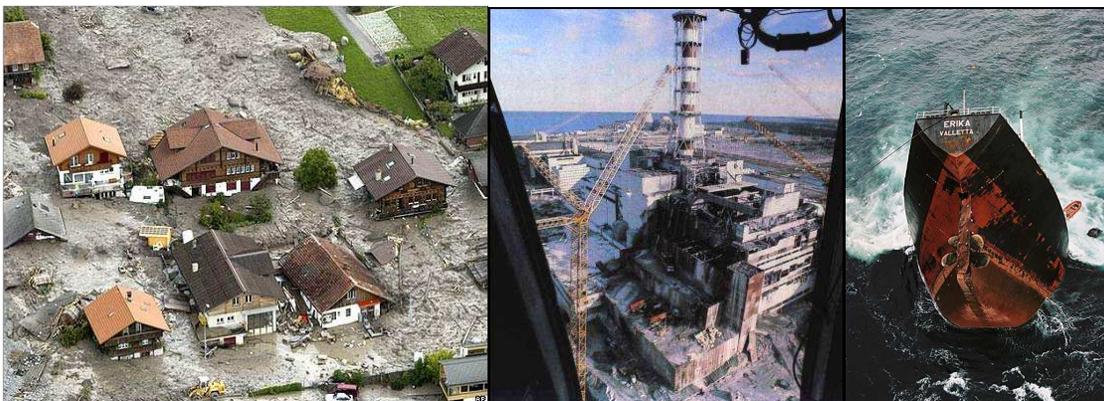


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**EUROPEAN AND MEDITERRANEAN MAJOR HAZARDS AGREEMENT
(EUR-OPA)**

**Draft European and Mediterranean Ethical Charter
on Resilience to Disasters**



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1 Foreword

This draft is the response of the Executive Secretariat of the European and Mediterranean Major Hazards Agreement (EUR-OPA) to the Parliamentary Assembly of the Council of Europe's invitation, in Recommendation 1862 (2009), for it to prepare a draft ethical charter on resilience to disasters. The Committee of Ministers of the Council of Europe endorsed this proposal in paragraph 8 of its reply of 8 July 2009, calling for a European and Mediterranean ethical charter on resilience to disasters, whose aim would be to improve preparedness and deal with ethical problems relating to disaster victims.

This document concerns both natural and technological disasters. It should be noted that most international documents relating to the links between human rights and disasters cover only natural disasters. However, we did not think it was right to limit ourselves to natural disasters, as ethical principles should apply in all circumstances. Moreover, the International Law Commission makes no distinction between the two types of disaster in its draft articles on the protection of persons in the event of disasters. Lastly, dealing with both types of disaster matches the remit of the European and Mediterranean Major Hazards Agreement. Including man-made disasters does mean, however, leaving out those resulting from armed conflicts.

The current document is intended to deal both with the direct victims of disasters and with other bodies and persons involved, such as public civil defence organisations, public servants of victim states and assisting states and humanitarian NGOs. So many people and bodies are involved that common ethical principles are required, transcending the rules governing the responsibilities of local and regional authorities and corresponding to the wishes expressed by the International Law Commission in the course of its work on protecting people in the event of a disaster.

These ethical principles are aimed therefore not just at victims but also at all other people involved in resilience to disasters, whatever the time, the place, the length of the disaster (sudden or progressive) or its context (simple or complex emergency¹).

Ethical rules mostly concern individuals but in some cases they can also apply to corporate bodies although ethical concerns are more inherently linked to personal law than institutional law.

The aim of this document will be to establish, throughout all of the processes connected with disasters (right through from prevention measures to reconstruction work and including crisis periods before, during and after the disaster), what moral obligations the various protagonists have in the light of existing international legal rules, particularly in the human rights field.

There have been many documents and declarations on disasters but they have very rarely addressed the link between disasters and human rights. Crisis situations and the emergencies to which they give rise have the effect of eclipsing existing rights in general, and human rights in particular. In some states, crisis situations are treated as exceptional circumstances which make it legally justifiable to set aside normal legal rules. In principle, fundamental human rights are to be applied at all times and in all places because of their universal nature. They should therefore be compulsory in all circumstances, including times of disaster. Crises and emergencies all too often mean that the overriding nature of human rights is forgotten and certain exceptions are tolerated. Instead, what we should be doing is pointing to the compelling need to respect these rights at an ethical level, either to fill a legal vacuum or to bolster and clarify the

¹ A humanitarian crisis accompanied by the near or total collapse of the authorities.

basic duties of those involved in the disaster. Disasters do not cause fundamental human rights to vanish. They often mean that they are intentionally or unintentionally forgotten, especially as the absence of, and the lack of effective supervision by, the police and judicial authorities make it easier for infringements of fundamental rights to go unpunished.

Disaster victims, humanitarian organisations and other bodies and persons involved must therefore be reminded that some human rights and duties must be especially respected and cannot be waived, even during exceptional circumstances.

It is difficult, however, to select the ethical principles which should apply. On the face of it, it would appear obvious that all human rights should apply, whether civil and political or economic, social and cultural. However, to avoid making an overlong list, we will concentrate only on those considered to be more frequently at stake during disaster situations and refer for a more exhaustive description to the various handbooks and operational guides on the links between human rights and disasters².

In the absence of an appropriate legal instrument setting out human rights and duties at international and regional level in the event of a disaster, it is in keeping with the Council of Europe's aims to propose *de lege ferenda* an ethical charter setting out recommended moral rights and obligations applying to both public and non-public partners dealing with disasters.

It should be possible to monitor informally application of this Charter through the EUR-OPA agreement. It could also be periodically reviewed at world level by the United Nations Human Rights Council, which has on several occasions highlighted the imperative need to take human rights into account in times of disaster.³ With regard to the Haiti disaster, reference may be made to the press release of 2 February 2010 by the regionally competent Inter-American Commission on Human Rights on the threats to human rights resulting from the emergency in Haiti.

² Sphere, project handbook and humanitarian charter, 2004; Inter-Agency Standing Committee (IASC), Operational guidelines on human rights and natural disasters, 2006; IDLO, Manual on international law and standards applicable in natural disaster situations, by Erica Harper (co-ordinator), Rome, March 2009.

³ Human Rights Council Resolution of 28 January 2010 on the support of the Human Rights Council to the recovery process in Haiti: a human rights approach (A/HRC/S-13/L.1)

2 Draft European and Mediterranean Ethical Charter on Resilience to Disasters

2.1 Preamble

The Parties to the EUR-OPA Agreement:

Noting the increase in the risks of natural and technological disasters and their frequency;

Considering that disasters pose a major threat not only to the survival of populations and society as a whole, but also to the dignity of individuals, **their safety and the safeguard of natural and cultural heritage;**

Noting that the disorder which disasters cause often results in serious infringements to the entire range of human rights;

Considering the various potential consequences for human life, safety, dignity, property, cultural heritage, the environment and sustainable development;

Considering that, through their impact on **society, the economy and** the environment, disasters jeopardise sustainable development, while environmental degradation compounds economic and social vulnerability by increasing all forms of inequality **and by** contributing to **an increase** in risks;

Convinced that the vulnerability of communities and the environment is a major factor in exposure to disaster risks, which limits the potential for resilience, but these risks do not affect everybody in the same way;

Convinced that poor people and socially disadvantaged groups **are the most exposed** and suffer most directly from disasters;

Noting that the most fragile people are in general not a priority issue in prevention strategies or in operational manuals even though they are evidently the most vulnerable;

Drawing attention **to the fact** that the increase in the risk of disaster, **the demographic density in exposed areas** and population movements due to climate change **have** consequences on human rights, which requires disaster risk reduction to be incorporated in strategies for **adaptation to** climate change **in liaison with the respect of human rights;**

Considering that the increase the impact of disasters on human rights and the need, in the absence of a universal binding legal instrument, to incorporate this aspect into prevention, relief and reconstruction strategies, at least as part of a minimum set of ethical standards for the various persons and bodies involved;

Considering that such standards, based on human rights, should help to strengthen resilience to disasters by ensuring that everyone, both among the victims and among the relief workers, is protected both physically and in terms of human dignity;

Considering that both natural and technological disasters can add to population displacements and that there is no internationally recognised legal status **to protect** environmentally displaced persons, whereas these people are in extremely vulnerable

situations requiring increased emphasis on ethical conduct showing due regard for basic human rights;

Considering that increased resilience is dependent on reducing vulnerability as a whole, whether it is linked to poverty, gender, health, insecurity, family breakups, fear or panic, and that ethically responsible practices are required to achieve this;

Considering that the international community and **local public**, regional and national authorities **as well as international organisations and non-governmental organisations**, have a duty to adopt prevention, assistance and reconstruction measures to protect individuals, natural, historical and cultural heritage, property and means of development and survival from the risks of a disaster, while taking account, at all times, in all places and without discrimination, of the need to protect the fundamental rights of those concerned;

Considering that the cross-border impact of disasters requires preventive measures, a common, concerted response, co-operation between governments, **local** and regional authorities and the involvement of civil society;

Considering that only better anticipation and improved prevention will be able to limit recourse to emergency measures and "exceptional circumstances", thereby reducing the risk of deliberate or unintentional breaches of the human rights of both victims and rescue workers;

Considering that some public and private development projects may increase the risk of disaster, they must therefore, with **a view to** sustainable development and respect for human rights, **take the risks into account in their impact studies and limit their effects**, particularly for vulnerable people, integrating these effects into various disaster prevention measures and plans designed to strengthen resilience to disasters;

Considering that good governance in the management of disasters forces people to account for their actions and hence reduces the risk of corruption in government, public services and society as a whole;

Emphasising that indigenous communities and local populations require special human rights protection catering for their different customs, cultures and relations with the environment, which make them more exposed to the risks of disaster, although their knowledge of the local surroundings and its history can be a major contribution to risk reduction and reconstruction after disasters;

Propose that an ethical charter should be adopted, serving as a guide to the conduct of the various partners involved voluntarily or involuntarily in disasters.

2.2 Chapter 1 – Purpose and principles

2.2.1 Article 1 – Purpose

The purpose of this Charter is to increase the resilience of populations in anticipation of the probable occurrence of natural and technological disasters by giving some ethical substance to risk reduction measures, **such as prevention**, assistance, **reduction of vulnerability and reconstruction**, with the emphasis on promoting sustainable development, protecting human rights and reducing **human vulnerabilities linked to gender, social and environmental aspects**. This should lead to the promotion of a

culture of resilience combined with a systematic regard for human rights in all places and circumstances.

2.2.2 Article 2 – Compatibility with existing rights

1. Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by international and regional human rights instruments.
2. The provisions of this Charter shall not affect any more favourable provisions already binding certain states or provided for by relevant bilateral or multilateral international agreements.

2.2.3 Article 3 – Principles

1. Solidarity – Nations and peoples shall co-operate in a spirit of solidarity to strengthen resilience to disasters and help victims. The costs and burdens of disasters as well as the benefits of risk reduction measures shall be shared equitably, which implies paying particular attention to the most vulnerable individuals and communities.
2. Non-discrimination – Measures to prevent, reduce and prepare for disasters, distribute relief and promote recovery, as well as the enjoyment of the rights set forth in this Charter shall be secured and implemented without discrimination on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, ethnic background, association with a national minority, social or economic circumstances, birth, disability, age or other status.
3. Humanity – All people shall be treated humanely in all circumstances, regardless of the nature, origin, length or place of the disaster, and particular attention should be paid to the most vulnerable people. The dignity and rights of all disaster victims and relief workers shall be respected and protected under all circumstances.
4. Impartiality – Disaster prevention, preparedness, relief and recovery measures shall be implemented on the basis of genuine needs alone, without any favouritism between the populations concerned or within them.
5. Neutrality – Disaster prevention, preparedness, relief, response and recovery measures shall be implemented without political, racial, religious or ideological debate, with the sole aim of protecting individuals and their rights, the environment, property and heritage and hence strengthening resilience to this type of event.
6. Co-operation – States shall co-operate, regardless of political, economic, social and cultural differences and according to their capabilities, to strengthen resilience to disasters and secure respect for human rights, showing particular regard for the possible cross-border impact of disasters and the need for joint action.
7. Territorial sovereignty – States have a duty to protect persons on their territory, guaranteeing, despite the disaster, that human rights are fully secured both for their nationals and for humanitarian and medical relief teams.
8. Prevention – States, **as well as regional and local authorities**, have a responsibility for implementing anticipation and prevention measures, with the most active involvement possible of all protagonists, including civil society. This principle presupposes awareness of the changing risks over space and time, particularly in relation to variables arising from demography and climate change.

9. Role of the media – The media should treat disaster victims with dignity and should totally respect their privacy.

2.3 Chapter 2 – Prerequisites for strengthening resilience to the risks of disasters

2.3.1 Article 4 – The right to enact prevention measures

1. All persons have the right to benefit from measures to prevent disasters, which ensure by suitable means that they have a dignified life, are protected from bodily harm **and that their heritage is protected**, while also providing an appropriate level of resilience to disasters, taking advantage of the experience of the various countries concerned in dealing with each possible type of disaster.
2. Such prevention measures must be specially adapted to the various eventualities and the diverse categories of vulnerable people **so as to better guarantee the right to the strictest security measures.**

2.3.2 Article 5 – The right to a healthy environment

Considering that there is a direct link between the quality of the environment, the level of exposure to disaster risks and communities' ability to cope, all persons shall **thus** have the right to a healthy environment, placing them in the best position to withstand disasters and thereby reducing their vulnerability **and contributing to their personal security and that of their property.**

2.3.3 Article 6 – The right to education, training and awareness-raising about resilience to disaster risks

All persons, including children and people with disabilities, **their families, those who take care of them and teachers**, have the right to appropriate education and training capable of strengthening resilience to disaster and creating an outlook and a culture of prevention of, and adaptation to, risks.

2.3.4 Article 7 – The right to prior information

1. All persons have the right to disseminate and/or request and receive official **trustworthy** information, of both a technical and more accessible nature, together with explanations where necessary (including about alerts and the correct behaviour to adopt) on the risks to which they are exposed and the measures to adopt to prevent or limit **the risks and** the effects of a disaster.
2. States, **regional and local authorities, hospitals and schools** have a positive obligation to produce and provide high-standard information according to clear procedures and in a language that is easily understandable by everyone, on the risks of disaster and the preventive measures to adopt in order to reduce these risks. This obligation shall apply subject to the limits relating to the level of knowledge, the possibility of forecasting risks and the availability of information.

2.3.5 Article 8 – The right to participation

All persons have the right to be consulted on, and participate in drawing up, disaster prevention plans and programmes and emergency and relief plans, as well as public or private projects which may cause or exacerbate disasters.

2.3.6 Article 9 – The right to freedom of expression.

All persons have the right to express publicly their opinions, fears and wishes and take part in the public debate on disaster risk prevention, forecasting by public authorities and private bodies, and relief and reconstruction measures planned in the event of a disaster.

2.3.7 Article 10 – The right of access to justice.

All persons have the right to a fair trial and an effective legal remedy to ensure the protection, respect and enjoyment of the rights enshrined in this Charter and other rights secured by international and domestic law with regard to the prevention measures planned or if the authorities fail to act to prevent disaster risks and organise relief.

2.3.8 Article 11 – The right to disaster prevention in the workplace

All workers have the right to be informed about disaster risks in their workplace and about the effects of natural and technological disasters. They shall have access to special training in prevention of, and possible responses to, disasters.

2.3.9 Article 12 – The right to disaster prevention in recreational and tourist areas

All individuals have the right to be informed about potential disaster risks during their leisure or tourism activities and on the effects of natural and technological disasters. They should be provided with special information focusing on prevention and the possible responses to disasters enabling them to be aware, in accessible language, of rescue plans and the behaviour to adopt **on the occurrence** of a disaster.

2.3.10 Article 12 bis – The right to disaster prevention in public places, in particular schools and hospitals

Users of public places, in particular schools and hospitals, have the right to be informed about disaster risks. This information shall comprise special preventive measures and possible responses to disasters and shall provide in an accessible language the essentials of safety plans and the behaviour to adopt in the case of a disaster.

2.3.11 Article 13 – The right of the most vulnerable groups to special prevention measures

Women, children and young people, indigenous populations, elderly persons, persons with disabilities, environmentally displaced persons, persons suffering from serious illnesses, ethnic and religious minorities and the most disadvantaged members of

society, including persons or groups of persons who are victims of racism, shall be able to rely on disaster prevention measures tailored **to their specific vulnerability**.

2.3.12 Article 14 – The right to organise **and participate in** emergency drills

To strengthen resilience to disasters, emergency drills and simulations **as well as national and local information campaigns** shall be held regularly with the active involvement of **the local authorities**, the relief agencies, the populations concerned and people temporarily in the area. Special arrangements should be made for **handicapped persons** and in particular for those with a hearing impairment when a siren is used.

2.3.13 Article 15 – Preventive evacuation

1. Except in situations of serious and imminent danger, all the necessary steps shall be taken, insofar as is possible without compromising public safety, to avoid temporary evacuation and displacement of people because of the risk of a disaster.
2. It should not be possible to organise compulsory evacuation before a disaster strikes unless there is an imminent threat. Persons who refuse to evacuate shall do so at their own risk.
3. Persons, groups or communities evacuated because of a serious and imminent risk of a disaster shall be duly notified about the time of the evacuation, the procedures to be followed, destination points and the planned duration of the evacuation. The arrangements for evacuation shall ensure that their dignity and their fundamental rights are protected, and shall include protection of their property and effects.
- 4. Special operational evacuation procedures shall be foreseen and applied for the evacuation of vulnerable persons and in particular for the handicapped.**

2.4 Chapter 3 – Rights that facilitate resilience to disasters

2.4.1 Article 16 – The right to humanitarian assistance

All persons have the right to immediate assistance in the event of a natural or technological disaster. Humanitarian assistance shall be provided fairly, impartially and without discrimination, showing due regard for the vulnerability of victims and individuals' and groups' specific needs.

2.4.2 Article 17 – Information and participation during disasters

All persons and communities affected by disasters shall be kept informed and have the right to take part in decision-making in response to disasters. They have the right, in particular, to receive, in their own language, easily understandable information on the nature and the extent of the disaster, the emergency measures planned to respond to it, the times and places at which food and drink will be distributed, the location of emergency medical facilities, temporary housing arrangements and the arrangements for and destination points of any population movements being planned.

2.4.3 Article 18 – Compulsory evacuation

Compulsory evacuation may only be applied once the potential risks have been clearly explained, and must entail special procedures to protect abandoned property. Persons who refuse to be evacuated shall do so at their own risk and must not endanger the lives of rescue workers through their conduct.

2.4.4 Article 19 – Protection of rights related to the conditions required to lead a dignified life

1. All persons who are victims of a disaster have the right to the requisite and appropriate conditions to lead a dignified life such as security, physical safety, access to food and clean water, hygiene, temporary housing, clothing and **essential** emergency medical and psychological care, taking account of the exceptional circumstances but preserving human dignity at all times.
2. Personal rights shall be respected, particularly the right to one's own image and the right to privacy, so that the presence of the media does not result in abuses.
3. Sexual violence and abuse shall be prohibited and severely punished, whoever the perpetrators and victims may be.

2.4.5 Article 20 – Emergency assistance for the most vulnerable people

Allowing for local circumstances, **and without detriment to priority assistance to be granted to all those who have a chance of survival**, humanitarian assistance, first aid and any emergency evacuations carried out shall be organised first and foremost for the most vulnerable people such as pregnant women, children, people with disabilities, elderly people, the ill and the wounded.

States should train and provide special equipment to rescue services, to doctors and to nurses to enable them to search and provide emergency aid to the most fragile groups of persons.

2.4.6 Article 21 – Duties of rescue workers

1. Assistance measures shall be implemented in a spirit of humanity, solidarity and impartiality.
2. Irrespective of their nationality and their function and regardless of the seriousness and nature of the disaster, both civilian and military rescue workers, including any private security forces, shall behave in a dignified manner, control their anxiety or fear, keep calm and ensure that they never infringe the fundamental rights of the people they are rescuing.
3. Emergency relief shall be provided without discrimination or favouritism and without heed to gender, religion, language or social status.
4. Rescue workers shall not take advantage of the exceptional situation to abuse their rights. They shall never exploit the weakness or helplessness of victims to force them to carry out acts that infringe their human dignity or their physical and sexual integrity. They shall refrain from any act that may equate to corruption.

2.4.7 Article 22 – Rights of rescue workers

1. Rescue workers of any nationality shall continue to enjoy their fundamental rights, even during crisis situations.
2. Rescue works shall be provided with psychological assistance during and after the rescue operations.
3. States, international organisations and all institutions connected with humanitarian aid in response to disasters shall adopt all possible measures to guarantee for rescue workers the necessary conditions for them to carry out their work successfully, including the conditions which will preserve their dignity and safety, and protect them from physical and psychological harm.
- 4. States, regional and local authorities as well as training schools for rescuers shall dispense special training to rescuers on human rights in times of disaster as well as on the special care required for attending to handicapped persons and the more vulnerable groups.**

2.4.8 Article 23 – Measures to safeguard and restore the environment

1. In view of the importance of the environment for the survival of populations, measures must be taken to ensure as rapidly as possible the safeguarding and restoration of environmental assets and the re-establishment of environmental quality.

2.4.9 Article 23 bis – Measures to safeguard and restore social links

- 1. Considering the importance of social links for the survival of populations, measures shall be taken to ensure that social links are restored as quickly as possible.**

2.5 Chapter 4 – Rights guaranteeing resilience after disasters

2.5.1 Article 24 – Responsibility to strengthen resilience to disasters

1. As guardians of sustainable development, states and local and regional authorities have prime responsibility for reconstruction after disasters. While recreating the conditions for a normal life and essential facilities and services, and during the transition period, which may vary in length, they must continue to safeguard enjoyment of and respect for human rights.
2. Businesses, other economic players and humanitarian organisations involved in the reconstruction process shall be responsible for ensuring respect for the human rights and dignity of victims and any other people taking part in the reconstruction work. They shall adopt measures and practices ensuring in all places and circumstances that human rights are protected and respected in the course of their activities.
3. The urgency of the reconstruction process shall not be used as a pretext to take rebuilding or environmental restoration measures that would ultimately prove to be harmful to the environment or detrimental to the future safety of inhabitants.

2.5.2 Article 25 – General obligations

1. States have the positive obligation to adopt the requisite measures to ensure that human rights are protected and promoted during all reconstruction and restoration work and to investigate infringements of these rights.
2. Organisations and authorities responsible for reconstruction work and humanitarian aid agencies participating therein, as well as all these bodies' staff, shall respect human rights and adopt an irreproachable line of conduct in keeping with the related ethical values throughout their work, while attempting at all times to achieve the highest level of protection.

2.5.3 Article 26 – Protection of economic, social and cultural rights

1. Economic, social and cultural rights shall be protected and measures shall be taken to ensure that they are implemented during the reconstruction work following disasters. Efforts to secure respect for these rights shall give priority to the right to medical and psychological assistance, education, protection of property, housing and means of subsistence, preservation of culture, traditions and customs and restoration of the quality of the environment.
2. It shall be possible to organise ceremonies for the dead without hindrance or delay and according to each group's traditions and religions.
3. Use of temporary housing shall last as short a time as possible.
4. Restitution of property shall be carried out on the basis of claimants' good faith, backed up by witness statements if the relevant documentary evidence has been lost.
5. Environmentally displaced persons from home or abroad shall be entitled to choose the place and the circumstances of their temporary housing freely.
6. Measures must be taken to guarantee in particular the right to health by providing for the necessary medical and psychological treatment to ensure the full physical and psychological recovery of victims and rescue workers after disasters have occurred.

2.5.4 Article 27 - Protection of civil and political rights

1. Civil and political rights shall be preserved after the disaster.
2. Disaster victims who have lost their official papers and identity documents shall be able to obtain replacements easily.
3. Disaster victims shall be free to come and go **on the scene of the disaster on the condition that they do not encumber rescue and rehabilitation operations.**
4. Disaster victims shall be able to obtain all the necessary assistance for the purposes of family reunion.
5. Special care shall be provided for orphans and searches shall be organised to find parents, family, neighbours, friends or adoptive parents capable of taking them in, with priority being given to family reunification.
6. Formalities relating to voting rights shall be relaxed where necessary to enable disaster victims to exercise their civic rights immediately.

The signatories to this Charter undertake to observe it in all circumstances as a code of ethics to cope more effectively with disasters.