairs), the federal government made a policy commitment to initiate the development of Malaysia’s National Action Plan (NAP) on Business and Human Rights (BHR),<sup>185</sup> framed by the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (OHCHR, 2011, p. 1) in the recognition of:

- a) states’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) the role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and
- c) the need for rights and obligations to be matched to appropriate and effective remedies when breached.

On 16 October 2020, the government of Japan launched the country’s first NAP on BHR, only the second NAP on BHR to emerge from Asia after Thailand. This is an opportune moment for Malaysia to join Thailand and Japan in leading the push towards responsible business practices in Asia.

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<sup>184</sup> United Nations Department of Economic and Social Affairs. (n.d.). *Goal 16*. <https://sdgs.un.org/goals/goal16>.

<sup>185</sup> Legal Affairs Division, Prime Minister’s Department. (n.d.). *Keynote Address*. [https://www.amerbon.com/wp-content/uploads/2019-LIEW-Keynote-Address\\_National-High-Level-Dialogue-on-BHR.pdf](https://www.amerbon.com/wp-content/uploads/2019-LIEW-Keynote-Address_National-High-Level-Dialogue-on-BHR.pdf)

The current Malaysian government has outlined a Shared Prosperity Vision 2030 to restructure Malaysia's development priorities over the next ten years.<sup>186</sup> Guiding Principle 15 on "Sovereignty and Sustainability" declared that "the implementation of sustainable socioeconomic development should consider environmental preservation and natural resources to meet the needs of present and future generations" (p.5-20). To achieve this goal, policymaking cannot focus only on industrial development and economic growth, solving pollution and other environmental problems reactively.

In the face of a climate crisis, it is imperative that the government institutes a whole-of-society and whole-of-government approach for policymaking, embracing 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. Economic development, and town and country planning, must take into account future environmental risks. 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.

The experiences of communities reported in this report underscore the significance of these international standards for human rights and development. However, the macro-level framing do not benefit local communities if they are not translated at the level of local governments. Every level of the government has a duty to protect and promote the rights of all citizens to an environment free of pollution. While river pollution has led to much public outcry in Selangor,<sup>187</sup> the consequences of air pollution on public health are less tangible and more difficult to quantify. As a result, the health impacts of air pollution from irresponsible industrial practices have often been overlooked by policymakers. The need to address air pollution has been made more urgent during the current pandemic; research shows that the death rates from COVID-19 were higher in places where people had prolonged exposure to high levels of air pollution (Kumar, Burston, & Karliner, 2020; Ogen, 2020; Wu, Nethery, Sabath, Braun, & Dominici, 2020).

In sum, weak institutions, poor governance, and corruption have detrimental effects on human and environmental health, clearly demonstrated by the plastic waste crisis in Malaysia. The federal, state, and local governments, together with all citizens, must continue to strive for democratic and accountable governance, as well as uphold the right to information, public participation, and a healthy environment.

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<sup>186</sup> See Economic Planning Unit. (n.d.). *Shared Prosperity Vision*. <http://www.epu.gov.my/sites/default/files/2020-02/Shared%20Prosperity%20Vision%202030.pdf>

<sup>187</sup> Keeton-Olsen, D. (2020, December 23). *Pollution, water cuts strengthen calls for environmental law reform in Malaysia*. Mongabay. <https://news.mongabay.com/2020/12/pollution-water-cuts-strengthen-calls-for-environmental-law-reform-in-malaysia/>

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