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The Icelandic Federalist Papers

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To the People of Iceland:

I shall now proceed with an explication of one of the most glaring omissions of the present charter, which has rendered the system of governance ill-equipped to meet the challenges of a world marked by injustice and exploitation. To form a proper union whose purpose fully attends to the needs of its citizenry, it is necessary that we should be well acquainted with this oversight and explore ways to overcome this flaw.

A most readily cognizable defect of the extant constitution is the curious absence of any provision for protection of the environment and inhabitants of the Republic. Iceland, in its current constitutional framework, has neglected this increasingly common and contemporary understanding of the relationship between humans, the environment, and law. Provisions of the sort that directly address environmental matters have been steadily on the rise across the many nations since 1850.¹ Common subjects afforded explicit mention in a governing charter include biodiversity, conservation, energy, forests, natural resources, sustainable development, and water. Many states offer pride of place to aspects of the natural environment that reflect the unique circumstances of that country and reflect both aspirations for environmental safeguarding and a recognition of the steps necessary to achieve practical implementation. To this end, countries around the globe have enacted constitutional provisions in the form of statements of public policy, duties of the state and the people, and human rights.

Of particular note among such provisions are rights to the environment; that is, human rights pertaining to environmental governance and protection. It may be said that there are mainly two forms of environmental rights worthy of consideration for inclusion in any modern charter—procedural environmental rights and substantive environmental rights. The former type entails rights to information, participation, and access to justice in environmental matters. Procedural environmental rights speak directly to the interface between democracy and the environment. They promote accountability, public deliberation, and transparency.² Recent empirical work shows that these so-called environmental democracy rights may be instrumental in achieving outcomes related to environmental justice.³ Over two dozen countries guarantee their citizens such rights.⁴ The latter type guarantees the populace an environment of high quality, which is conducive to the full enjoyment of life. Emerging from the wake of the 1972 Stockholm Convention, these rights have found a home in the constitutions of at least 75 nations.⁵ One would be hard-pressed to argue that a state can reasonably claim to practice responsible stewardship of its people in the absence of these rights, which undergird essential rights to life, health, and privacy.

But some have contended that the seemingly unchecked enumeration of positive rights in national constitutions is not a welcome development. Positive rights, as the argument goes, may unnecessarily interfere with markets or prove unenforceable by courts.⁶ Yet this objection was raised over 20 years ago at a time when jurisprudence on environmental rights was scarce, and the author was specifically addressing the particular situation found in newly independent post-Communist states of eastern Europe. There is scant evidence that environmental rights have placed an undue burden on the functioning of markets, and courts around the world have successfully adjudicated environmental rights claims.⁷

The present charter offers only a single, undefined statement regarding human rights. Article 65 reads: “Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status.” This provision, while broad, is insufficient to handle the task of protecting human rights where environmental concerns are animated. As with every other country in the world, Iceland faces daunting challenges associated with climate change. Alterations to Iceland’s climate and landscape will no doubt pose threats to human existence. Human rights are crucial tools for society’s most vulnerable, who will suffer the brunt of human-induced changes to the climate. The Republic would be wise to seize this opportunity to prepare for climate change and demonstrate its commitment to protecting its precious environment for both present and future generations by including the powerful language of environmental rights in the successor to its terse and outmoded constitution.

—CIVIS

¹ Joshua C. Gellers, “[Greening Constitutions with Environmental Rights: Testing the Isomorphism Thesis](#),” *Review of Policy Research* 29(4) (2012): 528.

² Carl Bruch, Wole Coker, and Chris VanArsdale, “[Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa](#),” *Columbia Journal of Environmental Law* 26 (2001): 135.

³ Joshua C. Gellers and Christopher Jeffords, “[Procedural Environmental Rights and Environmental Justice: Assessing the Impact of Environmental Constitutionalism](#),” Economic Rights Working Papers No. 25, University of Connecticut, Human Rights Institute (2015).

⁴ David R. Boyd, [Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment](#) (Vancouver: UBC Press, 2012).

⁵ James R. May and Erin Daly, [Global Environmental Constitutionalism](#) (New York: Cambridge UP, 2015).

⁶ Cass Sunstein, “[Against Positive Rights](#),” *East European Constitutional Review*, 35 (1993).

⁷ See May and Daly (2015), ch. 3.