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Legislative leadership on environmental issues

Dr Petra Alderman

November 2022

DLP

UNIVERSITY OF BIRMINGHAM

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WFD

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Executive summary

Environmental issues are becoming increasingly hard to ignore. More extreme weather patterns, rising sea levels and wide-spread pollution complicate everyday lives of millions of people around the world, but formal environmental action lags behind what scientists often deem as necessary to stop the pace of environmental decline. This raises concerns that the longer we wait to take formal environmental action, the more likely we are to find ourselves in crisis conditions that require swift environmental action at the expense of democratic governance. There are good reasons to worry as research indicates that 'authoritarian environmentalism' does not lead to optimal policy outcomes or problem-free implementation.

Legislatures play an important role in policymaking: they represent the public interest, hold governments to account and scrutinise legislation to ensure better policy outcomes that are based on consent rather than compliance. Yet, there is clear evidence that legislatures are already getting bypassed when it comes to environmental policymaking. Top-down environmental action that avoids legislative scrutiny, however, might be a poor substitute for quality and long-term sustainability. Instead of pitting swift environmental action against democratic governance, it is important to consider the following questions:

1. What role do legislatures play in environmental policymaking?
2. To what extent does this role vary between different regime types?
3. What are the main enablers and barriers to legislative action on environmental issues?
4. What can be done to support legislative leadership on environmental issues?

To examine the extent to which legislatures protected the environment, the Westminster Foundation for Democracy, the Developmental Leadership Programme and the International Development Department at the University of Birmingham conducted a study of single-use plastic (SUP) bans in 32 countries focusing on the following three indicators: a) whether a country has a legally binding SUP ban; if it does, b) what scope it has; and, c) how it was enacted. Data on these indicators was collected between February and April 2022 from publicly available sources, including government websites and legal repositories. Three in-depth case studies were conducted in Barbados, Kenya and Thailand to complement this data and illustrate the different levels of legislative involvement in enacting SUP bans and their outcomes. The study reveals that:

- There is little variation in the uptake of legally binding SUP bans across different regime types.
- Electoral and closed autocracies tend to ban fewer SUPs than liberal democracies, but they are more ambitious with regards to the scope of banned activities.
- Fines are by far the most popular penalty for contravening SUP bans across all regime types.
- Electoral democracies and electoral and closed autocracies prefer a regulatory as opposed to legislative route for enacting their SUP bans.
- SUP bans enacted through a legislative process are often more robust and sustainable regardless of the level of legislative scrutiny.

These findings suggest that legislatures can play an important role in environmental policymaking and that promoting swift environmental action at the expense of democratic governance does not always pay dividends. Inspiring more legislative action on SUPs and other environmental issues is not easy as there are several barriers that can prevent effective legislative involvement regardless of a specific regime type. These include weak parliaments, legal frameworks designed to prevent effective legislative action, political partisanship, and strong industry interests. To overcome these barriers, the study recommends:

- **Inclusion**. More opportunities for stakeholder consultations that include legislators and not just government representatives are required to co-create solutions to environmental issues.
- **Training**. MPs interested in environmental issues should be identified and trained in leadership skills.
- **Advocacy**. Structural and legal provisions designed to keep legislatures weak should be identified and changed.
- **Investment**. Public awareness and education campaigns should be supported in order to create public pressure and protect legislators from industry interests.
- **Democracy**. Provision of environmental support and funding should go hand in hand with upholding legislative processes.

Introduction

The notion that 'environmental authoritarianism' might be better suited to tackling environmental issues than democratic governance has become a hotly debated topic in public and academia.[1] Yet there have been few systematic studies of this topic based on cross-regional data. Our report provides valuable insights into this question – and to the broader role of legislatures in providing leadership on environmental issues, by examining formal environmental action across different regime types. As a top-down, non-participatory mode of governance, 'environmental authoritarianism' relies on little legislative involvement, or indeed oversight.[2] While this might result in more responsive environmental policymaking, the same might not be true when it comes to its quality or long-term sustainability.[3]

Environmental policies entail considerable social and economic costs and can be difficult to implement without political support, public buy-in and stakeholder engagement. Existing research suggests that successful leadership in any area of policymaking, including the environment, 'is often about winning consent rather than securing compliance.'[4] While legislative involvement creates opportunities for negotiation and compromise that might increase the likelihood of consent, such opportunities might be absent in the case of a unilateral government action that bypasses or excludes legislatures in the name of swift environmental action. To examine the extent to which legislatures have protected the environment by passing key environmental legislation, this report asks the following **research questions**:

1. What role do legislatures play in environmental policymaking?
2. To what extent does this role vary between different regime types?
3. What are the main enablers and barriers to legislative action on environmental issues?
4. What can be done to support legislative leadership on environmental issues?

Given the scope of environmental issues faced by governments the world over, we narrow the focus of this report on the issue of single-use plastics. In recent years, plastic waste pollution has come to the fore of public and government attention as images of once pristine beaches covered in often single-use plastic bags and marine wildlife ensnarled in pieces of single-use plastics flooded

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[1] For example, see Ross Mittiga, 'Political Legitimacy, Authoritarianism, and Climate Change,' *American Political Science Review* (2021): 1-14; Mark Beeson, 'The coming of environmental authoritarianism,' Environmental Politics 19, no.2 (2010): 276-94; Heejin Han, 'Authoritarian environmentalism under democracy: Korea's river restoration project,' *Environmental Politics* 24, no.5 (2015): 810-829; Robert Looney, 'Democracy Is the Answer to Climate Change,' *Foreign Policy*, 1 June 2016, https://foreignpolicy.com/2016/06/01/democracy-is-the-answer-to-climate-change/.
[2] Bruce Gilley, 'Authoritarian environmentalism and China's response to climate change,' *Environmental Politics* 21, no.2 (2012): 288.
[3] Han, 'Authoritarian environmentalism,' 822-823.
[4] OECD, *Making Reform Happen: Lessons from OECD Countries* (Paris: OECD Publishing 2010), 18, https://read.oecd-ilibrary.org/economics/making-reform-happen_9789264086296-en#page7

the Internet. The global Covid-19 pandemic has further exacerbated this problem. Single-use personal protective equipment, such as gloves and face mask, made of or containing plastics have become part of our everyday lives, leaking into the natural environment.[5]

Single-use plastics are only one part of the broader plastics problem, but they present a particular environmental challenge: they are thin, hard to recycle and unsuitable for repeated use. There is little academic consensus on how best to tackle them.[6] Governments have multiple policy options, ranging from outright bans, through standard regulations and taxes to voluntary campaigns and enhanced producer responsibility schemes. Given that no single policy option can fully resolve this problem, and countries often adopt multiple approaches to tackling single-use plastics, cross-national policy comparisons can be challenging as different policy options cannot be compared like for like. Because of this, we focus on just one policy option: single-use plastic (SUP) bans.

SUP bans are a tempting policy option in that they try to eliminate certain SUPs altogether rather than focus on their management post-consumption, but their effectiveness is never guaranteed.[7] They might not lead to a long-term change in consumer behaviour but rather a shift to another single-use item which moves the problem from one area of environmental concern to another.[8] They might also become a form of virtue signalling rather than an act of committed environmental action. They attract attention and signal a level of commitment that the other policy options and instruments, such as fees and regulations, do not. But SUP bans come in all shapes and sizes, and while they are frequently announced they are not always implemented. In this report, we find that SUP bans enacted through a legislative process are often more robust and sustainable that those that did not go through such a process.

Single-use plastic bans: the legislative landscape

Out of the 32 countries in our sample, 20 countries (63%) have some form of a legally binding national (for unitary states) or federal SUP ban, as illustrated by Figure 1. In the remaining 12 countries (37%),

[5] For example, see Krishna Priyadarshini Das, Deepika Sharma, Sampa Saha and Bhabani K. Satapathy, 'From outbreak of Covid-19 to launching of vaccination drive: invigorating single-use plastics, mitigation strategies, and way forward,' *Environmental Science and Pollution Research* 28, no.40 (2021): 55811-55845.
[6] Doris Knoblauch, Linda Mederake and Ulf Stein, 'Developing Countries in the Lead – What Drives the Diffusion of Plastic Bag Policies?' *Sustainability* 10, no.6 (2018): 3; Kim Borg, Alyse Lennox, Stefan Kaufman, Fraser Tull, Renee Prime, Luke Rogers and Emily Dunstan, 'Curbing plastic consumption: A review of single-use plastic behaviour change interventions,' *Journal of Cleaner Production* 344, (2022): 9.
[7] Tobias Dan Nielsen, Karl Holmberg and Johannes Stripple, 'Need a bag? A review of public policies on plastic carrier bags – Where, how and to what effect?' *Waste management* 87, (2019): 434.
[8] Time Herberz, Claire Y Barlow and Matthias Finkbeiner, 'Sustainability Assessment of a Single-Use Plastic Ban,' *Sustainability* 12, (2020): 14.

we could find no such bans.[9] This does not mean that these countries have no sub-national or state-level (for federal states) SUP bans or that they are doing nothing about single-use plastics. In Australia and the United Kingdom, SUP bans are enacted on national and sub-national level as both countries have a decentralised approach to plastic waste management.[10] In the United States, a proposed legislation that contains a phased-out ban on several types of SUPs is pending in Congress, while California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon and Vermont have enacted state-level legislation that bans single-use plastic bags.[11] In Thailand and Singapore, there are long-term policy plans addressing single-use plastics: both include targeted SUP bans but in the case of Thailand they have no base in law, while in the case of Singapore they are also limited to government-operated hawker centres.[12]

Our list of legally binding SUP bans omits bans on microbeads as they are often regulated by a separate legislation to other single-use plastics, such as bags, cutlery, cups, or food containers. Because of this, we have coded Argentina, a country with a legally binding federal ban on microbeads but no other types of SUPs, into the 'no ban' category.[13]

Despite the limited size of our sample, there is an interesting regional variation in the incidence of legally binding SUP bans (Figure 2): 75% of countries in Europe and Africa have legally binding SUP bans compared to 67% of countries in Asia & the Pacific and 20% of countries in the Americas & the Caribbean. While it might be tempting to explain some of this regional variation in development terms, there is little evidence in our sample that higher income levels would lead to higher incidence of legally binding SUP bans (Figure 3). In fact, 80% of lower-middle- and low-income counties have legally binding SUP bans. This is the highest percentage across all income

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[9] The data on legally binding SUP bans were collected throughout February, March, and April 2022. Any bans enacted after this period would not have been included.

[10] There is some debate about the effectiveness of this approach to environmental legislation as the devolution of responsibilities might complicate its implementation. In the UK, for example, the ambitions of Scottish and Welsh governments in banning more SUPs than England might be tempered by the Internal Markets Act 2020 that stipulates that all goods on the UK market should be able to be sold freely in all of its constituent parts. See OECD, *Making Reform Happen*, and 'Plastics and Packaging Laws in the United Kingdom,' *CMS*, 10 June 2021, https://cms.law/en/int/expert-guides/plastics-and-packaging-laws/united-kingdom.

[11] The Break Free From Plastic Pollution Act of 2021 was introduced to the United States Congress on 25 March 2021, its progress can be tracked on the official Congress website. See https://www.congress.gov/bill/117th-congress/senate-bill/984/all-info#:~:text=Introduced%20in%20Senate%20(03%2F25%2F2021)&text=This%20bill%20sets%20forth%20requirements,or%20compost%20products%20and%20materials. For information on state action on single-use plastic bags across the United States, see 'State Plastic Bag Legislation,' National Conference of State Legislatures, last modified 8 February 2021, https://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx#enacted.

[12] Thailand's plan is called the Roadmap on Plastic Waste Management 2018-2030. A short infographic summary can be accessed in English from https://www.pcd.go.th/wp-content/uploads/2021/10/pcdnew-2021-10-19_08-59-54_995414.pdf; Singapore's plan is called Zero Waste Masterplan and can be accessed in full from https://www.towardszerowaste.gov.sg/files/zero-waste-masterplan.pdf.

[13] 'Policies, regulations and strategies in Latin America and the Caribbean to prevent marine litter and plastic waste,' Information Report to the XXII LAC Forum of Ministers of Environment, United Nations Environment Programme UNEP – Latin America and the Caribbean Office, 13 January 2021, 37, https://wedocs.unep.org/bitstream/handle/20.500.11822/34931/Marine_EN.pdf?sequence=1&isAllowed=y.

categories. 64% of high-income and only 38% of upper-middle-income countries in our sample have legally binding SUP bans. This is consistent with broader research that indicates that developing countries are leading the way in stringent anti-plastic legislation, including bans.[14]

Figure 1: Legally binding national/federal SUP bans by country

Ban	No ban
Indonesia	United States
India	Thailand
China	Brazil
Egypt	Japan
Malaysia	Russia
Italy	Argentina
Germany	United Kingdom
South Korea	Mexico
France	Algeria
Pakistan	Singapore
Spain	Australia
Taiwan	Solomon Islands
Sri Lanka	
Nepal	
Maldives	
Kenya	
Rwanda	
Denmark	
Sweden	
Barbados	

[14] See Doris Knoblauch, Linda Mederake and Ulf Stein, 'Developing Countries in the Lead—What Drives the Diffusion of Plastic Bag Policies?' *Sustainability* 10, no.6 (2018): 1-24; Jennifer Clapp and Linda Swanston, 'Doing away with plastic shopping bags: international patterns of norm emergence and policy implementation,' *Environmental Politics* 18, no.3 (2009): 315-332.

Figure 2: Legally binding SUP bans by region (%)

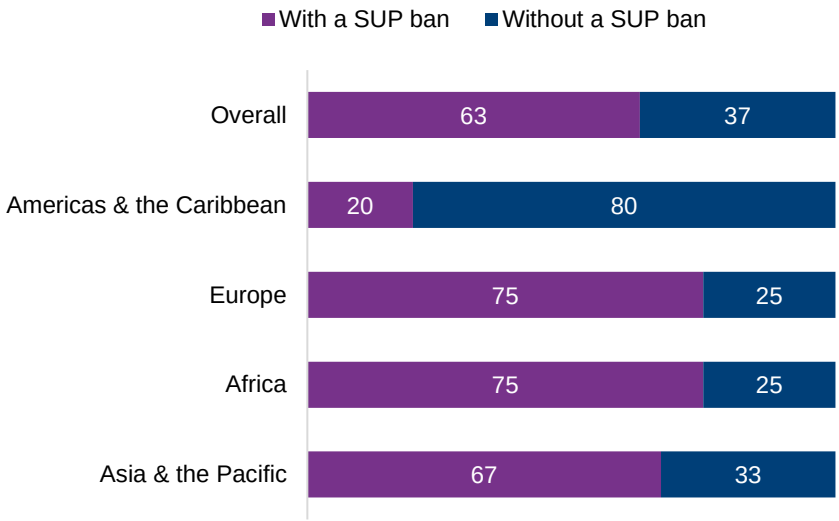
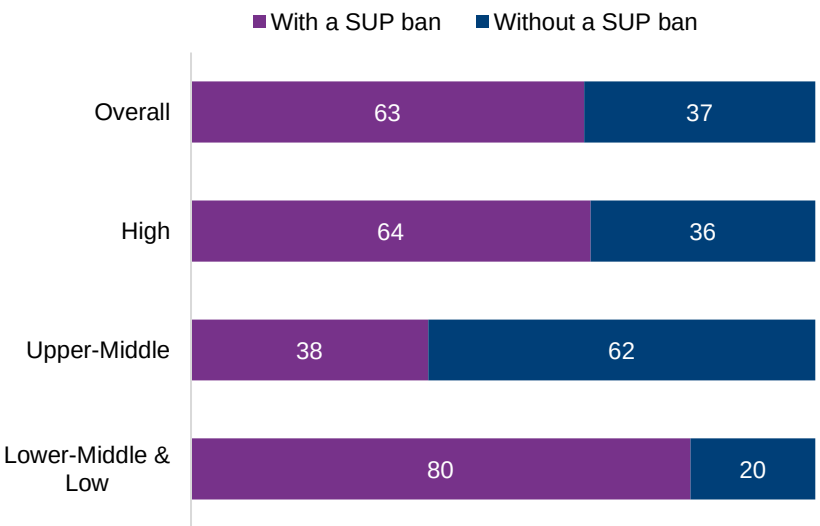
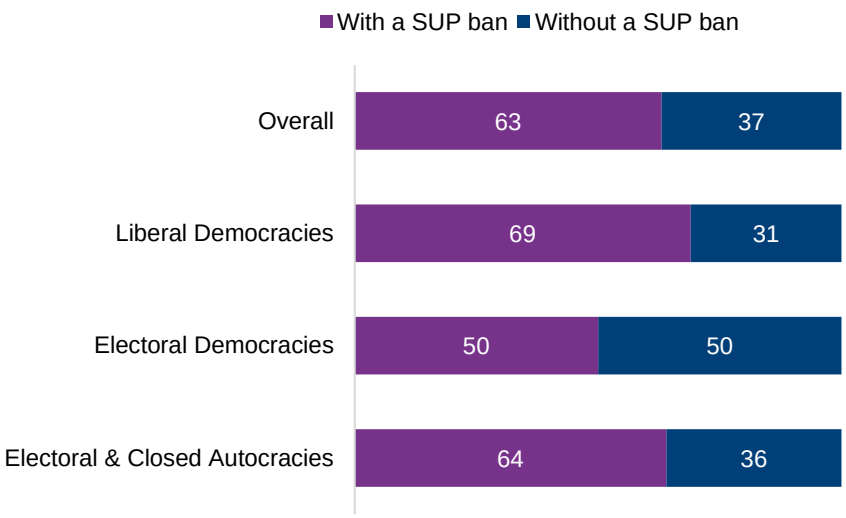


Figure 3: Legally binding SUP bans by income levels (%)



The distribution of SUP bans by regime type (Figure 4) shows that the variation in the uptake of SUP bans among different regime types in our sample is relatively low.[15] 69% of liberal democracies have a national/federal level SUP ban. They are closely followed by 64% of electoral and closed autocracies and 50% of electoral democracies. There is an important caveat to the leading position of liberal democracies in our sample. It is only recent and comes down to the European Union (EU) Directive 2019/904 on single-use plastics enacted in June 2019. Without the EU member countries, only 43% of liberal democracies have legally binding national/federal SUP bans – the lowest number out of all regime types. There are many different reasons that help to explain the relative lack of SUP bans in these liberal democracies. Countries such as Japan, Australia, the United Kingdom and the United States have well-developed solid waste management and recycling systems making the problem of SUPs less visible than in developing countries such as Rwanda, Kenya, or Nepal. Many liberal democracies have also been very active in the global plastic waste trade, essentially offshoring their plastic problems while keeping their countries relatively clean.[16]

Figure 4: Legally binding SUP bans by regime type (%)



Electoral and closed autocracies are the second regime type with the most frequent SUP bans in our sample. This trend is driven mainly by electoral and closed autocracies in Africa (Egypt, Kenya, Rwanda) and Asia (China, India, Malaysia, Pakistan), several of which have adopted SUP bans

[15] Our regime classification is based on the 2021 V-DEM Democracy report. See Nazifa Alizada, Rowan Cole, Lisa Gastaldi, Sandra Grahn, Sebastian Hellmeier, Palina Kolvani, Jean Lachapelle, Anna Lührmann, Seraphine F. Maerz, Shreeya Pillai, and Staffan I. Lindberg, *Autocratization Turns Viral: Democracy Report 2021* (University of Gothenburg: V-DEM Institute, 2021), https://www.v-dem.net/static/website/files/dr/dr_2021.pdf.

[16] For example, see Hannah Ellis-Petersen, 'Treated like trash: south-east Asia vows to return mountains of rubbish from west,' *The Guardian*, 28 May 2019, https://www.theguardian.com/environment/2019/may/28/treated-like-trash-south-east-asia-vows-to-return-mountains-of-rubbish-from-west.

long before the selected liberal democracies. For example, Kenya adopted its first plastic bag ban in 2005, while Rwanda enacted one of the world's harshest anti-plastic bag legislations in 2008.[17] Yet, the scope of SUP bans in electoral and closed autocracies is often more limited than that in liberal democracies, indicating that there might be a qualitative rather than a quantitative variation in the uptake of SUP bans among different regime types.

To date, 29% of electoral and closed autocracies with SUP bans have targeted plastic bags only and 14% have targeted plastic bags and straws. Out of the remaining 57%, China, India and Rwanda have adopted extensive country-wide SUP bans, but in all three cases, this has been a recent development (2020 in China, 2021 in India, 2019 in Rwanda) and in the case of China and India, they entail long phase-out periods (5 years in China, 10 years in India). Kenya's 2019 ban on SUPs other than plastic bags is currently limited to protected areas only. In comparison, all liberal democracies have banned multiple types of single-use plastics, although these do not always include bags which are often regulated by other policy instruments, such as fees and levies. There are several possible explanations for why many electoral and closed autocracies have tended to ban fewer SUPs. Most of our electoral and closed autocracies (71%) with legally binding national/federal SUP bans are either lower-middle- or low-income countries. Banning a wide range of SUPs might be particularly challenging in these countries if cheap alternatives are not readily available. Similarly, many electoral and closed autocracies – including Kenya, India and Malaysia – have relatively low levels of state capacity and have struggled with implementation and enforcement.[18]

Where electoral and closed autocracies do seem to be more ambitious is with regards to the extent of activities that bans apply to. While most liberal democracies (78%) focus only on banning the provision and use of SUPs, most SUP bans in electoral autocracies (86%) target multiple upstream and downstream activities in SUP life cycle, including their production. There are several possible reasons that might help to explain this difference, including strong industry and financial interests. According to the 2021 Minderoo Foundation report, many liberal democracies have high stakes in SUPs through global plastics trade: two of the world's top 20 polymer producers are based in Taiwan, two are based in the EU and one is based in South Korea.[19] Italian, French and German banks are among the world's top 20 funders of polymer production, while South Korea and Germany are among the top 5 polymer exporters.[20] Given the strong industry and financial

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[17] Pritish Behuria, 'Ban the (plastic) bag? Explaining variation in the implementation of plastic bag bans in Rwanda, Kenya and Uganda,' *EPC: Politics and Space* 39, no.8 (2021): 1796 and 1799.
[18] See Behuria, 'Ban the (plastic) bag,' 1798-1801; Nikhil Ghanekar, 'India's ban on single-use plastics runs into challenges, pitches new rules,' *Business Standard*, 17 June 2021, https://www.business-standard.com/article/current-affairs/what-india-must-do-to-implement-ban-on-single-use-plastics-effectively-121061700235_1.html; Edward Rajendra, Fatin Izzati and Kanimoli Manimaran, 'Plastic straws still freely available: Convenience, hygiene, cost and ignorance cited as reasons for not adhering to directive,' *Star Metro*, 2 July 2019, https://katu.kpkt.gov.my/uploads/keratan/file_1562110479.pdf.
[19] Dominic Charles, Laurent Kimman and Nakul Saran, *The Plastic Waste Makers Index: Revealing the source of the single-use plastic crisis* (Perth: Minderoo Foundation, 2021), 14, https://cdn.minderoo.org/content/uploads/2021/05/27094234/20211105-Plastic-Waste-Makers-Index.pdf.
[20] Ibid., 42.

interests, more ambitious bans that target upstream SUP activities might be more difficult to push through in these countries.

Out of the 20 countries with legally binding SUP bans in our sample, fifteen (75%) have legal provisions for contravening the bans. In the remaining five countries (25%), no such provisions were found.[21] Fines are by far the most popular penalty instrument: 73% of countries with SUP ban penalties favour fines; the remaining 27% have a combination of fines and a prison sentence. In liberal democracies with legally binding SUP bans, fines can be found in 78% of countries in our sample. 22% of countries have a combination of fines and a prison sentence. In electoral and closed autocracies with legally binding SUP bans, fines are favoured by 57% of countries. 29% of countries have a combination of fines and a prison sentence, while in 14% no penalties were found.[22]

Most countries in our sample (55%) enacted SUP bans in the form of ministerial and/or presidential decrees and regulations (Figure 5). This form of SUP ban is prevalent among electoral democracies (75%) and among electoral and closed autocracies (57%). Less than half (44%) of the liberal democracies in our sample have enacted their SUP bans in this way, preferring new laws or amendments instead. Only Denmark, Egypt, Germany and Maldives enacted their SUP ban through a combination of a legislative and regulatory processes. In Egypt it was a combination of a new law and an executive regulation, while in the case of Denmark, Germany and Maldives it was a legal amendment combined with an executive order.

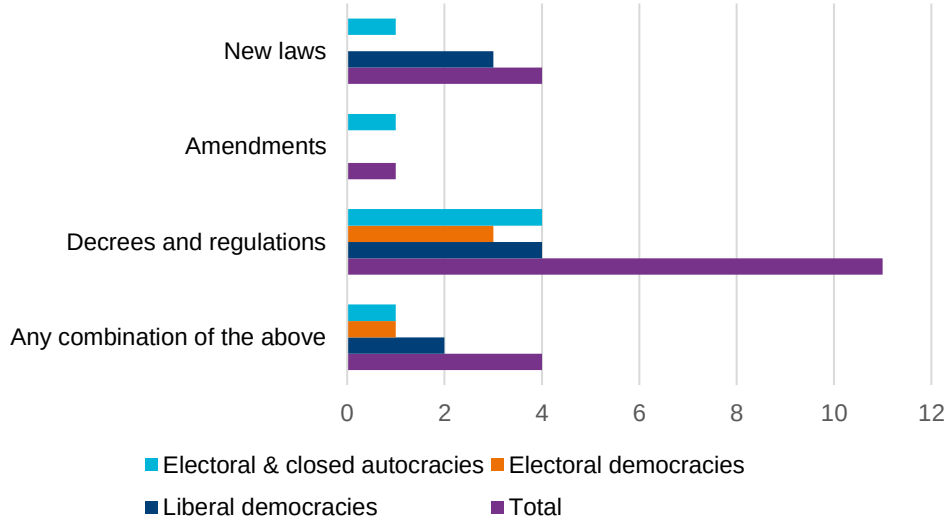
Enacting SUP bans in the form of ministerial and/or presidential decrees, orders and regulations enables governments to act on SUPs often without consulting the parliament, instead using powers vested in laws that have been in force for several years if not decades. For example, the ministerial regulations banning the distribution of plastic straws and the free distribution of plastic carrier bags to consumers in Malaysia are based on the provisions of the Local Government Act of 1976. India's Plastic Waste Management Rules that were first enacted by the federal government in 2011 and revised several times since are based on powers vested in the Environment (Protection) Act of 1986. Similarly, the regulation of the Pakistan Environmental Protection Agency that bans the manufacturing, import, sale, purchase, storage and usage of polythene bags is based on the provisions of the country's Environmental Protection Act of 1997.

Enacting SUP bans in the form of ministerial and/or presidential decrees, orders and regulations has its obvious advantages, especially if the parliament is beset by strong industry lobby groups or powerful business interests, but there are also many drawbacks. SUP bans are no silver bullets: they need to be designed carefully to produce desirable effects without creating problems elsewhere. Their effectiveness is also dependent on wide societal and industry buy-in which might simply be absent if the bans are enacted unilaterally by a central or federal government. Kenya, for

[21] These include Indonesia, India, Egypt, Sri Lanka, Nepal, and Maldives. It is possible that penalties for contravening SUP bans in these countries are part of other legislation or regulatory framework.
[22] We could not find any penalties in the Indian Plastic Waste Management (Amendment) Rules of 2021.

example, announced its plastic bag ban on four separate occasions before it was finally implemented in 2017. As Behuria explains, strong opposition from the country's plastic bag industry was the main reason behind the slow implementation.[23] Yet, even with the ban now firmly in place, the banned bags are still in circulation thanks to the operation of the country's black market.[24] Meanwhile, Kenya's consumers have swapped the banned polythene plastic bag for another alternative – a polypropylene plastic bag that might be easier to recycle but given the country's poor recycling and waste management rates, often ends up leaking into the environment.[25] As this example illustrates, quick regulatory wins do not always translate into long-term sustainability and lasting environmental gains.

Figure 5: Legislative forms of SUP bans by regime type



It is important to note that the identification of the relevant SUP legislation and the processes that have led to its enactment has been often challenging. In many countries, relevant SUP legislation is not always easy to find or accessible in English, and there is often little indication of the level of legislative involvement.[26] In some cases, the primary legislation is also decades old and contains no mention of SUPs as these have become regulated recently. It is possible that additional data would have led us to slightly different assessments and conclusions.

[23] Behuria, 'Ban the (plastic) bag,' 1801
[24] Citizen Reporter, 'Return of Plastics: Single-Use Plastic Bags Back in Use, Five Years After Ban,' *Citizen Digital*, 21 February 2022, /www.citizen.digital/news/return-of-plastics-single-use-plastic-bags-back-in-use-five-years-after-ban-n292915.
[25] 'Has Kenya's plastic bag ban worked?' *BBC Reality Check*, 28 August 2019, www.bbc.co.uk/news/world-africa-49421885.
[26] We used Google Translate to help with non-English language texts and searches for all non-English speaking countries in our sample except Thailand. Alderman conducted all Thailand-related searches in Thai.

Case studies

To better understand the role legislatures play in environmental policy making, and how this role varies across different regime types, we conducted three case studies of SUP bans in Barbados, Kenya and Thailand. These cases were selected because they vary in terms of regime type and the way in which bans were introduced (see Figure 6). Barbados is a liberal democracy with a legally binding SUP ban that went through a full parliamentary process. Kenya is an electoral autocracy with a legally binding SUP ban in a form of a ministerial regulation, while Thailand is a closed autocracy with a voluntary SUP ban that has no base in law. Through these case studies, we illustrate that SUP bans enacted through the legislative process are often more robust and sustainable than those that were enacted in the form of executive decrees and/or ministerial regulations. We also show the many different nuances and contextual factors that enable or prevent legislative action on SUPs.

Figure 6: Overview of the three case studies

Country	Regime	Political rights (PR) & civil liberties (CL)[27]	Legally binding SUP ban	Process of enacting SUP ban	Targeted SUPs	Banned activities	Penalty
Barbados	Liberal democracy	PR 38/40 CL 57/60	Yes	Full legislative process	Petroleum-based plastic bags, egg boxes, food service products (lids, caps, stoppers and other closures), cups, drinking straws, forks, knives, plates, spoons, stirrers	Importation, distribution, offer for sale, sale and use Manufacture (plastic bags only)	Imprisonment (1 year), fine (BD $100,000; BD $5,000 for the use of plastic bags), or both
Kenya	Electoral autocracy	PR 19/40 CL 29/60	Yes	Ministerial regulation	Carrier bags and flat bags made of polythene (nationwide) Bottles, straws and other related products (protected areas only)	Use, manufacture and importations (polythene bags) Use (other SUPs)	Imprisonment (from 1 to 4 years), fine (KSh 2-4 million), or both (polythene bags) Imprisonment (no less than 3 years), fine (no less than KSh 500,000), or both
Thailand	Closed autocracy	PR 5/40 CL 24/60	No	Cabinet resolution	Cap seal, microbeads, oxo-degradable plastics, foam food containers, straws, cups less than 100 microns, bags less than 36 microns	Use	N/A

[27] Based on Freedom House ratings, see Freedom House, 'Countries and Territories,' *Freedom House*, last accessed 21 July 2020, https://freedomhouse.org/countries/freedom-world/scores.

Barbados

Barbados is a liberal democracy with a strong regard for citizens' political rights and civil liberties.[28] Having declared independence from the United Kingdom in November 2021, it is a parliamentary republic with a president as head of state and prime minister as head of government. The president exercises the country's executive power on the advice of the prime minister and the cabinet. In practice, the prime minister and the cabinet are responsible for the government's decisions as the role of the president is largely ceremonial. The country's legislative power is vested in a bicameral parliament, consisting of the elected House of Assembly (30 members) and the appointed Senate (21 members). The Barbados Labour Party (BLP) led by Mia Amor Mottley won a landslide victory in the 2018 election and in the 2022 snap election, filling all 30 seats in the House of Assembly. Since the start of her premiership, Mottley has placed great importance on addressing environmental problems in Barbados and abroad. She made several powerful speeches at international conferences, including the COP26 in Glasgow.[29] Less than a year into her first year in office, the BLP-dominated parliament passed the Control of Disposable Plastics Act, 2019-11, prohibiting the importation, manufacture, sale, distribution, and use of several types of single-use petroleum-based plastics. Since then, it has been worked on, amended, and replaced by the more comprehensive Control of Disposable Plastics Act, 2020, resulting in a more robust and arguably more sustainable SUP ban.

The BLP became aware of international trends and policy directions on SUPs during their time in the opposition (2008-2018) and decided to take on banning SUPs 'with a little bit more zeal.'[30] This was reflected in the 2018 BLP election manifesto that featured a ban on SUPs and styrofoam food containers.[31] BLP also discussed the topic of SUPs in their election campaign. Kirk Humphrey, a BLP Cabinet Minister and MP for St. Michael South, believed that the time in the run up to the 2018 election was 'ripe' for introducing a strong policy agenda on SUPs.[32] By then most Barbadians had been exposed to videos and images of fish and other marine animals ensnarled in pieces of often single-use plastic and recognised SUPs as a serious environmental problem. Still, the BLP SUP agenda was not on top of people's minds when they voted for the party in the 2018 general election as environmental concerns came secondary to the country's economic problems.[33]

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[28] Freedom House, 'Freedom in the world 2022: Barbados,' *Freedom House*, last accessed 14 July 2022, https://freedomhouse.org/country/barbados/freedom-world/2022.
[29] For Mottley's full speech, see Doha Debates, 'Prime Minister of Barbados Mia Mottley's full speech from COP26,' YouTube video, 4 November 2021, https://www.youtube.com/watch?v=mIl8xRP4xK4.
[30] Interview with Kirk D.M. Humphrey, Cabinet Minister and MP for St. Michael South in Barbados, 22 June 2022.
[31] 'The People's Manifesto: Building the Best Barbados Together,' Barbados Labour Party, last accessed 14 July 2022, http://www.caribbeanelections.com/eDocs/manifestos/bb/blp_manifesto_2018.pdf.
[32] Interview with Kirk Humphrey.
[33] Interview with Ché Amor Greenidge, Executive Director of the Barbados Environment Conservation Trust, 5 July 2022.

Prime Minister Mia Mottley announced her government's plan to ban SUPs in September 2018, just four months into office.[34] As one Barbadian environmental activist noted, Mottley wanted to have the SUP ban and once she assigned it to Humphrey, the then Minister of Maritime Affairs and Blue Economy, 'he didn't have a choice but to find ways to make it happen.'[35] Mottley's announcement attracted strong opposition from the country's plastic importers and plastic bag manufacturers. To bring them and other stakeholders on board, Humphrey and his team at the Ministry of Maritime Affairs and Blue Economy ran a series of stakeholder consultations involving local environmental groups and businesses. Ché Greenidge, an environmental activist who was working at the time for an environmental charity called the Future Centre Trust, noted that these consultations were 'intense' and 'very heated.'[36] Nikola Simpson, who was helping the government run these consultations and draft the SUP legislation, revealed that she even received threats on social media during this time.[37]

The government was not going to budge on the ban, but it faced strong industry pushback on its implementation timeframe: the plastic importers, bag manufacturers and other businesses dealing with petroleum-based SUPs demanded more time to sell their stock and retrofit their businesses.[38] Humphrey and his team compromised with these demands by drafting a bill that focused on phasing out SUPs rather than banning them outright, highlighting the importance of participation in designing SUP bans. As Simpson explained, 'the ban changed quite a bit' during the stakeholder consultations – Humphrey was a 'people-oriented' Minister and an MP who wanted to compromise rather than push through with the ban.[39] Simpson believed that the government's community outreach activities 'truly helped' to overcome some of the industry opposition. These included visits to local stores and markets, talking up the benefits of the ban and showcasing some of the SUP alternatives. Many plastics importers and manufacturers also asked the government for concessions on SUP alternatives, once these were granted there was more industry acceptance of the impending ban making it more sustainable in the long run.[40]

To enact the ban, Humphrey opted for a full legislative process. As he recalled: 'Given the gravity of the situation and the seriousness with which we were treating [the SUP ban], we needed the bill.'[41] Barbados had a lot of old legislation that was no longer suited for tackling modern-day environmental problems like SUPs. The ban presented an opportunity to modernise the country's environmental legislation while drafting a new legislation allowed Humphrey to enact a more comprehensive SUP ban. The bill that Humphrey introduced to parliament on 22 March 2019 proposed a phased-out ban on single-use petroleum-based cutlery, polystyrene containers and

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[34] Julia Rawlins-Bentham, 'Changes To Plastic Ban Announced,' *Barbados Government Information Service*, 22 March 2019, https://gisbarbados.gov.bb/blog/changes-to-plastic-ban-announced/.
[35] Interview with Ché Amor Greenidge.
[36] Ibid.
[37] Interview with Nikola Simpson, Head of the Blue Economy Accelerator Lab of UNDP Barbados and Easter Caribbean, 18 July 2022.
[38] Interview with Ché Amor Greenidge; Interview with Kirk Humphrey; Interview with Nikola Simpson.
[39] Interview with Nikola Simpson.
[40] Ibid.
[41] Interview with Kirk Humphrey.

bags that targeted multiple upstream and downstream activities of the SUP lifecycle (including production), contained several exemptions, a comprehensive penalty regime and a licencing scheme for importing of bio-based alternatives.

Humphrey was in an advantageous position to exploit the legislative process. Having won all 30 seats in the 2018 election, the BLP had no political opposition in the House of Assembly: the bill passed the House within four days of its introduction.[42] Humphrey and his fellow BLP MPs had 'the luxury' of having the conversations about the bill before it was formally introduced to the parliament, but Humphrey emphasised that they did not rest on their laurels.[43] Many of his fellow MPs raised concerns about the bill which Humphrey and his team were able to discuss and address before the bill landed in front of the parliament. Having passed the House, the bill was then considered by the country's Senate which the BLP did not fully control. The party had 12 appointed senators, the remaining 9 were selected by the now defunct position of the Governor-General and the leader of the opposition.[44] The bill was first reviewed by the opposition senator and then the independent senators who as Humphrey recalled 'were very environmentally aware' and did not object to the bill.[45] The bill cleared the Senate a day after it was introduced and entered into force on 1 April 2019. Humphrey believed that the bill's easy passage through the Senate was because of all the stakeholder consultations and the fact that Barbadians were ready for the ban.[46]

Despite the ease with which the Control of Disposable Plastics Act passed the parliament, the government continued to face opposition from plastic bag manufacturers who pushed for more time to adjust their business operations. To help accommodate these demands, Humphrey deferred the implementation of Section 5 of the Act – prohibiting the importation and manufacture of petroleum-based plastic bags – by 4 months which was codified in the December 2019 amendment. Four months later, Humphrey proposed, and the Barbadian parliament passed, the Control of Disposable Plastics Act, 2020.

The Control of Disposable Plastics Act, 2020, was a more elaborate version of the 2019 Act that was informed by additional stakeholder consultations and the country's changing circumstances. For example, the new Act gave the Minister of Maritime Affairs and Blue Economy powers to make temporary exemptions to the ban in response to the global disruption in the supply of organic resin in the wake of the Covid-19 pandemic.[47] The 2019 amendment and the 2020 replacement Act

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[42] The Barbados Parliament, 'Control of Disposable Plastics Bill (as amended), 2019: History of this Bill,' last accessed 13 July 2022, https://www.barbadosparliament.com/bills/details/382/UGxhc3RpYw==.
[43] Interview with Kirk Humphrey.
[44] One BLP MP resigned from the party less than two weeks after the election to become the Leader of the Opposition in the House of Assembly claiming that he wanted to provide the party with at least a level of critical opposition. For more on this, see 'Bishop Atherley now leader of the opposition,' *The Barbados Advocate*, 2 June 2018, https://www.barbadosadvocate.com/news/bishop-atherley-now-leader-opposition.
[45] Interview with Kirk Humphrey.
[46] Ibid.
[47] For the video of the bill's proceedings in the House of Assembly, see Barbados Parliament Channel, ' The 69th Sitting of The Honourable The House of Assembly, Wednesday 24th April, 2020,' YouTube video, 24 April 2020, https://www.youtube.com/watch?v=rdUH8DswmJA.

highlight the government's flexibility and willingness to work on adjusting the country's legislation by involving different stakeholders and adapting to new challenges without bypassing the country's legislature. As Simpson explained, Humphrey and his team were honest with the people from the start, acknowledging that they would likely get many things wrong as there was no 'blueprint' for an effective SUP ban, but they did not cut any corners when it came to how the ban was enacted.[48] This resulted in a more robust SUP ban that has set a precedent for future government action in this area.

The 2020 Act was fully reinstated in February 2022 as the impact of the Covid-19 pandemic on the global supply chain of organic resin eased.[49] Humphrey, Simpson and Greenidge respectively noted that the ban has already resulted in some behavioural change among Barbadians but acknowledged that more needed to be done in this area as the switch to bio-based alternatives did not necessarily resolve the problem of littering.[50] As Simpson explained, the ban was an 'entry point' on larger conversations regarding Barbados's waste management, which is the area the government is tackling next.

Kenya

Kenya is an electoral autocracy with a weak commitment to citizens' political rights and civil liberties.[51] The Kenyan president, together with the Cabinet, exercises the country's executive power. The Parliament of Kenya, which is the country's bicameral legislature, comprises of the National Assembly (349 members) and the Senate (67 members). The parliament was historically weak and operationally dependent on the president until the 2010 Constitution removed the president's prerogatives to prorogue or dissolve it and to refuse to approve parliament-passed bills.[52] The constitution also made it easier for the parliament to impeach the president, while the president can no longer introduce bills without finding a sponsor in the National Assembly.[53] Despite these improvements, the parliament remains subservient to the president.[54] The Kenyan parliament played no role in enacting the country's 2017 plastic bag ban or the subsequent 2019 ban on the use of SUPs in protected areas. Several legislators had proved critical in helping to amend the key environmental legislation that enabled these bans, but the bans themselves remain limited.

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[48] Interview with Nikola Simpson.
[49] 'Reminder of Reinstatement of Single-Use Plastics Ban,' *Barbados Government Information Service*, 1 February 2022, https://gisbarbados.gov.bb/blog/reminder-of-reinstatement-of-single-use-plastics-ban/.
[50] Interview with Kirk Humphrey; Interview with Nikola Simpson; Interview with Ché Greenidge.
[51] Freedom House, 'Freedom in the world 2022: Kenya,' *Freedom House*, last accessed 25 May 2022, https://freedomhouse.org/country/kenya/freedom-world/2022.
[52] Ken Ochieng' Opalo. *Legislative Development in Africa: Politics and Postcolonial Legacies* (Cambridge: Cambridge University Press, 2019), 229; Gedion Onyango, 'Legislative Policymaking in Kenya,' in *Governing Kenya: Public Policy in theory and Practice*, eds. Gedion Onyango and Goran Hyden (Cham: Palgrave Macmillan, 2021), 76-77.
[53] Ibid, 76; Opalo. *Legislative Development*, 196.
[54] Freedom House, 'Kenya.'

Now former President Uhuru Kenyatta's Jubilee Party dominated the Kenyan parliament since the country's 2017 election.[55] Before that it was the Jubilee Alliance that comprised The National Alliance Party led by Kenyatta and several other prominent Kenyan parties. Kenyatta's first administration (2013-2017) enacted the 2017 plastic bag ban just a few months before the 2017 election. Adopted in the form of a ministerial regulation, the ban prohibited the use, manufacture, and importation of polythene plastic bags. It came after years of unsuccessful partial plastic bag bans announced in 2005, 2007 and 2011. Each time the bans' implementation was blocked by the Kenyan Association of Manufactures (KAM) representing the plastic industry interests.[56] KAM tried but failed to block the implementation of the 2017 ban, which remains the world's harshest SUP ban – its contravention can lead up to 4 years in prison, hefty fines, or a combination of both.

Several factors made the 2017 plastic bag ban possible. First, the 2010 constitution provided for a right to clean and healthy environment for all Kenyan citizens for the first time in the country's history. This created opportunities for better environmental management and bolder environmental action.[57] Second, there was a considerable public support for the ban. Online and offline campaigns demanding government action on plastic bags were growing in intensity since 2013.[58] Third, Kenya's historical image of an environmental leader in Africa was increasingly challenged by Rwanda.[59] While Kenya was failing to enforce its partial plastic bag ban for twelve years, Rwanda outlawed the importation and use of all non-biodegradable packaging bags with a relative ease in 2008 thanks to the absence of strong industry interests.[60]

Professor Judi Wakhungu, then Cabinet Secretary for Environment and Natural Resources (2013-2018), was the leading force behind the 2017 ban. She wanted to ban several different types of SUPs but was persuaded to focus on banning polythene bags first.[61] Polythene bags were the most visible source of plastic pollution in Kenya, and while they were a relatively low-hanging fruit compared to other types of SUPs, banning them was not easy as Wakhungu lacked broad political support and faced fierce opposition from KAM.[62]

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[55] Kenyatta reached the country's constitutional two-term presidency limit and was replaced in the 9 August 2022 general election by William Ruto.
[56] Pritish Behuria, 'Ban the (plastic) bag? Explaining variation in the implementation of plastic bag bans in Rwanda, Kenya and Uganda,' *EPC: Politics and Space* 39, no.8 (2021): 1798-1799; Interview with Professor Judi Wakhungu, Ambassador of Kenya to the French Republic, Portugal, Serbia & Holy See and former Cabinet Secretary for Environment and Natural Resources, on 16 and 27 May 2022.
[57] Angela Mwenda and Thomas N. Kibutu, 'Implications of the New Constitution on Environmental Management in Kenya,' *Law, Environment and Development Journal* 8, no.1 (2012): 87-88.
[58] Interview with James Wakibia, an environmental activist and founder of the #banplasticsKE campaign, on 5 May 2022.
[59] Behuria, 'Ban the (plastic) bag?' 1796.
[60] Ibid.
[61] Interview with Professor Judi Wakhungu; Interview with Hadley Becha, Chair of the National Environment Civil Society Alliance of Kenya and Executive Director of Community Action for Nature Conservation (CANCO), and Doreen Simiyu, Environmental Expert and Communications Monitoring and Evaluation Officer at CANCO, 13 May 2022.
[62] Interview with Professor Judi Wakhungu.

Instead of going through the Kenyan parliament, Wakhungu decided to change the country's Environmental Management and Coordination Act of 1999 to give herself the necessary powers to push through with the ban. She received 'tremendous support' from two house speakers and two chairpersons of Kenya's parliamentary committees on environment.[63] She praised the speakers' efficiency in getting the proposed amendments through the different stages of the parliamentary process and highlighted the chairpersons' commitment to strong environmental leadership and their openness to being challenged 'with various pieces of legislation' that needed modernising.[64] These legislators were Wakhungu's 'critical allies,'[65] pointing out that even in relatively weak legislatures there is still space for environmental leadership and action.

The Environmental Management and Coordination (Amendment) Act passed Kenya's parliament in 2015. It did not mention single-use plastics, but instead gave Wakhungu, as the Cabinet Secretary for Environment and Natural Resources, the power to ban any pollutants deemed harmful to the country's environment.[66] Wakhungu admitted that the parliament 'somehow just approved [the amendment] without really understanding the magnitude of what I was trying to do.'[67] Two years later, she used her new powers to enact the ban by publishing it in The Kenya Gazette.

KAM strongly opposed the ban, resulting in more than 200 court cases against Wakhungu, all of which were dismissed in her favour.[68] It also lobbied the Kenyan parliament to suspend the ban.[69] Wakhungu recalled facing a 'very harsh parliament' but added that 'we were clever enough' by timing the ban so that 'whatever the parliament decided was null and void' because it would be the matter for the next administration.[70] Wakhungu's political craftsmanship aside, Kenya's 2017 plastic bag ban highlights the many challenges linked to adopting SUP bans in the form of a top-down ministerial regulation. In the absence of a broader political and industry support, Wakhunghu had to concede to a much narrower SUP ban whilst still taking great personal and professional risks to implement it.

Five years on, the 2017 plastic bag ban is considered a relative success both by Wakhungu and Kenya's environmental activists.[71] This raises an important question as to why it has not been replicated with regard to other SUPs. One possible explanation might be the absence of a strong environmental leader, such as Wakhungu. James Wakibia, a prominent local anti-plastic activist

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[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] See Section 3 and 86 of the 'Environmental Management and Coordination (Amendment) Act, 2015, *Kenya Gazette Supplement No. 74*, 3 June 2015, https://isa.org.jm/files/files/documents/EMCA_Act_2015.pdf.
[67] Interview with Professor Judi Wakhungu.
[68] Interview with Professor Judi Wakhungu. Also see, National Environment Management Authority, 'Court upholds plastic bag ban,' no date, https://www.nema.go.ke/index.php?option=com_content&view=article&id=225:judges-upholds-plastic-bags-ban&catid=10:news-and-events&Itemid=375.
[69] Interview with Professor Judi Wakhungu; also see, Samwel Owino, 'Plastic bags ban benefits exceed burdens, says CS Judi Wakhungu,' *Nation*, last updated 28 June 2020, https://nation.africa/kenya/news/plastic-bags-ban-benefits-exceed-burdens-says-cs-judi-wakhungu-398308.
[70] Interview with Professor Judi Wakhungu.
[71] Interview with Judi Wakhungu; Interview with James Wakibia; Interview with Hadley Becha and Doreen Simiyu.

who was behind the popular #banplasticsKE social media campaign, described Wakhungu as 'the right person at the right place' – a sentiment shared by other environmental activists.[72] The problem of relying on a single environmental leader like Wakhungu is what happens when such a leader is replaced or leaves office. Wakhungu's successor has done little to advance her plastics agenda despite her leaving an entire roadmap on tackling Kenya's plastics problem.[73] There is also the problem of the ban's side effects. As Wakibia noted, 'the biggest winner of the [2017 plastic bag] ban was a non-woven [polypropylene] bag from China.'[74] Polypropylene bags are easier to recycle than polythene bags, but they continue to leak into Kenya's environment due to the country's underdeveloped recycling and waste management system.[75]

On 5 June 2019, the World Environment Day, President Kenyatta announced a ban on the use of all SUPs in protected areas.[76] The ban was published in The Kenya Gazette a day later in the form of a ministerial regulation and with a retrospective date. Wakibia referred to the ban as mere '[government] PR and talking,' pointing out that its enforcement was practically untenable.[77] The fact that Kenyatta announced the ban on the World Environment Day whilst he was on an official visit to Canada lends credit to the argument that his governments' environmental action might have been motivated more by reputational than environmental concerns.[78] The Kenyatta government's preference for regulatory as opposed to legislative route resulted in an undoubtedly faster action on SUPs but came at the expense of building a broader political support and industry buy-in. Kenya's two SUP bans thus remain limited while the long-term sustainability of the 2019 ban is questionable at best.

Thailand

Thailand is a closed autocracy with almost no regard for citizens' political rights and civil liberties.[79] It is dominated by big business interests and the interests of the traditional Thai elite comprising of the monarchy, military, and senior bureaucracy.[80] The Thai prime minister, who is the head of government, exercises executive power through the Cabinet. (Retired) General Prayuth Chan-o-cha, the leader of National Council for Peace and Order (NCPO), a military junta that seized power in the May 2014 military coup, became the country's prime minister in August 2014. Following the

[72] Interview with James Wakibia; Interview with Hadley Becha and Doreen Simiyu.
[73] Interview with Professor Judi Wakhungu.
[74] Interview with James Wakibia.
[75] BBC, 'Has Kenya's plastic.'
[76] 'President Kenyatta Announces Ban on Single-use Plastics in Protected Areas,' *President of the Republic of Kenya* website, 5 June 2019, https://www.president.go.ke/2019/06/05/president-kenyatta-announces-ban-on-single-use-plastics-in-protected-areas/.
[77] Interview James Wakibia.
[78] Behuria, 'Ban the (plastic) bag?' 1801; Interview with James Wakibia.
[79] Freedom House, 'Freedom in the world 2022: Thailand,' *Freedom House*, last accessed 25 May 2022, https://freedomhouse.org/country/thailand/freedom-world/2022.
[80] Chris Baker, 'The 2014 Thai Coup and Some roots of Authoritarianism,' *Journal of Contemporary Asia* 46, no.3 (2016): 393-397.

manipulated 2019 election, Prayuth was elected to continue as prime minister.[81] His tenure ends next year. The National Assembly of Thailand is the country's bicameral legislature comprising of fully appointed Senate (250 members) and elected House of Representatives (500 members). Palang Pracharat Party, a pro-military proxy party formed less than a year before the 2019 election, leads a 19-party coalition government. Despite the country's major plastic polluter status, Thailand does not have a legally binding SUP ban. Lack of relevant laws, authoritarian governance, strong business interests and purposefully weak legislature have prevented any meaningful action on SUPs so far.

Law-making in Thailand has been traditionally a prerogative of the Thai Cabinet due to special constitutional provisions first introduced in the country's 1946 constitution that give the Thai prime minister extensive veto powers over proposed legislation.[82] Any new legislation with budgetary implications proposed either by members of the House of Representatives or via a popular petition needs to be endorsed by the prime minister before it goes to parliament.[83] Given that most proposed legislation can be seen as having some budgetary implications, the constitution essentially gives the Thai prime minister a carte blanche to stop any legislative attempts from outside the Cabinet. According to data gathered by iLaw on the first eight months of Prayuth's elected premiership, Prayuth used these powers to reject at least 7 prospective legislations, including three environmental bills, and to delay another 27 by withholding his endorsement.[84]

Thailand's single-use plastic policy originated with the NCPO's 'Roadmap on Plastic Waste Management 2018-2030,' a long-term policy plan aimed at tackling the country's plastic waste pollution problem. The roadmap has a status of a cabinet resolution, but neither the NCPO nor its elected iteration in the form of Palang Pracharat-led coalition government has taken steps to make it legally binding. An important part of the roadmap is a phased-out ban on 7 types of single-use plastics, including bags thinner than 36 microns, cups thinner than 100 microns, straws, and foam food containers. Like the roadmap, the SUP ban has no base in Thai law and focuses narrowly on reducing the use of the designated SUPs. It pays lip service to the country's environmental problems and can be seen as saving the Thai governments 'face' given the country's major plastic polluter status.

There are several legislations, including the Factory Act of 1992 and the Commodities Control Act of 1952, that the NCPO could have used to make the ban legally binding by regulating SUPs at the

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[81] On the 2019 election, see Petra Desatova and Saowanee T. Alexander, 'Election commissions and non-democratic outcomes: Thailand's contentious 2019 election,' *Politics*, (April 2021): 1-15, https://journals.sagepub.com/doi/abs/10.1177/02633957211000978.

[82] Interview with a plastics policy researcher on 4 May 2022.

[83] See sections 133 and 134 of the current 2017 military-drafted constitution. Constitute Project, 'Thailand's Constitution of 2017,' last accessed 20 May 2022, https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en.

[84] '"พ.ร.บ.การเงินฯ" กับ อำนาจนายกฯ สำหรับ 'ปัดตก' หรือ 'ดอง' กฎหมาย ["Money bill" and the power of the Prime Minister to 'shoot down' or 'delay' laws],' *iLaw*, 22 January 2021, https://ilaw.or.th/node/5809.

production, retail, and consumption stage.[85] The NCPO prioritised the economy and big business interests over the environment by opting for a voluntary SUP ban instead. The Palang Pracharat-led government has done the same. There is a relatively simple explanation: the Thai government has a stake in PTT Public Company Limited, a state-owned (51.5% share) oil and gas company that is involved in petrochemical products through its subsidiary business PTT Global Chemical (PTTGC). Thailand's King Vajiralongkorn is the major shareholder (at 30%) of the Siam Cement Public Company Limited, a cement and building conglomerate that also dabbles in petrochemicals through its subsidiary business SCG Chemical (SCGC). Popularly referred to as 'big brothers,' PTTGC and SCGC are Thailand's major petrochemical conglomerates and producers of virgin plastics; they wield significant influence over the Thai government.[86]

Following his appointment as the Minister of the Natural Resources and Environment in July 2019, Varawut Silpa-archa has become a vociferous SUP ban advocate, particularly in relation to plastic bags. He persuaded 43 Thai retailers to stop handing out free plastic bags to their customers by 1 January 2020.[87] After this date, bags were meant to be available only upon request and for a small charge. While the campaign was met with some initial success, its voluntary nature stymied any real progress on the issue of SUPs. Lightweight plastic bags alongside the other supposedly banned SUPs like cups, straws, and foam food containers, are still ubiquitous in Thailand, while some shops continue to hand out free plastic bags to their customers.[88] Varawut's campaign has also attracted criticism from the plastic bag manufacturers, some of whom went bankrupt in the wake of the campaign, and from within the Cabinet.[89] As one plastic bag factory owner explained, the campaign benefitted the retailers who are now profiteering from the plastic bag charge given the absence of laws that would regulate what they can and cannot do with it.[90]

Varawut's attempts at tackling Thailand's plastic pollution problem are further undermined by the relative weakness of his Ministry of Natural Resources and Environment (MoNRE). MoNRE does not have the necessary powers to outlaw the use of SUPs under the existing legislation without cooperating with other ministries, such as the Ministry of Industry, Ministry of Interior or the Ministry of Commerce, that are under big business influence and industry interests. MoNRE's attempt at

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[85] Naporn Popattanachai. *Policy effectiveness assessment of selected tools for addressing marine plastic pollution: Regulations on plastic products and Extended Producer Responsibility in Thailand* (Bonn: IUCN Environmental Law Centre, 2020), https://www.iucn.org/sites/dev/files/thailand_policy_assessment.pdf.
[86] Interview with a plastics policy researcher.
[87] Sirinya Wattanasukchai, 'Where's the alternative to plastic bag?' *Bangkok Post*, 11 October 2019, https://www.bangkokpost.com/opinion/opinion/1769449/wheres-the-alternative-to-plastic-bags-.
[88] Interview with a plastics policy researcher; Interview with Dr Piya Kerdlap, Sustainability Scientist and International Development Professional, 11 April 2022; Interview with a Thai environmental activist A, 7 May 2022; Interview with a Thai environmental activist B, 8 May 2022.
[89] Interview with a plastic bag factory owner and TPIA member on 7 April 2022; for more on the Cabinet feud, see '"วราวุธ" เผยขอโทษ "มนัญญา" ทุกอย่างจบด้วยดี ไม่มีปัญหาอะไร ["Varawut" apologises to "Manaya." Everything has ended well, there are no problems],' *Thairath online*, 6 April 2022, https://www.thairath.co.th/news/politic/2361465.
[90] Interview with a plastic bag factory owner and TPIA member on 7 April 2022.

making the SUP ban legally binding by getting the Ministry of Industry to amend relevant regulations under the Factory Act of 1992 has so far failed.[91]

Taking a legislative route through the Thai parliament is also difficult, not the least because of the special veto powers enjoyed by the Thai prime minister. As one Thai MP revealed, there has been little discussion of plastics in the Thai parliament since the 2019 election as environmental issues tend to play second fiddle to the country's political problems and economic fallout from the Covid-19 pandemic.[92] Nevertheless, he believed that there were MPs who could be co-opted to support new legislation on SUPs. Building coalitions between environmentally minded MPs, academics, civil society organisations, environmental activists and 'green' influencers might help to create a stronger push-back against big business influence and industry interests. This, is turn, might help create future opportunities for legislative leadership on SUPs in Thailand that could provide for a more robust and sustainable solution than that offered by NCPO and the Palang Pracharat-led government.

Key findings

Our analysis of the presence – or absence – of legally binding SUP bans in 32 countries shows that SUP bans are an increasingly popular policy instrument to tackle plastic waste pollution. China's 2017 ban on solid waste imports that included most types of plastics has accelerated the uptake of SUP bans in many parts of the world.[93] We are likely to see even more countries turning to SUP bans in near future. As such, we need to understand the different means of instituting these bans and their related implications. Our analysis suggests that there are three main take aways related to regime type, legislative involvement and the type of legislation adopted.

Regime type variation

There is relatively little variation in the uptake of SUP bans across different regime types but our analysis shows that in less democratic regimes SUP bans tend to have a narrower character targeting mostly plastic bags and straws as illustrated by Kenya. These are relatively 'low-hanging fruits' with available and relatively affordable alternatives. When it comes to plastic bags they are also seldom outlawed completely. This is not to say that narrow SUP bans are easy to implement or that countries should strive for complete plastic bag bans,[94] but rather that SUP bans in less

[91] Interview with a plastics policy researcher.
[92] Interview with a Thai MP from the Move Forward Party on 28 April 2022.
[93] Emma Brady, 'The Effects of China's Ban on imported Scrap Plastic on Global Recycling Efforts,' *Earth.*org, 5 January 2021, https://earth.org/china-ban-on-imported-scrap-plastic/?gclid=Cj0KCQjwwJuVBhCAARIsAOPwGARTgbRh66HQhV0KXcl3C_aqHi_1thV3xjfRR-43JA6I80AfulaRTiYaAl7oEALw_wcB.
[94] Life cycle assessments on the environmental impact of single-use paper versus plastic bags indicate that plastic has either similar or lower environmental impact than paper across most categories. See Herberz et al. 'Sustainability assessment,' 11.

democratic regimes tend to be more limited. Lack of state capacity in relation to enforcement and the absence of cheap alternatives seem to be a particular problem here. Where less democratic regimes outperform the more democratic ones is in the scope of SUP bans as they tend to target multiple upstream and downstream activities of the SUP lifecycle, including production. As our analysis shows this difference might be linked to either the presence or absence of strong industry and financial interests in the global polymer trade.

Motivation emerged as an important factor to consider, especially when it comes to SUP bans in non-democratic regimes. In Kenya, the government's actions on SUPs seemed to have been motivated more by reputational than environmental gains. Judi Wakhungu was persuaded not to push for a broader SUP ban and instead start one step at a time.[95] The fact that Kenya has yet to adopt a nationwide SUP ban on items other than plastic bags indicates a lack of support to follow through with what Wakhungu had started, giving more weight to the reputational over environmental argument. In the case of Thailand, a voluntary SUP ban has been used as a form of greenwashing to appease international pressure and safeguard government reputation. What these examples show is that we need to understand why and how SUP bans are adopted, whether they have any legal standing and whether (and how) they are implemented before we turn to praising non-democratic regimes on their environmental action.

The extent of legislative involvement

As our data and case studies show, the role legislatures play in enacting SUP bans is mixed. Legislative involvement in enacting SUP bans is stronger in liberal democracies than in other regime types. The EU member states present a distinct case as the full legislative process for the EU Directive on SUPs took place at the supranational instead of national level. Once the European Parliament passed the SUP directive, it obliged all member states to transpose it into their national laws. Depending on each member state, this transposition was done either in the form of a new law which guaranteed a full parliamentary process or in the form of an executive decree or ministerial regulation which did not need to involve national parliaments. In some member states, the transposition included a combination of a legal amendment and a decree/regulation. Yet even in cases where the transposition took form of an executive decree or a ministerial regulation, there was still space for some legislative oversight at the national level. For example, the Federal Government of Germany transposed the EU Directive on SUPs in a form of an executive decree but then Chancellor Angela Merkel sought advice and approval of the relevant committees in the Bundestag and Bundesrat.[96]

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[95] Interview with Professor Judi Wakhungu.

[96] See Deutscher Bundestag, 'Vorgang – Rechtsverordnung: Verordnung über das Verbot des Inverkehrbringens von bestimmten Einwegkunststoffprodukten und von Produkten aus oxo-abbaubarem Kunststoff (Einwegkunststoffverbotsverordnung - EWKVerbotsV) [Process – ordinance: Ordinance prohibiting the placing on the market of certain single-use plastic products and products made of oxo-degradable plastic (Single-use Plastic Prohibition Ordinance – EWKVerbotsV)],' *DIP*, last accessed 13 June 2022, https://dip.bundestag.de/vorgang/verordnung-%C3%BCber-das-verbot-des-inverkehrbringens-von-bestimmten-einwegkunststoffprodukten-und/264068.

What our analysis and case studies indicate is that the less democratic a regime is the more likely it is to favour a SUP ban in the form of a regulation rather than a law or an amendment. Out of the seven electoral and closed autocracies with legally binding SUP bans in our sample, only China, Egypt and Rwanda opted for a legislative process, but legislatures in these three countries are not independent, they serve as mere rubberstamps for executive action.[97]

Legislatures might also prevent effective environmental action. When parliaments are beset with partisan or industry interests like we saw in Kenya, passing environmental legislation can be extremely difficult. Such issues are often manifestations of deeper political problems that require more holistic solutions, but these are not confined to non-democratic regimes only. In the United States, the plastics industry has managed to successfully thwart or pre-empt several state-level efforts to ban SUPs.[98] At the federal level, 'The Break Free From Plastic Pollution Act of 2021' has been stuck in Congress since late March 2021 without any signs of progress.[99]

The type of legislation adopted

While adopting SUP bans in the form of executive decrees and ministerial regulations can seem like a good idea to take a swift action on SUPs, this usually comes at the expense of broader political, industry and sometimes even popular buy-in. These bans are often not implemented or are propped up by draconian penalties, neither of which is particularly good if the ban's goal is a lasting change in behaviour. Wakhungu's experience of facing a hostile parliament and more than 200 lawsuits attests to this as does the fact that plastic bags continue to be smuggled into Kenya from neighbouring countries. Similar to Kenya before 2017, governments in Nepal and Pakistan have announced SUP bans on several occasions without much success.[100] In Pakistan, efforts to enforce the latest SUP ban in the capital city of Islamabad resulted in a physical altercation between an inspector from the Pakistan's Environment Protection Agency and members of staff at a popular restaurant.[101] For bans to be effective, they need to be designed carefully and with a

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[97] See 'Freedom in the world 2022: Rwanda,' *Freedom House*, last accessed 13 June 2022, https://freedomhouse.org/country/rwanda/freedom-world/2022; 'Freedom in the world 2022: China,' *Freedom House*, last accessed 13 June 2022, https://freedomhouse.org/country/china/freedom-world/2022; 'Freedom in the world 2022: Egypt,' *Freedom House*, last accessed 13 June 2022, https://freedomhouse.org/country/egypt/freedom-world/2022.
[98] Samantha Maldonado, Bruce Ritchie and Debra Kahn, 'Plastic bags have lobbyists. They're winning,' *Politico*, 20 January 2020, https://www.politico.com/news/2020/01/20/plastic-bags-have-lobbyists-winning-100587.
[99] See 'All information (Except Text) for H.R.2233 – Break Free From Plastic Pollution Act of 2021,' *Congress.gov*, last accessed 13 June 2022, https://www.congress.gov/bill/117th-congress/house-bill/2238/all-info and 'S.984 – Break Free From Plastic Pollution Act of 2021,' *Congress.gov*, last accessed 13 June 2022, https://www.congress.gov/bill/117th-congress/senate-bill/984.
[100] Rabindra Ghimire, 'Nepal announces banning plastic bags for the third time. There are doubts if it will translate to action,' *Online Khabar*, 7 June 2021, https://english.onlinekhabar.com/nepal-announces-banning-plastic-bags-for-the-third-time-there-are-doubts-if-it-will-translate-to-action.html; Sohail Akhtar, 'Plastic conundrum,' *Dawn*, 19 April 2022, https://www.dawn.com/news/1685738/plastic-conundrum#:~:text=For%20example%2C%20the%20Sindh%20government,that%20too%20was%20a%20failure.
[101] Rina Saeed Khan, 'Carrier bag spat erupts as Islamabad moves to ban plastic,' *Reuters*, 22 August 2019, https://www.reuters.com/article/us-pakistan-environment-plastics-idUSKCN1VC1S3.

degree of sensitivity towards those who will lose out. A full legislative process offers more opportunities for creating such bans, especially if it is inclusive. As we could see in the case of Barbados, stakeholder consultations were deemed crucial for the ban's smooth passage through the Senate which was not under full BLP control. But the consultations did not stop once the ban passed the parliament resulting in a highly-flexible and iterative process that has resulted in a more robust and sustainable SUP ban in the long run.

Enablers of legislative action on environmental issues

In each of our three case studies, there were pre-existing factors that supported legislative action on SUPs (Figure 7). In Kenya, the passage of the 2010 constitution that established the citizens' right to clean and healthy environment incentivised the revision of outdated environmental laws. It also provided a level of legal protection for Wakhungu once the lawsuits against her SUP ban started rolling in.[102] Wakhungu was an important enabler of legislative action herself, highlighting the positive impact of a strong and committed leadership that puts environmental concerns above political interests. The support she received from the two house speakers and members of Kenya's parliamentary committees on environment was crucial for facilitating the amendment of the Environmental Management and Coordination Act (1999). This shows that even in countries with relatively weak legislatures, there is still scope for legislatures to support environmental action.

Another important enabler is public awareness and pressure to act on SUPs. While this is seldom enough to spur legislative action, campaigns calling for a ban on SUPs by James Wakibia and other environmental activists in Kenya might have had some effect on legislators. According to Wakhungu, despite the parliament's overall hostility a quarter of Kenya's legislators supported the plastic bag ban calling it the 'best thing' that had happened to them in the wake of the upcoming 2017 election.[103] This indicates that sustained public pressure might help to galvanise support for environmental action especially around election times. In comparison, there was no similar public pressure in Thailand before the government adopted its voluntary plastic waste roadmap.

A strong popular mandate like the one enjoyed by the BLP in Barbados might also help to support legislative action on SUPs and other environmental issues. The BLP's commitment to banning SUPs in the 2018 election manifesto laid grounds for legislative action while its landslide victory in the 2018 election made such an action possible. This does not mean that parties should strive for a complete control of parliaments (as this can be in itself highly problematic even in democratic regimes) but rather that a transparent environmental agenda combined with a strong electoral performance can go a long way.

[102] Nation Africa, 'Kenya court upholds plastic bag ban,' *The East African*, 27 June 2018, https://www.theeastafrican.co.ke/tea/business/kenya-court-upholds-plastic-bags-ban-1396950.
[103] Interview with Professor Judi Wakhungu.

Figure 7: Enablers of legislative action

Structural	Political	Legal	Civic
Presence of parliamentary committees on environment Regime stability	Strong popular mandate International pressure and support Leaders willing to put environmental concerns above their political interests	Constitutional rights to clean and healthy environment	Public awareness and pressure to act on SUPs

International pressure is another factor that might help to incentivise legislative action on environment. China's 2017 ban on solid waste imports disrupted the global trade in plastic waste, forcing countries to reconsider what they do with post-consumer plastic products. It also resulted in amendments to the Basel Convention that recognised plastics as hazardous waste regulating the global waste trade among the Convention signatories.[104] Barbados was one of the countries that used to export its plastic waste to China but had to reconsider how it dealt with its own plastic waste.[105] Academic studies, policy reports and news articles that have been naming and shaming the world's biggest plastic polluters for the past few years have also contributed to this pressure. Image conscious regimes, like those ruling over Kenya and Thailand, might be more willing to support action on SUPs and other environmental issues if this comes with reputational benefits. The potential problem here is that it might result in greenwashing rather than a committed environmental action as Thailand's half-hearted attempt at banning SUPs demonstrates.

Regime stability also matters. Thailand's protracted political crisis, at the heart of which lies an elite struggle over political power and legitimacy, often leaves little legislative bandwidth for environmental action. This is in a stark contrast with Barbados which is a stable liberal democracy with a progressive environmental agenda. The fact that the BLP government enacted the Control of Disposable Plastics Act within less than a year since its landslide 2018 election victory attests to the importance of regime stability for prioritising environmental action. It is difficult to imagine this happening in a country like Thailand, even if power changed hands like it did in Barbados in 2018. The need for political reforms would most likely take precedence over environmental action as the first order of government business in Thailand.

[104] Emily Benson and Sarah Mortensen, 'The Basel Convention: From Hazardous Waste to Plastic Pollution,' *Center for Strategic & International Studies*, 7 October 2021, https://www.csis.org/analysis/basel-convention-hazardous-waste-plastic-pollution.
[105] Interview with Kirk Humphrey.

Barriers to legislative action on environmental issues

In all our cases, there were pre-existing barriers to legislative action on SUPs. They included structural, political, legal and civic barriers (Figure 8). Some were related to specific regime types while others were more generic in nature. Weak parliaments and laws preventing effective legislative action loomed large in our two non-democratic regimes, Kenya and Thailand. Kenyan parliament remained weak despite its enhanced powers and oversight functions granted by the 2010 constitution. Thai parliament, on the other hand, was made weak by the special constitutional provisions that afforded extensive veto powers over proposed legislation to the Thai prime minister. The fully appointed Senate served as another guard against legislative action that was at odds with the interests of the government.

Figure 8: Barriers to legislative action

Structural	Political	Legal	Civic
Weak parliaments Weak CSOs Strong lobby groups and industry interests	Partisanship More immediate problems (e.g., regime stability, economy)	Lack of strong environmental laws Laws preventing effective legislative action	Lack of popular pressure

Another considerable barrier to legislative action on SUPs was the lack of strong environmental laws in the Thai case. What this meant in practice was that any regulatory or legislative action required either the adoption of new laws, which was a challenge given Thailand's legal context, or the reliance on legislation that was not concerned with the environment and was subject to strong industry interests. Strong industry interests and lobby groups proved to be an important barrier to any action on SUPs regardless of the regime type. This was true for Kenya, Thailand, and Barbados. In contrast, an absence of strong industry interests in Rwanda made action on SUPs considerably easier.

Partisan parliaments can also prevent effective legislative action. This is particularly the case in politically divided countries like Thailand or the US where partisan loyalties often override the merits of a proposed legislation. While the Thai parliament has never deliberated on a SUP legislation, the experience of several failed legislative proposals by opposition parties illustrates many of these problems.[106] Another salient issue is that seemingly more immediate problems, such

[106] For example, see 'Thai opposition party seeks review of security laws after protest arrests,' *Reuters*, 1 November 2021, https://www.reuters.com/world/asia-pacific/thai-opposition-party-seeks-review-security-laws-after-protest-arrests-

as those related to the economy and the functioning of the existing political system, are often prioritised over the long-term environmental health. Lack of popular pressure and weak environmental CSOs might help compound this notion that environment is a less important area for legislative action, making any attempts at leadership in this area more difficult.

Conclusion and recommendations

Legislatures can play an important role in environmental policy making, but in some countries, they are bypassed in the name of a swift environmental action or a host of other reasons, including partisanship and industry influence. Such an approach does not always pay dividends. As our analysis has shown SUP bans that were adopted in the form of executive decrees or ministerial regulations were often much narrower than those that went through parliaments. Many of these SUP bans were also difficult to implement due to the lack of popular and/or industry support. Even the relatively successful ones, such as Kenya's 2017 plastic bag ban, are yet to be replicated in other areas of SUPs.

When legislatures are beset with partisan or strong industry interests, they might become barriers to environmental action. Yet, as our analysis has shown on the example of Kenya, bypassing legislatures might not make future environmental action easier. Legislative involvement offers an opportunity to galvanise broader political support that is not dependent on a single strong-minded environmental leader. This is important because as we have demonstrated on the example of Thailand there may be limitations to what a single environmental leader can achieve. Not all ministerial portfolios are created equal and the option of a regulatory action on SUPs should not be taken for granted.

There were several pre-existing barriers to legislative action on SUPs. Out of these, the structural, political and legal barriers were the most salient. Weak parliaments and legal frameworks that prevent effective legislative action were often the defining features of non-democratic regimes, making legislative action on SUPs extremely difficult. Political partisanship and the influence of strong industry interests further compromised meaningful legislative action on SUPs. The latter were a frequently cited reason in our Kenya case study for bypassing the parliament, but such barriers were not necessarily confined to a specific regime type. They were often a manifestation of deeper political problems that went beyond parliaments. In the Thai case, strong industry interests determined the government's half-hearted approach to SUPs.

Inspiring more legislative leadership on SUPs and other environmental issues requires a balanced approach that recognises the need to work with democratic institutions and processes even if this leads to a lengthier action and to address the structural, legal and political barriers that many

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2021-11-01/ and Wichuta Teeratanabodee, 'Thailand's Hazy Problem – Challenges in Passing Clean Air Legislation,' *Fulcrum*, 22 June 2021, https://fulcrum.sg/thailands-hazy-problem-challenges-in-passing-clean-air-legislation/.

legislatures face in their countries. The evidence presented in this report suggests that increasing legislative leadership on environmental issues will take at least 5 steps:

1. **Facilitate inclusion.** Opportunities for stakeholder consultations that involve government representatives, legislators, cross-disciplinary experts, plastic industry and CSO representatives should be created. Solutions to environmental issues, such as SUP bans, are likely to be more effective if they are designed carefully showing a degree of sensitivity towards those who will lose out.
2. **Provide leadership training.** MPs interested in environmental issues should be identified and trained in leadership skills. Such training can help build cross-party coalitions around environmental issues, empowering MPs to assume a leading role on these issues in future.
3. **Advocate for structural and legal changes.** In some countries, parliaments are designed to be weak, or they are subject to laws that prevent effective legislative action. These structural and legal provisions should be identified and changed. While this is certainly going to be an uphill struggle, especially in non-democratic contexts, increased awareness and steadfast advocacy around these issues might facilitate change in the long term.
4. **Invest in public awareness and education campaigns.** The power of public voice should not be underestimated when it comes to environmental issues. Increased public pressure might create a more conducive environment for change, empowering legislators to take up bold environmental action. Providing assistance, training and resources to environmental CSOs and 'green' influencers will strengthen and organise public voice that can push against industry interests, making it easier for legislators to act.
5. **Insist on working with rather than around democratic institutions and process**. Development and democracy are not mutually exclusive.[107] International actors and donors that provide environmental support and funding should insist on working with legislatures and through full legislative processes. Bypassing legislatures in the name of a swift environmental action might lead to suboptimal outcomes when it comes to public acceptance, industry co-operation and implementation.

[107] Susan Dodsworth and Graeme Ramshaw, Democracy's Development Dividend,' *Journal of Democracy* 32, no.1 (2021): 126-138.

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