

State obligations and people’s right to be protected from the serious effects of global warming:

realization of the right to a healthy and sustainable environment in the face of risks and threats of natural hazards

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SUMMARY:

The **aim** of this report is to establish how consideration of the need for a healthy and sustainable environment (and, in particular, the human right to a healthy and sustainable environment and a right to be protected from the harmful effects on fundamental rights of climate change) can guide action taken under the European and Mediterranean Major Hazards Agreement (EUR-OPA) within the Council of Europe to tackle the serious effects on human rights of climate change-related risks. The challenge therefore is to restore the human dimension to risk management. The “right to a healthy and sustainable environment” has both a material aspect: the right to breathe clean air, access to clean water and proper sanitation, the right to healthy and sustainable food, the rights to a safe climate and to healthy biodiversity and ecosystems; and a procedural aspect: the participation rights enshrined in the Aarhus Convention.¹ This report will focus on the obligations and rights arising from the need to prevent the serious effects of climate change on human rights and will not cover the rights of persons once the disaster has occurred (particularly the reparations and rehabilitation aspect).

The report is divided into **three parts**: the first focuses on states’ responsibilities in the light of the harmful effects of climate change and on the rights of populations; the second outlines the specific arrangements needed to give these rights and responsibilities practical effect, i.e. the procedural aspect; and the third contains guidelines and recommendations for future activities in the context of EUR-OPA. **Part one** points out that the responsibility to punish and compensate has now been joined by a responsibility to take preventive action through anticipation, in other words an obligation of result to adopt institutional regulations and mechanisms, but also an obligation of means in terms of prevention including preparedness (preparing populations and enhancing their individual and collective capacities for action) in response to the known climate change-related risks, whose impact, as is now scientifically proven, states have the power to limit by adopting appropriate behaviour. This responsibility lies primarily with states and intergovernmental organisations in relation to present and future generations. The human rights-based approach, which has now been incorporated into public disaster prevention policies, is now reflected in the explicit recognition by the European Court of Human Rights of “a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life”; this right comprises a substantive and procedural dimension, and the latter gives rise in particular to rights to education, information, science, participation and access to justice, which are addressed in **part two**. Although these procedural rights are now well embedded in our judicial systems, a lack of precision and persuasive follow-up at European level (including by the EUR-OPA bodies) has resulted in only piecemeal implementation. Gearing prevention and preparation policies to the challenges of climate change also calls for inclusive and participatory governance including real joint decision making with all stakeholders going well beyond mere consultation, giving agency at local level, involving scientists, and basing itself on increased synergy, including at the Council of Europe. Bearing in mind that more progress is needed, **part three** suggests priority activities along the following four lines: (i) setting up a monitoring mechanism for the recommendations adopted by EUR-OPA in order to ascertain what impact these standards are having and identify more clearly what steps still need to be taken; (ii) drawing up a new recommendation on rights and obligations in the light of climate change drawing on a human-rights based approach; (iii) renewing modes of governance to achieve true societal change; and (iv) rethinking links with the scientific community.

INTRODUCTION:

In Appendix V, “The Council of Europe and the environment”, of the Reykjavik Declaration “United around our values”, adopted at the 4th Council of Europe Summit of Heads of State and Government of 16 and 17 May 2023,² the states highlighted “the urgency of taking co-ordinated action to protect the environment by countering the triple planetary crisis of pollution, climate change and loss of biodiversity” and undertook to identify the challenges and develop “common responses”. More specifically, the member states of the European and Mediterranean Major Hazards Agreement (EUR-

¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: <https://unece.org/environment-policy/public-participation/aarhus-convention/text> (4 September 2024)

² <https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html#> (15 August 2024).

OPA) have undertaken to promote “disaster risk reduction – including prevention, preparedness and efficient response to emergencies”,³ bearing in mind the current context of climate change.

The aim of this report is, more specifically, to “provide member states of the EUR-OPA Major Hazards Agreement with information and advice on a more effective response to the threats posed by damage to the environment and climate change and suggest potential measures to be taken to secure a clean, healthy and sustainable environment”.⁴ The goal therefore is to understand in what way placing emphasis on a clean, healthy and sustainable environment (and, in particular, the right to a healthy environment) can orientate public policies and legal tools intended to tackle the effects on human living conditions and fundamental rights of new climate change-related risks. Though the subject matter is broader than just the subjective right to a healthy environment, this question is nonetheless central; a human rights-based approach to climate issues is moreover now broadly accepted both by academics and the public authorities and other stakeholders. Furthermore, in EUR-OPA’s various activities, one of the commonly accepted key challenges is to restore humans at the heart of the risk management process.

It is now accepted that global warming is going to cause ever more frequent and serious natural disasters in future years. The huge floods in spring 2024 in north-west France and the fires on the outskirts of Athens and Izmir in August 2024 are just three examples among so many others. These events seriously impact human lives and the well-being of populations subject to constant climate stress.

To begin, it is important for the understanding of this report to **define certain key terms**. Applying the definition given in Article 1(2) of the UN Framework Convention on Climate Change “**Climate change**’ means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods”; according to Article 1(1) of the same text, “**Adverse effects of climate change**’ means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare”. For the purposes of this report, it is only the effects on humans that will be taken into account. The European Court of Human Rights states that in recent times there has “been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights”.⁵

It is worth noting that we will not be using the official jargon of the Reykjavik Declaration, copied from the UN, which talks of a “triple crisis”; according to dictionary definitions, a crisis is a passing event, lasting for a short period. Yet, this event is neither a passing one, as it dates back several decades, nor has it lasted a “short period”. Since its establishment in 1988, the Intergovernmental Panel on Climate Change (IPCC) has talked consistently of “global warming” and “climate change”; accordingly, it can be asserted that these are lasting changes, warranting the term for the new geological era we have now entered, the Anthropocene. The term “climate change” is moreover the one used in the Framework

³ EUR-OPA, Resolution 2016 – 1 of the Committee of Permanent Correspondents “Building more disaster resilient societies in Europe and the Mediterranean region: Priorities for Action”, 26 October 2016, online: <https://rm.coe.int/16806b391b> (19 August 2024). See also: Resolution 2010 – 1 of the Committee of Permanent Correspondents “Working together in Europe and the Mediterranean for the Prevention of Disasters, Preparedness and Response: Priorities for Action”, 28 September 2010, paragraph 1, which talks of “the challenges of increased risk from climate change and other phenomena”.

⁴ Act of Engagement, AE/2024/04.

⁵ ECtHR, GC, Verein Klimaseniorinnen Schweiz and Others v. Switzerland, no. 53600/20, judgment, 9 April 2024, para. 431.

Convention cited above. As pointed out in one of my previous articles,⁶ the choice of the terms we use is not without its consequences: it is quite clear that the response to a lasting, serious phenomenon cannot be the same as that to a crisis, which is bound to be only fleeting. The United Nations seems moreover to have adjusted its own terminology as the report adopted by the United Nations Environment Programme (UNEP) in November 2023 talks of a “triple existential threat”, removing the debatable word “crisis” and underlining the idea of the extreme gravity of the problems we face. The expression “**healthy and sustainable environment**” has the merit that it relates not only to environmental problems with an impact on human health or well-being (“healthy”), based on an anthropocentric approach which is now criticised, but also to the impact of global warming on all living beings, it being understood that humans are only one part of this, seen from an ecological angle. According to the definition given by the UN Special Rapporteur, the “**right to a healthy and sustainable environment**” includes the right to breathe clean air, access to clean water and proper sanitation, the right to healthy and sustainable food,⁷ and the right to a safe climate and healthy biodiversity and ecosystems.⁸ Lastly, we will use the term “**risk**”, which lies at the core of EUR-OPA’s activities, and has the advantage of denoting an objectifiable and calculable event (whereas the word “threat” is linked more to subjective feelings).⁹

The **key question** addressed in this report therefore is as follows: **how can consideration for a healthy and sustainable environment (and, in particular, of a human right to a healthy and sustainable environment or a right to be protected from the harmful effects on fundamental rights of climate change) guide the actions taken in the context of EUR-OPA to respond to climate change-related risks?** This central question gives rise to secondary questions: What are the responsibilities of European states? Are there any new responsibilities? How can these new obligations and the rights of populations be rendered operable? How can populations be more closely involved in being prepared for the serious effects of current and future risks? What new governance methods should be set up at various levels? And lastly, what recommendations should be made to expand on the measures decided on in the context of EUR-OPA?

This report therefore focuses on the **obligations and rights tied up with the prevention of the effects of global warming on human rights** and will not cover the rights of persons once a disaster has occurred, on which there are already many studies.¹⁰ We will merely state in this respect that the ordinary law rules on international responsibility apply, namely the requirement for termination of the unlawful act, reparation (*restitutio in integrum* and/or compensation if restitution is entirely or partly impossible) and measures to avoid repetition. EUR-OPA has also produced standards concerning the requirement to provide psychosocial support for people traumatised by the damage occasioned.¹¹ As

⁶ Elisabeth Lambert, “Le Processus de Reykjavik sur les aspects de l’environnement liés aux droits de l’homme : échec ou impulsion politique ?” (in French only), RDLF 2024 chron. No. 17, online: https://revuedlf.com/cedh/le-processus-de-reykjavik-sur-les-aspects-de-lenvironnement-lies-aux-droits-de-lhomme-echec-ou-impulsion-politique/#_ftn1 (16 August 2024).

⁷ See Elisabeth Lambert, *Prendre au sérieux le droit à une alimentation saine et durable, Analyse comparée d’une histoire contemporaine et prospective juridique*, Peter Lang, 2024.

⁸ GA, UN, A/HRC/40/55, 8 January 2019, “Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”, Report of the Special Rapporteur, p.4, online: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/40/55&Lang=E>, 16 August 2024.

⁹ Lionel Charles and Bernard Kalaora, “Société du risque, environnement et potentialisation des menaces : un défi pour les sciences sociales”, *Développement durable et territoires*, vol.10, no.3, December 2019, para. 5, online: <https://journals.openedition.org/developpementdurable/15302>.

¹⁰ See, for example: United Nations, CDI, draft articles on the protection of persons in the event of disasters and commentaries thereto, 2016. Flavia Zorzi et al. (eds), *Routledge Handbook of Human Rights and Disasters*, 2018, 393 pages.

¹¹ See the online publications: <https://www.coe.int/en/web/europarisks/publications> (18 August 2024) and the Recommendation of 2007 on Psychosocial support and services for victims of disasters, 27 and 28

this report focuses on human rights, it does not deal either with obligations and rights linked to the protection of cultural or historical heritage, which have already been covered in studies by EUR-OPA.¹²

The ideas outlined in this report draw on previous measures adopted under the auspices of EUR-OPA and, to a lesser degree, of other European and international bodies (especially the UN), on the relevant literature and on my previous expert work for the Council of Europe. For instance in my introductory report on the environment and human rights for the political conference held in February 2020 by the Georgian Presidency,¹³ I highlighted in particular (1) the legitimacy of the Council of Europe to deal with such matters, (2) the need for interaction within this organisation between the various directorates and bodies – a need which will also be addressed in this report, and (3) the need for instruments in addition to the European Convention on Human Rights (ECHR) and possibly an additional protocol on the right to a healthy environment. The decisions and judgment given by the European Court of Human Rights (the ECtHR) on 9 April 2024 in the first climate cases support the idea I put forward in my report and my other publications that the litigation on global warming has special features compared to the environmental litigation heard and ruled on by the Court over the last forty years, which the Court cannot deal with alone. The Court explains at length why the requirements to be considered a victim are high and to what extent associations taking a collective approach, although not victims, may, under certain conditions, be deemed to have legal standing, being better equipped to bring such matters before the courts. The human rights-based approach to climate justice is therefore supported by the Strasbourg Court. In the same introductory report of 2020, I pointed to the need to transcend the binary approach which regards nature as a subject or an object and move towards a “project Nature” approach, which highlights the interdependence between humans and nature. Climate change-related natural disasters remind us every time they occur how little control man has over nature. Europe seems to have opted for “an eco-anthropocentric outlook”, a middle way interpreting Nature as a “project” *with rights but without legal personality*.

This report is **structured around the following components**: firstly, an examination of states’ responsibilities in response to the harmful effects of climate change and, in particular, the new concept of capacity responsibilities and the related rights of populations; secondly, the specific arrangements needed to give these rights and responsibilities practical effect, i.e. the procedural aspect; and third, guidelines and recommendations for future EUR-OPA activities.

I. STAKEHOLDERS’ RESPONSIBILITIES, OBLIGATIONS AND RIGHTS IN THE LIGHT OF KNOWN AND SERIOUS CLIMATE CHANGE-RELATED RISKS

In the light of natural disasters caused by anthropogenic climate change, legal tools can provide public decision makers with means of action. It still needs to be determined, first of all, what responsibilities lie with the stakeholders, particularly states and intergovernmental organisations. As the harmful effects relate in particular to human living conditions, the legal landscape is fragmented and draws on various disciplines such as environmental law, climate law, human rights, public international law and international humanitarian law.

September 2007, available online at: <https://www.coe.int/en/web/europarisks/recommendations> (18 August 2024).

¹² See [Cultural heritage - European and Mediterranean Major Hazards Agreement \(coe.int\)](https://www.coe.int/en/web/europarisks/recommendations) (18 August 2024).

¹³ Council of Europe, Presidency of Georgia, Elisabeth Lambert, Introductory Report *Environment and Human Rights*, Introductory Report to the High-level Conference on Environmental Protection and Human Rights, Strasbourg, 27 February 2020, prepared at the request of the CDDH: <https://rm.coe.int/report-e-lambert-en/16809c827f> (16 August 2024).

A. Identifying states' and intergovernmental organisations' responsibilities:

1. What do we mean by responsibilities in the light of climate risks?

It is worth insisting here on **two major aspects**, firstly the extent to which the concept of responsibilities implies a duty to act and meet the need to anticipate, not just to repair damage incurred as a result of negligence; secondly, in addition to this preventive aspect, the importance of establishing the link between the responsibilities/accountability and the capacity to act of the various stakeholders (including individuals), which will vary according to the parties' potential,¹⁴ particularly in the light of the emergence of the concept of the responsibility to prepare populations.

The concept of responsibility is fundamentally complex and rich in that it traditionally includes the idea of attribution (with regard to an offence, a sanction or an obligation to take preventive action) and of a capacity to account for and justify conduct but also of a function to be fulfilled.¹⁵ Jonas and Ricoeur have criticised the outdated, punitive concept of responsibility (in relation to a past offence) which "fails to encompass its whole meaning, as is clear in particular in the light of the major ecological and demographic challenges which humankind currently faces. This warrants a more mobilising, future-oriented approach to responsibility ...".¹⁶ Our relationship with the future has changed in that the future now places us under obligations. There are therefore two sides to responsibility, one being an obligation to respond to a past event and the other an ability to begin taking action. This is what the Court accepts in its first judgment on climate change: "the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target".¹⁷

This responsibility as a capacity to act is very relevant here in that it has a political and legal dimension, it can be viewed in a collective manner,¹⁸ and it meets the need for **anticipation** that is inherent in a **risk society**.¹⁹ We have also reached the stage of collective responsibility for ourselves (*responsabilité-Nous*), or rather of accountability and empowerment, including a duty for the state to enhance individuals' capabilities to adapt to new challenges.²⁰ Yet, as the occurrence of the risks linked to global warming is now inevitable, and because they are growing, the centre of gravity of the responsibility has shifted. The distinction made by François Ost between responsibility for punishment of infringements, responsibility for covering risks, responsibility for prevention and responsibility to foster participation may be worth pointing out here,²¹ and we will return to this point.

¹⁴ On the international stage, for example, a concept of shared but differentiated responsibilities between developing and developed countries has emerged.

¹⁵ Hugues Dumont, François Ost and Sébastien Van Drooghenbroeck, 2005, Preface to *La responsabilité, face cachée des droits de l'homme*, Bruylant, p.V-XI, pp.VI-VII.

¹⁶ François Ost and Sébastien Van Drooghenbroeck, "La responsabilité, face cachée des droits de l'homme (1)", in 2005, *La responsabilité, face cachée des droits de l'homme*, Bruylant, pp.1-49, p.26.

¹⁷ ECtHR, GC, judgment of 9 April 2024, para. 436.

¹⁸ Jean-Louis Genard, 2007, "Responsabilité et solidarité: Etat libéral, Etat-Providence, Etat réseaux", in *La solidarité à l'ère de la globalisation*, Academic Press Fribourg, Fribourg, p.3.

¹⁹ Ulrich Beck, *Risk Society - Towards a new modernity*, 1st ed., 1992, Univ. of Munich, 272 pages.

²⁰ Jean-Louis Genard, 2007, *op. cit.*, p.6.

²¹ François Ost, "La responsabilité fil d'ariane du droit de l'environnement", *Droit et Société*, 1995, vol. 30/31, pp.281-321.

2. What types of responsibilities (old and new) are we talking about?

While, in international human rights law, a distinction is traditionally made between the responsibilities to **protect** (through omission above all), to **comply** (by preventing third parties, particularly industrial operators, from infringing rights) and to **implement** (by facilitating the exercise of rights through positive measures) (including reparations), the **obligation of prevention** is clearly present and is linked to a major principle of responsibility in environmental law. We should also add the various forms of capacity responsibility and responsibility to prepare.

A long-accepted obligation of prevention: the obligation of due diligence

The origins of the obligation of prevention lie in inter-state relations and above all, in environmental law. It was included in the Stockholm Declaration of 1972, then that of Rio in 1992, before being transposed into natural hazards law instruments such as the **Yokohama Strategy for a Safer World** adopted in 1994.²² According to principle 3, “disaster prevention and preparedness should be considered integral aspects of development policy and planning at national, regional, bilateral, multilateral and international levels”. Overlying these texts,²³ there is considered to be a general legal principle requiring all states, within their means, to prevent risks in the form of an obligation of **due diligence** (an obligation of conduct). With the risk society into which we have entered, anticipation has taken its full place in the legal arsenal.²⁴ Once a risk is scientifically established (such as the natural hazards associated with climate change), the state has a duty of prevention. This is primarily an obligation of means as the state cannot obviate the occurrence of the risk. The obligation of due/reasonable diligence presupposes awareness of the risk and the capacity to take measures to limit its impact.²⁵ Due diligence, which is a well-established concept in international law, mainly implies positive obligations of conduct covering prevention of, protection from and compensation for known risks of damage, presupposing a capacity for action and the use of all appropriate means.²⁶ Furthermore, the obligation to adopt an appropriate regulatory framework and institutional system to fulfil the duty of prevention already constitutes **an obligation to produce results and a duty to afford one’s “best efforts”**.²⁷ The obligation of prevention also implies a **duty for states to co-operate**. Specific co-operation mechanisms could be set up within EUR-OPA or more broadly among the Council of Europe member states in keeping with a solidarity-based approach, including between local authorities, which often have only minimal capacities for action. This inter-state co-operation is provided for, for instance, in the recommendation adopted by EUR-OPA in 2011 on forest fires.²⁸

In addition, paragraph 3 of Article 3 (on “Principles”) of the UN Framework Convention on Climate Change acknowledges that “the Parties should take precautionary measures to anticipate, prevent or

²² United Nations, World Conference on Natural Disaster Reduction, A/CONF/172.9, Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, 27 September 1994, online: https://www.preventionweb.net/files/10996_N9437604.pdf (16 August 2024).

²³ Barbara Nicoletti, chap.8, “The prevention of natural and Man-Made disasters: What duties for States?”, pp.177-198, pp.185-187, in Andrea de Guttry, Marco Gestri, Gabriella Venturini (eds), *International Disaster Response Law*, Springer, 2012, which concludes with an assertion of the need for a human rights-based approach to promote a more proactive line (p.196).

²⁴ Samantha Besson, (2024) “Anticipation under the human right to science: concepts, stakes and specificities”, *The International Journal of Human Rights*, 28:3, 293-312, p.296.

²⁵ Idem. Mirko Sossai, “States’ failure to take preventive action and to reduce exposure to disasters as a human rights issue”, chap. 8 in Flavia Zorzi Giustiniani, Emanuele Sommario, Federico Casolari and Giulio Bartolini (eds.), *Routledge Handbook of Human Rights and Disasters* (Routledge 2018), pp.119-131.

²⁶ Samantha Besson, *Due Diligence*, Brill, Nijhoff, 2021, The Hague Academy of International Law, 2023, online: [folia.unifr.ch](https://www.folia.unifr.ch) (19 August 2024).

²⁷ Mirko Sossai, « States’ failure (...) », op. cit., p.123.

²⁸ EUR-OPA, Recommendation 2011 – 2 of the Committee of Permanent Correspondents on preventing and fighting wildland fires in a context of climate change, 30 September 2011, Article 4.

minimize the causes of climate change and mitigate its adverse effects". Likewise, under Article 8, para. 1, of the Paris Agreement of 2015, "Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage".

Four key cases **before the Court** are worth citing here because **they illustrate this obligation of prevention and due diligence in relation to known risks**. In the case of *Öneryıldız v. Türkiye*,²⁹ the Grand Chamber of the Court describes the state's obligations in relation to the methane gas explosion which occurred on 28 April 1993 at the municipal rubbish tip in Ümraniye (Istanbul) causing the deaths of 39 people and the destruction of property. It considers Article 2 ECHR to be applicable to the facts of the case, taking care to point out that the right to life includes "a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction" (para. 71). Regarding the content of this obligation, the Court points out that Article 2 "entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life" (para. 89). Noting that "the Turkish authorities at several levels knew or ought to have known that there was a real and immediate risk to a number of persons living near the Ümraniye municipal rubbish tip", the Court adds that "they consequently had a positive obligation under Article 2 of the Convention to take such **preventive operational measures**³⁰ as were necessary and sufficient to protect those individuals (see paragraphs 92-93 above), especially as they themselves had set up the site and authorised its operation, which gave rise to the risk in question" (para.101). While accepting the margin of appreciation of the state, which must make public policy choices according to the resources available, the Court considers that "the preventive measures required by the positive obligation in question fall precisely within the powers conferred on the authorities and **may reasonably be regarded as a suitable means** of averting the risk brought to their attention" (para. 107). This argument was repeated in the case of *Budayeva and Others v. Russia*³¹, in which the applicants alleged that the national authorities were responsible for the death of eight other persons, endangering their own lives and destroying their property, as the authorities had failed to mitigate the consequences of a mudslide which occurred in Tyrnauz on 18-25 July 2000, and they had had no effective domestic remedy in this respect (para.3). In its defence, the government asserted that a mudslide of such exceptional force could not be predicted. The Court stated as follows (para.137): "In the sphere of emergency relief, where the State is directly involved in the protection of human lives through the **mitigation of natural hazards**, these considerations should apply in so far as the circumstances of a particular case point to the **imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity** affecting a distinct area developed for human habitation or use ... **The scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation**". The Court therefore would assess on a case-by-case basis what was known about the risk and the capability of the state to anticipate it and mitigate its effects. The state's obligations in this case should also have been assessed from a procedural viewpoint (obligations to investigate and prosecute). In the instant case, particularly in view of the lack of a proper early warning and information system, the Court found a violation of the right to life. Before giving its judgment, the Court took care to "consider whether the Government envisaged other solutions to ensure the safety of the local population" (para. 156). This consideration for the "safety of the local population" is particularly relevant in the context of risks relating to climate change. As one author has stated, "with the gradual establishment of a right to safety separate from the right to security guaranteed in Article 5 of the Convention, the obligation of prevention is shifting gradually away from a protection from individual risks to a protection from a general risk which may involve

²⁹ ECtHR, no. 48939/99, *Öneryıldız v. Türkiye*, 30 November 2004.

³⁰ Our emphasis.

³¹ ECtHR, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, *Budayeva v. Russia*, 20 March 2008.

several persons”.³² It is worth noting the inadmissibility decision in the case of *Hadzhiyska v. Bulgaria*,³³ in which the Court made two distinctions: the first was between Article 2 (right to life), an absolute right, and Article 1 Protocol 1 (right to property), a non-absolute right, meaning that there is a greater margin of appreciation with regard to the latter. The second was to do with the origin of the risk, namely whether it was caused by humans or not. In the case in question, the heavy rains which had resulted in a river overflowing and the applicant’s property being flooded were considered not to be something for which the state could be held liable. The Court took care to add that the applicant had provided no evidence that the state authorities had been negligent, in other words that positive measures (which had not been taken) could have prevented or mitigated the damage incurred.

Lastly and above all, in the recent **first climate judgment**, the Court stated that “the State’s primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change” (para. 545), in other words they must “put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth’s atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights” (para. 546). An obligation to set goals and trajectories forms part of an intergenerational approach designed to “avoid a disproportionate burden on future generations” (para. 549). The Court adds that “effective protection of the rights of individuals from serious adverse effects on their life, health, well-being and quality of life requires that the above-noted mitigation measures be supplemented by adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection” (para. 552). Until recently, the Court applied different principles depending on whether the state faced industrial hazards or hazards of natural origin, granting a higher margin of appreciation in the latter case because natural hazards are somewhat unpredictable. For some years now, there has been a transposition of the Court’s interpretation in the event of industrial hazards to all risks to reflect the duty of prevention. It is now certain that the Court will assess the obligation to exercise due diligence on a case-by-case basis and will pay special attention to whether the state is deploying all the means at its disposal to limit the effects of natural hazards as much as possible as soon as they are known; the immediacy requirement does not apply to climate risks in view of the scientific knowledge that is now available to all states³⁴ (see below).

³² Mustapha Afroukh, “Les droits de l’homme et l’obligation de prévention dans le système de la Convention EDH”, in *Les droits de l’Homme face aux risques pour l’Humanité*, ed. Caroline Boiteux-Picheral, pp.93-106, p.103.

³³ ECtHR, *Hadzhiyska v. Bulgaria*, no. 20701/09, 15 May 2012, para.16: “in the instant case the applicant has neither alleged that the authorities could have foreseen or prevented the consequences of the rain, nor provided any details of the scale of the flooding. She rather claimed that the authorities should have built flood-protection facilities, maintained the riverbed, and put in place a warning system to protect her village from weather hazards. However, it remains unclear whether the measures suggested by the applicant could have prevented or mitigated the damage that the flood caused to her possessions, or, in other words, whether the damage sustained by her may be attributed, wholly or partly, to State negligence”, also: “In view of the operational choices which must be made in terms of priorities and resources, any obligations arising under this provision must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities”.)

³⁴ Alice Riccardi, “The right to know – The role of transparency, access to information and freedom of expression in overcoming disasters”, chap. 15, in Flavia Zorzi et al. (eds.), *Routledge Handbook of Human Rights and Disasters*, 2018, pp.228-244, p.238 et p.240: in which it is stated that if there is a known risk, it must always be considered immediate.

New variations or facets of the obligation to prevent climate risks: responsibility to prepare and capacity responsibility

Although not a separate new responsibility, the **responsibility to prepare** (i.e. to prepare populations within authorities' jurisdictions) is one of the crucial components of the obligation to prevent, and this is a view supported by the International Law Commission.³⁵ However, this designation undoubtedly marks the transition from an approach emphasising mitigation and prevention (doing everything possible to avoid the actual occurrence of risks deemed probable or highly probable or to mitigate their frequency or degree of seriousness) to one of adaptation and preparation, in which risks are considered inevitable so there is an urgent need to prepare populations to face them.³⁶ The responsibility to prepare was posited by a North American think-tank, the Center for Climate and Security, in three successive reports between 2017 and 2019.³⁷ The first report is based on the initial observation that "what unifies the challenge of governance across time and space is both uncertainty and the inability (or unwillingness) of societies to recognize and adequately prepare for change" (2017 Report, p.2). However, according to the authors, while the 21st century has seen an improvement in the potential to predict events (including those linked to climate change), this has not been accompanied by better preparedness in societies (p.2). We are able to forecast the harmful effects of global warming on the rights to food, water, health, housing, etc. (as a result, for example, of rising sea levels) as "climate change, especially when compared to other drivers of international security risks, can be modelled with a relatively high degree of certainty" (p.4). We have sufficiently robust scientific knowledge (particularly from the IPCC) to model various possible scenarios, but it can be hard to get the academic science to reach policy makers and be translated into practical action (Report 2019, p. 16). Worse still, there are attempts to circumvent and undermine the credibility of scientific truth. While "scientific wavering may seem significant *from the outside*, ... the IPCC's findings are beyond doubt and entail the obvious conclusion that there is an urgent need to mobilise anyone who can be mobilised ...".³⁸

The combination of these two factors – the global risk posed by global warming and an unprecedented ability to foresee the risk – entails a responsibility to prepare, which lies with states and intergovernmental organisations (p.4). This responsibility to prepare forms part of the obligation to prevent: "If governments and intergovernmental institutions have (or can develop) the tools to anticipate climate risks to security, it follows that they have a responsibility to mitigate those risks"

³⁵ United Nations, A/CN.4/662, Sixth report on the protection of persons in the event of disasters by Mr Eduardo Valencia-Ospina, Special Rapporteur, 3 May 2013, para. 40: "Since, by definition, mitigation and preparedness imply the taking of measures prior to the onset of a disaster, they can be properly regarded as specific manifestations of the overarching principle of prevention, which lies at the heart of international law".

³⁶ Sabine Lavorel, "La 'responsabilité de préparer', nouveau paradigme juridique face à l'urgence climatique ?", *Revue Juridique de l'Environnement*, 2021/Special, pp. 97-116.

³⁷ C. Werrell, F. Femia, S. Goodman, S. Fetzek: *A responsibility to prepare: governing in an age of unprecedented risk and unprecedented foresight*, Briefer No. 38, 7 August 2017. A second study was published in 2018 in order to specify European states' and the European Union's foreign policy responsibilities in the light of the risks of instability and conflicts caused by climate change: S. Fetzek, L. von Schaik, *Europe's responsibility to prepare: managing climate security risks in a changing world*, Washington, Centre for climate and security, June 2018, 20 pp. The 2018 report outlines six principles: "It argues that the foreign policy and security community must routinise its response to climate change and institutionalise it by embedding it in existing capacities and structures. It must elevate climate risk up the international security agenda and integrate consideration and analysis of climate risk into other relevant fields of external action and (internal) security. It must further develop capacity for rapid response to foreseeable threats, and contingency plans for the unintended consequences of acting" (p.4). Lastly, a third publication in 2019 was entitled "The responsibility to prepare and prevent a climate security governance framework for the 21st century" and written by Caitlin Werrell and Francesco Femia. All these reports are available on line on the site: <https://climateandsecurity.org/reports/> (14 August 2024).

³⁸ Arnaud Saint-Martin, *Science*, Anamosa, 2020, p.66.

(2019 Report, p.21). The ECtHR acknowledged "the specific nature of climate change-related risks, including their potential for irreversible consequences and corollary severity of harm. Where future harms are not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action, the fact that the harm is not strictly imminent should not, on its own, lead to the conclusion that the outcome of the proceedings would not be decisive for its alleviation or reduction. Such an approach would unduly limit access to a court for many of the most serious risks associated with climate change" (para. 614).

The reports of the Center for Climate and Security outline the elements of a responsibility to prepare: the first is a "responsibility to prepare goals" at various levels which states and intergovernmental organisations can "adopt, measure and promote" (p. 5). These goals must therefore be geared to the territories concerned and the risks involved. This should enable states to assess, measure and map objectifiable risks. This requirement is clearly set out in the Recommendation of 2010 on reducing vulnerability in the face of climate change³⁹ adopted by the EUR-OPA members, or the draft (and still pending) articles prepared by the International Law Commission on the protection of persons in the event of disasters.⁴⁰ Secondly, there is a need to prepare a governance method "designed to fill the 'right information, right people at the right time' gaps" (2019 Report, p.23). This would mean incorporating previously identified goals into public policies, co-ordinating the relevant departments, developing rapid response mechanisms and devising emergency plans to deal with unforeseen consequences (p. 6). The authors suggest setting up an early warning system at a high political level by, for example, creating a senior position in the climate and security field, answering directly to the UN Secretary General and reporting regularly to the UN Security Council (p. 7). The scope of the obligation to prepare must therefore be "differentiated according to two criteria: the means actually available to vulnerable states to prepare for climate damage and the nature of the damage that will be inflicted on them".⁴¹ For instance, in the ECtHR's judgment of 9 April 2024, it talks in terms of "mitigation" and "adaptation".⁴² According to Sabine Lavorel, bearing in mind the probability that climate change-related risks will increase, the obligation to prepare populations could reach the level of a "reinforced obligation of means" or a "true obligation of result".⁴³

The concept of **capacity responsibilities** will help us to establish the link with the subjective rights-based approach (part 2) and above all to justify the priority actions to be established in part 3. In practical terms, the state's responsibility in this respect is to "preserve the very possibility to act and to be involved" for citizens themselves.⁴⁴ In this connection, we must return to Jonas: "the responsibility which should be given the absolute priority is the very possibility for responsibility to exist".⁴⁵ Referring both to Jonas and to Habermas, De Stexhe asserts that "capacity responsibility is one of the founding values of human rights. Through this approach citizens become drivers of the mechanisms set up. In this context, human rights are seen as empowerment".⁴⁶ **In the capacity-based approach (which enriches the human rights-based approach), the aim is to move the rights cursor towards individuals' potential to act,** bearing in mind their circumstances. Individuals' reactions and

³⁹ EUR-OPA, Recommendation 2010 – 1 on reducing vulnerability in the face of climate change, 28 September 2010, section 1: "Identify problems and vulnerabilities", online: [Recommendations - European and Mediterranean Major Hazards Agreement \(coe.int\)](https://www.coe.int/en/web/european-and-mediterranean-major-hazards-agreement) (17 August 2024).

⁴⁰ United Nations, CDI, Draft articles on the protection of persons in the event of disasters, 2016, Article 9(2): "Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems".

⁴¹ Sabine Lavorel, op. cit., (2021), p.109.

⁴² ECtHR, GC, 9 April 2024, para. 421.

⁴³ Sabine Lavorel, op. cit., (2021), pp.111-112.

⁴⁴ Guillaume De Stexhe, "Devoir, pouvoir ? La responsabilité dans les limites de la simple Humanité", in Hugues Dumont, François Ost and Sébastien Van Drooghenbroeck, 2005, *La responsabilité, face cachée des droits de l'homme*, Bruylant, pp.91-130, p.107.

⁴⁵ Hans Jonas, 1990, *Le principe responsabilité*, Paris, Champs Flammarion, 484 pp.

⁴⁶ Guillaume De Stexhe (2005), op. cit., p.108.

their capacities for resilience and adjustment to climate change are linked to many social, cultural, economic and other factors which should be taken into account when devising public policies.⁴⁷

This concept is reminiscent of the ideas expounded by Jean Dabin (inspired in part by those of Duguit and Josserand), according to which some subjective rights amount to “social functions”, assigned to perform a role or a task.⁴⁸ As F. Ost and S. Van Drooghenbroeck write, “what is extremely unusual is that this targeted prerogative can be interpreted as much as a burden (a responsibility or a duty) as a right”.⁴⁹ Such rights (including the right to a healthy environment or the right to be protected from the harmful effects of climate change) contribute to “an aim which is higher than that of the individual interests of the right holder”.⁵⁰ This “duty” echoes the rising power of the theme of “engagement”. Because it underlines fundamental rights’ objective dimension, this mixed theory adds to the state’s obligation to implement these rights so that the rights credits, and above all the right to participation which will be discussed in part 2, can be exercised by individuals. This brings us to the concept of “participation responsibility” expounded by François Ost⁵¹. “By virtue of this dual status, the ideas of solidarity and participation progress, favourably complementing the goals based on egotism and solitude of individuals pursued by the founding liberal theory”.⁵² Accordingly, on 9 April 2024, the Court stated that “individuals themselves will be called upon to assume a share of responsibilities and burdens as well” (para. 419), which moves us neatly on to the question of the bearers of these responsibilities.

3. Who bears these responsibilities?

The prime responsibility lies of course with **states (and their branches) and intergovernmental organisations**,⁵³ as asserted moreover in the Yokohama Strategy in 1994.⁵⁴ At EUR-OPA Agreement level, the revised Medium-Term Plan for 2021-2025 talks of “the primary responsibility of States to prevent and reduce disaster risk”.⁵⁵ This prime responsibility is warranted on several grounds: a “healthy and sustainable environment” is not an entity that can be compared to commercial assets, as breathing clean air, drinking clean water and so on affect people’s health and living conditions. Furthermore, as the health of the environment is seriously under threat, as is a climate compatible with an earth that can be inhabited by humans, it seemed necessary to raise these higher interests (breathing unpolluted air, etc.) to the rank of fundamental rights (on the same footing, for example, as the right to freedom of expression). In addition, co-operation activities will sometimes be required within states, between central government and the periphery or the local level, but also between states, as governments cannot fight alone, at the sole dimension of their own territories, against the effects of climate change. A demand for “responsibility” in court seemed to represent a decisive judicial lever in the light of the relative ineffectiveness of public policies over the last 40 years, especially if it could be brought by individual rights holders, as the Strasbourg Court has acknowledged. Responsibility is an appropriate legal response in times of a risk society. Furthermore, responsibility has also been the “Ariadne’s thread of environmental law”⁵⁶ or the “guiding strand of an ecological

⁴⁷ Martha C. Nussbaum (2011) *Creating capabilities, the human development approach*, The Belknap Press of Harvard University Press, Cambridge/London.

⁴⁸ Jean Dabin, *Le droit subjectif*, Paris, Dalloz, 1952, 313 p., p.219.

⁴⁹ François Ost and Sébastien Van Drooghenbroeck, 2005, *op. cit.*, p.13.

⁵⁰ François Ost and Sébastien Van Drooghenbroeck, 2005, *op. cit.*, p.15.

⁵¹ François Ost, “La responsabilité fil d’ariane (...)”, *op. cit.*, 1995, pp.281-321.

⁵² François Ost and Sébastien Van Drooghenbroeck, 2005, *op. cit.*, p.16.

⁵³ We will not address the responsibility of private concerns in this report, as it lies outside the remit we were given and would be far too broad a subject.

⁵⁴ Principle 10: “Each country bears the primary responsibility for protecting its people, infrastructure, and other national assets from the impact of natural disasters”.

⁵⁵ EUR-OPA, AP/CAT(2021)11, 24.11.2021, Medium-Term Plan 2021 – 2025 revised, p.3.

⁵⁶ François Ost, 1995, *op. cit.*

public order”.⁵⁷ François Ost, for example, argues that in response to the deterioration of habitats, we need to invoke our responsibilities to future generations rather than the rights of nature.⁵⁸ This collective challenge makes states accountable both to present and to future generations, as recognised in particular by the UNESCO Declaration of 1997: “Each generation inheriting the Earth temporarily should take care to use natural resources reasonably and ensure that life is not prejudiced by harmful modifications of the ecosystems and that scientific and technological progress in all fields does not harm life on Earth”.⁵⁹

→ In addition to punitive and restorative responsibility, there is now a responsibility to take preventive action in anticipation. This consists for the most part in obligations of means in terms of prevention, including preparedness (preparing populations and enhancing their capacities for individual and collective action), in response to the known climate change-related risks linked to global warming whose impact states can limit. The exercise of citizens’ rights of participation is dependent on this capacity-based approach. This responsibility lies primarily with states and intergovernmental organisations vis-à-vis present and future generations.

B. Granting subjective rights to individuals and populations and recognising the added value of a human rights-based approach:

It is worth pointing out initially that the concept of **responsibility differs from that of duties and obligations**, in particular because **it is not related to a subjective right**.⁶⁰ The state’s responsibility is not dependent on the recognition of a pre-existing human right to a healthy environment or a right to protection with regard to climate change, even though it is essential for such rights to be recognised, in particular by enabling individuals to invoke the responsibility of states in court (as with the ECtHR).

Historically, the environment was protected through a fundamentally inter-state approach and by objective law alone; the limits to this approach have become obvious, however, since the 1980s. Between 1960 and 2000, environmental law norms were drawn up primarily as objective law, in other words legal rules requiring states to respect standards. However, this normative output had major limitations: because the provisions had no direct effect in domestic legal systems, the persons they were intended to cover could not enforce them in court. In addition, besides the fact that a highly inadequate number of these treaties were actually ratified by states, they rarely had their own effective and independent mechanism to monitor their enforcement; as a result their implementation proved to be on a very limited scale. This inter-state approach was adopted by the EUR-OPA Agreement. For example, in the revised Plan for 2021-2025, quantified targets are set for 2030 and good practices are to be shared in keeping with a horizontal inter-state approach.⁶¹

Faced with the widely documented limitations of these norms of inter-state objective law, a complementary approach is now advocated, namely a human rights-based one, which is also

⁵⁷ Bettina, Laville Bettina, 2015, “L’ordre public écologique Des troubles de voisinage à l’aventure de l’Anthropocène”, *Archives de Philosophie du Droit*, vol. 58, no. 1, pp.317-336, p.318.

⁵⁸ François Ost, 2018, “Élargir la communauté politique par les droits ou par les responsabilités ?”, *Écologie & politique*, vol. 56, no. 1, pp. 65-82.

⁵⁹ UNESCO, Declaration on the Responsibilities of the Present Generations Towards Future Generations, 1997, Article 4.

⁶⁰ Samantha Besson, 2015, “The Bearers of Human Rights’ Duties and Responsibilities for Human Rights: A Quiet (R)Evolution? », *Social Philosophy and Policy*, vol. 32, no.1, pp.244-268, p.262.

⁶¹ EUR-OPA, AP/CAT(2021)11, 24.11.2021, Medium-Term Plan 2021 – 2025 revised, p. 3.

acknowledged to be relevant in the context of EUR-OPA.⁶² A human rights-based approach has now been adopted for environmental protection, in the context of climate justice and through norms protecting persons in the event of disasters.⁶³

1. What does a human rights-based approach mean?

The human rights-based approach means that, in addition to objective law, subjective rights or in other words prerogatives are granted to individuals or groups of individuals enabling them, among other things, to defend their rights in court, require the state to render them a service and thus become involved in the punishment of breaches of these rights. The definition of the human rights-based approach given by the United Nations was taken up for example in 2018 by the French National Consultative Commission on Human Rights (CNCDH) in the following terms: “Over and above the diverse forms of implementation, there seems to be some conceptual agreement on two main points: firstly, that the primacy of the human person should be restored; and secondly, that the due place of human rights in public policy should be reaffirmed; the state must not just respect the human rights enshrined in international conventions it has ratified but also report on their implementation. Human rights should no longer be at the periphery of public policy but at its very core”.⁶⁴ The CNCDH also “recommends that France adopt and defend, as part of its work in multilateral institutions, an approach to climate action based on human rights”.⁶⁵

Fundamentally, living in a healthy environment on an inhabitable earth is a prerequisite for the effective enjoyment of other rights, particularly the right to live in dignity, the right to health and the right of access to healthy food (and drinking water). The holders are both individual and collective as we do not each possess an individual portion of the environment.⁶⁶ The right to a healthy environment, like the right to be protected from the harmful effects of climate change, comprises both a substantive dimension and a procedural one. As summarised by the Steering Committee for Human Rights, which took the care to refer to the work of the UN Special Rapporteur on Human Rights and the Environment, “The procedural elements identified in the report are (i) access to information, (ii) public participation, and (iii) access to justice and effective remedies. The substantive elements include (i) clean air, (ii) a safe climate, access to safe water and adequate sanitation, (iii) healthy and sustainably produced food, (iv) non-toxic environments in which to live, work, study, and play, and (v) healthy biodiversity and ecosystems”.⁶⁷

This right belongs to everyone, but additional measures are needed for vulnerable groups (as is pointed out, moreover, in many of the documents adopted by EUR-OPA, which focus on migrants, asylum seekers, refugees and persons with disabilities,⁶⁸ to which we can add elderly people, children,

⁶² EUR-OPA, AP/CAT(2021)11, 24.11.2021, Medium-Term Plan 2021 – 2025 revised, p. 4.

⁶³ Annalisa Creta, “Integrating human rights into disaster management, normative, operational and methodological aspects”, in Flavia Zorzi et al. (eds), *Routledge Handbook of Human Rights and Disasters*, 2018, pp.132-148, which describes how this approach emerged at the United Nations.

⁶⁴ CNCDH, Opinion “calling for a human rights-based approach”, 3 July 2018, French Official Gazette (JORF), 14 July 2018, text 104, para.4.

⁶⁵ CNCDH, Opinion on “The climate emergency and human rights” (A – 2020 – 6), 27 May 2021, JORF, 6 June 2021, text 46, recommendation no. 7.

⁶⁶ I would refer the reader to my report for the CDDH on the importance of granting the right to a healthy and sustainable environment (and going beyond this): <https://rm.coe.int/intervention-elisabeth-lambert/1680a9025e> (14 August 2024).

⁶⁷ CDDH, Drafting Group on Human Rights and Environment, revised report on the need for and feasibility of a further instrument or instruments on human rights and the environment, CDDH-ENV(2023)06REV4, 29 April 2024, para. 86.

⁶⁸ EUR-OPA, Recommendation 2016 - 1 on the Inclusion of Migrants, Asylum Seekers and Refugees in disaster preparedness and response, 26 October 2016, online: <http://rm.coe.int/doc/09000016806b37f5> (17 August 2024). EUR-OPA, Recommendation 2013 - 1 on the inclusion of people with disabilities in disaster preparedness and response, 24 October 2013.

pregnant women, indigenous peoples, etc.). Researchers have extensively documented the fact that social and environmental vulnerabilities go hand in hand and are mutually reinforcing,⁶⁹ a relationship that was acknowledged by the member governments of EUR-OPA in 2010.⁷⁰ In this respect, it is clear that priority measures should be taken to consolidate economic, social and cultural rights, which have been neglected in European societies since the mid-20th century, as increased implementation of these rights would mitigate the harmful effects of climate change.⁷¹ This question lies, however, outside the remit of this report. It has been noted that these vulnerable groups are too often kept out of these participation processes,⁷² which is an issue we will return to. In law, we should stress the importance of the concept of intersectional discrimination (which is still used by few legal systems), meaning discrimination on several grounds at once. These vulnerable population groups, which are economically and social fragile, are also those which are most exposed to the natural hazards linked to climate change. At the 79th meeting of the Committee of Permanent Correspondents of the EUR-OPA Agreement, Mr Gruden, Director of Democratic Participation, emphasised the need for the Agreement to “advance ... human rights and dignity”.⁷³ The human rights-based approach also primarily targets marginalised groups.⁷⁴ As asserted by the ECtHR on 9 April 2024 in the case of the new right to be protected by one’s state from the impact of climate change, this right belongs both to present and to future generations. In 1997, Article 5(1) of the Declaration on the Responsibilities of the Present Generations Towards Future Generations adopted by UNESCO recognises that the present generations must “preserve living conditions, particularly the quality and integrity of the environment” and (para. 2) “ensure that future generations are not exposed to pollution which may endanger their health or their existence itself”.

It is very useful here to refer to the **new right** recognised by the ECtHR in the judgment of 9 April 2024:⁷⁵ taking the view that climate change has specific characteristics compared to the conventional environmental disputes it has examined over the last forty years (para.422), the Court does not base its findings on the right to a healthy environment (which is not yet explicitly enshrined in the ECHR). However, “having regard to the causal relationship between State actions and/or omissions relating to climate change and the harm, or risk of harm, affecting individuals ... Article 8 must be seen as encompassing a **right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life**” (para. 519). When examining future cases connected with the exercise of this right in the context of climate risks, the Court should be able to refer to **recommendations adopted in the context of EUR-OPA** so as to

⁶⁹ Mariangela Bizzarri, “Protection of Vulnerable Groups in Natural and Man-Made Disasters”, chap. 16, in Andrea de Guttery, Marco Gestri, Gabriella Venturini (eds.), *International Disaster Response Law*, Springer, 2012, pp.381-414. This author highlights the lack of investment in support for elderly people and minorities, whereas efforts are made for women and children. Sabaa Khan, Catherine Hallmich (ed.), *La Nature de l’injustice, Racisme et inégalités environnementales, écosociété*, 2023, 274 pages.

⁷⁰ EUR-OPA, Resolution 2010 – 2 on ethical values and resilience to disasters, 28 September 2010, online: https://www.coe.int/t/dg4/majorhazards/ressources/resolution/RES_2010-2_EthicsResilienceDisasters_FR.pdf (19 August 2024). See also: Resolution on the economic and social consequences of the recent earthquakes in Turkey and Greece in response to Recommendations 1447 (2000) and 1448 (2000) of the Parliamentary Assembly of the Council of Europe, 21-22 February 2000, online: https://www.coe.int/t/dg4/majorhazards/ressources/resolution/APCAT_2000_17_res_adopted_Consequences_Min_Athens_220200_EN.pdf (19 August 2024).

⁷¹ On this question, see for example, Miriam Cullen & Jane Munro, “Preventing Disasters and Displacement: How Economic, Social, and Cultural Rights can advance Local resilience”, in Gentian Zybery et al. (eds.), *Reflections on the Future of Human Rights*, Routledge, 2023, pp.118-132.

⁷² Mariangela Bizzarri, “Protection of Vulnerable Groups (...)”, op. cit., p.410.

⁷³ EUR-OPA, Meeting Report, AP/CAT(2023)03, 10 July 2023, p.5, online: <https://www.coe.int/fr/web/euoparisks/documents-79th-cpc-meeting> (16 August 2024).

⁷⁴ CNCDH, *Avis pour une approche ...*, op. cit., para.5.

⁷⁵ ECtHR, GC, no. 53600/20, Verein Klimaseniorinnen Switzerland and Others v. Switzerland, 9 April 2024, online: https://hudoc.echr.coe.int/eng#_Toc161934289 (16 August 2024).

assess the extent to which the responsibility of a state which has not taken sufficient measures to prevent problems and protect its population is incurred.

2. What are the advantages of this approach?

There are major legal and political advantages: firstly, this approach raises access to a healthy environment and the right to be protected from the harmful effects of global warming to the rank of a fundamental need and “takes seriously” the responsibility of states and of non-state parties in the event of the infringement of rights such as the right of access to clean drinking water and to breathe clean air; secondly, it makes it possible to empower citizens to act individually and collectively by exercising, among other things, the rights to information, participation and legal action (see part 2); by getting citizens involved, it makes it socially acceptable to impose preventive measures in response to climate risks (such as orders to leave one’s home). In other words, it forms the basis of a **new social contract based on climate risks**. The human rights-based approach has the merit of complementing the security-based approach, which in a broad sense, claimed to bring state concerns closer to those of populations but failed to look sufficiently on human rights as an anchorage point.⁷⁶ This approach should act as a driver for change, which is a goal we will look at in more detail in part 2.

→ In comparison to the limited approach of objective inter-state law inherited from environmental law, the human rights-based approach (now accepted by the ECtHR since the judgment of April 2024) provides an added value to disaster prevention and preparedness measures and should guide EUR-OPA’s work towards accepting populations and individuals as full actors in climate risk management, not as mere passive recipients of public policy.

II. DETERMINING STATE OBLIGATIONS ASSOCIATED WITH A RIGHT TO BE PROTECTED FROM THE HARMFUL EFFECTS OF CLIMATE CHANGE

In Part I we described the nature and foundations of the responsibilities weighing on states and intergovernmental organisations in the form of obligations of result to adopt regulations and institutional mechanisms and of obligations of means to prevent, protect from and prepare for the harmful effects of climate and the corresponding right of populations to be protected. The aim now, in Part II is to detail how, with the impetus of the EUR-OPA Agreement, governments should and could gear their activities to enable peoples and individuals to enjoy the right to “effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life” now explicitly recognised by the European Court of Human Rights. As parties to the ECHR, all the EUR-OPA member states are required to implement this right. There will be no attempt to be exhaustive in this part of the report in view of the limits we have set.⁷⁷ Accordingly, the focus will be mainly on public policy measures linked to states’ positive obligations of a preventive nature, allowing for the enjoyment of participation rights and echoing approaches adopted or outlined in the context of EUR-OPA. We will deal with the rights to education, information and access to science separately from governance issues (including the right to citizen participation).

⁷⁶ Christopher Hobson, Paul Bacon, Robin Cameron, *Human Security and Natural Disasters*, Routledge, 2014, 196 pages.

⁷⁷ It will be recalled that we do not intend to analyse the rights of populations once damage has occurred.

Before anything else, it is important to state that a number of documents prepared as part of EUR-OPA's activities talk of the citizens' responsibilities without necessarily going into many details.⁷⁸ This point echoes the arguments made in part 1. It would be dangerous to impose too heavy a burden on citizens (or associations), who have less power and fewer resources than public authorities (and the industrial actions not included in this report). Undeniably, citizens may have a role to play; it would be more accurate to talk of empowerment from an ethical viewpoint and above all in terms of exercising function rights (according to the definition by Jean Dabin referred to above) to serve the higher interest of combating the societal impacts of global warming. Two essential rights, which are not unconnected because the second depends on the achievement of the first, must be described here in order to understand the task that lies with individuals, provided that states meet their obligation to give them the means or capacity for action, namely the right of access to serious knowledge and the right to take part in public decision making.⁷⁹

A. The rights to education, information and access to science of populations subject to climate risks:

As stated above, we are no longer at a precautionary stage (which presupposes some scientific uncertainty) but at the later stage of prevention, because the risks of climate change have now been established with absolute certainty.

We also talked in part 1 of the importance of the procedural aspect of the right to a healthy environment and the right to be protected from the serious consequences of climate change (which forms a key component). Procedural safeguards were developed above all in the context of international and European environmental law. Already, the Rio Declaration of 1972 established in Principle 10 a right to participation of "all concerned citizens" and access to information concerning the environment. The 1994 Yokohama Strategy cited above also refers, in Principle 7, to the essential nature of "education and training of the whole community". However, it is mainly the Aarhus Convention,⁸⁰ adopted in 1998 and ratified by most of the states which are also members of EUR-OPA,⁸¹ which established the three pillars of environmental procedural rights, namely the rights of the public to information, participation and access to justice.

However, although this convention dates from 1998, has a Compliance Committee and is frequently referred to by the ECtHR in its case law, implementation of its provisions at domestic level is still unsatisfactory, as amply demonstrated by legal authors.⁸² A study in 2020 by a researcher using both

⁷⁸ AP/CAT(2023)03, 10 July 2023, p.12.

⁷⁹ We will not deal in this report with the third pillar of the Aarhus Convention on the right of access to justice because this has more to do with compensation, which is not covered here. There are many academic publications on this subject. See for example, Ingrid Nifosi-Sutton, "Contour of Disaster Victims' rights to a remedy and reparation under international human rights law", chap. 17, in Andrea de Guttry, Marco Gestri, Gabriella Venturini (eds.), *International Disaster Response Law*, Springer, 2012, pp.415-440. Sabine Lavorel, Marta Torre-Schaub, *La justice climatique : prévenir, surmonter et réparer les inégalités liées au changement climatique*, Éditions Charles Léopold Mayer, 2023, 330 pages (chap. VIII).

⁸⁰ For more information, see the Aarhus Convention website at: <https://unece.org/environment-policy/public-participation/aarhus-convention/text>.

⁸¹ Nineteen EUR-OPA member states have ratified (or acceded to) the Aarhus Convention. For more details, consult: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=en (4 September 2024).

⁸² M. Lee, "The Aarhus Convention 1998 and the Environment Act 2021: Eroding Public Participation", *The Modern Law Review* (2023) 86:3, pp.756-784. Emily Barritt, *Foundations of the Aarhus Convention: Environmental Rights, Democracy and Stewardship*, Oxford: Hart Publishing, 2019.

quantitative and qualitative methods⁸³ revealed a compliance rate of about 41% with the decisions of the above-mentioned Compliance Committee. It suggests the following explanations for this: the difficulty is not so much that this is a non-judicial body (although since 2002 it can receive complaints, including from individuals) as opposed to a court (whose judgments are final and binding), although this does play some role; its ineffectiveness at national level depends on other factors, especially the imprecise way in which recommendations are worded by the Committee and insufficient national capacities. This observation is similar in some respects to the results of work on the implementation of judgments of the Court (which I and my colleagues have carried out), which found that it is more the lack of interaction at national level (between stakeholders including central and local government), of the limited capacities of local and national partners and of a lack of clarity as to what are the most appropriate measures to comply with the standards laid down that are hampering progress. It seems important to us to mention these aspects in the light of the plan (described in part 3) to set up a system to follow up on EUR-OPA recommendations and the need to encourage states to abide by these procedural safeguards in the context of the right of populations to be protected.

For the subject matters of this report, the Sendai Framework for Disaster Risk Reduction adopted by the United Nations in 2015,⁸⁴ with which the member states of the EUR-OPA have decided to comply,⁸⁵ also includes procedural safeguards, such as information sharing and public consultation on the preparation of public policies. The Preamble to the Paris Agreement of 2015 affirms “the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement”. These procedural rights are set out explicitly in Article 12 of the Agreement, which has the merit of referring to them even though the very general and vague wording has been criticised.⁸⁶

In truth, the **three fundamental rights** which we need to look at here are **the right to education (of the populations at risk and public policy makers), the right to information and the right to science.**

1. A right to initial and further education for all:

The **right to education** has given rise to previous measures under EUR-OPA. Among these are the Recommendation on Disaster risk reduction through education at school of 2006.⁸⁷ While the main focus is education for school pupils, Article 1 calls on states to “integrate disaster risk reduction into all relevant subjects, programmes and courses at school and provide specific subject programmes, courses and practical activities on risk reduction, both in formal school curricula and in vocational or extracurricular activities”. Under the revised Medium-Term Plan for 2021-2025, “the Agreement will

⁸³ Gor Samvel, “Non-judicial, advisory, yet impactful? The Aarhus Convention compliance committee as a gateway to environmental justice”, *Transnational Environmental Law* (2020)9:2, pp.211-238. Cases of violations of the convention are often related to ineffective access for NGOs to the justice system.

⁸⁴ United Nations, UNDRR, Sendai Framework for Disaster Risk Reduction 2015-2030, Geneva, 2015, online: https://inec.org/sites/default/files/resources/UNIDSR_Sendai-Framework-Disaster-Risk-Reduction-2015-2030_2015_ENG.pdf (18 August 2024).

⁸⁵ EUR-OPA, Resolution 2016 – 1 “Building more disaster resilient societies in Europe and the Mediterranean region: Priorities for Action”, 26 October 2016, point 4.

⁸⁶ Article 12: “Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement”. Delphine Misonne, “Access to information, the hidden human rights touch of the Paris Agreement?”, in Jerzy Jendrośka, Magdalena Bar (eds.), *Procedural Environmental Rights: Principle X in Theory and Practice*, Intersentia, 2017, pp.465-480.

⁸⁷ EUR-OPA, Recommendation on Disaster risk reduction through education at school, 31 October 2006, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/APCAT_2006_47rev_Rec_adopted_Mi_n_Marrakech_311006_EN.pdf (17 August 2024).

promote a model using a triple helix approach (academia/industry/government) to DRR knowledge-sharing by disseminating best practices of collaboration by academic, public and private entities”.⁸⁸

Accordingly, education in climate risks should be set up as **initial and further training, targeting all children and adults including public policy makers**. It is important for it to be **geared to public sensibilities, taking account of vulnerabilities and incorporating a cultural dimension**.

2. An effective right to information:

To implement the **right to information**, it is essential to understand the purpose or, to be more precise, the **purposes** of this right. In a risk society, access to information has many purposes. Information about risks helps to understand them and hence to be more accepting of them; in addition, the key aim of information, in European law, is to enable populations to protect themselves from the risks to which they are inevitably exposed. This is why the right to information is regarded as the ultimate legal tool for the governance of environmental and climate risks and a major means of mitigating their impact. The bodies of the Aarhus Convention endorse the recognition of the right to information, without the need to demonstrate a particular interest, in connection with an individual and collective fundamental right to a healthy environment (and hence the higher interest of human health) but also to good governance and the accountability/responsibility of public authorities in a democratic society. The importance of “the public’s right to information” has been emphasised repeatedly by the **European Court of Human Rights**.⁸⁹ The Court has always advocated a broad interpretation of the right to freedom of information and expression because in its view, this is “one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment”.⁹⁰ In the first climate judgment, it attaches particular importance to the procedural safeguards of the Aarhus Convention; it states in particular as follows: “The information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change **must be made available to the public**, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them **to assess the risk to which they are exposed**” (para. 554). In addition, the **Court of Justice of the European Union** (CJEU) has adopted a broad interpretation of “emissions into the environment” (covered by the right to citizen information) including not only industrial pollution (to which the Commission intended to limit the scope of this law) but also “the release into the environment of products or substances such as plant protection products or biocides and substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use”,⁹¹ on the ground that disclosure “is deemed to be in the overriding public interest, compared with the interest in protecting the commercial interests of a particular natural or legal person”. The CJEU even advocates a right to information giving individuals the power to “check whether the assessment of actual or foreseeable emissions, on the basis of which the competent authority authorised the product or substance in question, is correct, as well as verifying the data relating to the effects of those emissions on the environment”.⁹² In the CJEU’s view, this entails “increasing, on the part of the competent bodies, the accountability of decision-making and contributing to public awareness and support for the decisions taken. In order to be able to ensure that the decisions taken by the competent authorities in environmental matters are justified and **to participate effectively in decision-making** in environmental matters, the public must have

⁸⁸ EUR-OPA, AP/CAT(2021)11, 24.11.2021, revised Medium-Term Plan 2021 – 2025, p.9.

⁸⁹ For example, in ECHR, GC, *Öneryildiz v. Türkiye*, no. 48939/99, para. 90.

⁹⁰ ECHR, *Handyside v. UK*, 7 December 1976, A 24, para.49.

⁹¹ CJEU, C-442/14 Bayer CropScience SA-NV and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden, 23 November 2016, para. 81.

⁹² CJEU, C-442/14, op. cit., para.80.

access to information enabling it to ascertain whether the emissions were correctly assessed and must be given the opportunity reasonably to understand how the environment could be affected by those emissions”. Likewise, Article L120-1 of the French Environment Code provides for a “public right ... to access relevant information allowing for its effective participation”.

Consequently, the information to which the public has a right of access and/or which it can insist that the state proactively disseminates to the public **must enable it not only to protect itself from and mitigate the impact of the risks to which it is exposed but also, in a democracy, to monitor the proper management of risks by the authorities and participate in this governance**. The right to information must therefore make it possible to exercise the right to citizen participation in environmental and climate issues.

These purposes may be complex and ambitious but once they have been recalled, it becomes possible to decide what types of information must be available, in what form and for whom. **Sufficiently clear and exhaustive information** is key to public trust. Contrary to what is sometimes said, it is a lack of information which causes anxiety, not the opposite. For it to help populations to protect themselves, information must be provided **in advance** of the realisation of the risk (which science can now predict) and be sufficiently **detailed, precise and specific**. This explains the importance of the **local level**, a point to which I will return below. For example, people living on the coast must be given different information to those living in the mountains, as the risks are different. Information must also be **geared to the people being addressed, taking a clearly-needed cultural and linguistic approach**. It must be **comprehensible, but also sufficiently comprehensive, thorough and objective** to foster the right to citizen participation. If we apply the approach adopted in the Aarhus Convention, **information must be made available to the public without it having to ask for it**, bearing in mind the purposes pursued by this requirement for transparency. According to the ECtHR, **this proactive dissemination requirement** can be imposed on a state in the event of a serious and immediate risk of an infringement of the right to life⁹³ (though the characteristic of immediacy is no longer required by the Court where it comes to climate justice, see above). As a result of the judgment of 9 April 2024, there seems therefore to be a duty now to proactively disseminate information on the climate risks to which peoples are exposed in the light of current scientific knowledge; assessments will be made therefore on a case-by-case basis depending on the risks involved and the measures taken by the state.

Access to information was the focus of some previous EUR-OPA activities. Access to information with reference to the Aarhus framework was introduced cautiously (not as a fundamental right) in the Recommendation of 2011 on information to the public on radiation risks,⁹⁴ which referred to it as follows: “Recognise as appropriate the principle of access of the population to the relevant information concerning the hazard of industrial activities using radioactive materials, as a principle recognised in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and in some decisions of the European Court of Human Rights”. It is important to point out that access to information held by the authorities is considered a fundamental right in European law. Currently, there is a strong tendency to rely on the benefits of digital information. For instance, the EUR-OPA Recommendation on the use of digital tools such as social media and mobile applications for successful disaster risk communication,⁹⁵ takes interesting new approaches. However, when information is provided using digital tools, this must not lead states to

⁹³ ECtHR, *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008, para. 131: “The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry”.

⁹⁴ EUR-OPA, Recommendation 2011 – 1 on information to the public on radiation risks, 30 September 2011, Article 4, online:

https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2011-1_RadiationRisk_EN.pdf.

⁹⁵ EUR-OPA, ACAT (2023)01 REC, 6 November 2023.

neglect other information media, particularly in view of the digital divide. It is perfectly well known that vulnerable groups, which should be the priority recipients of information, are often deprived of digital technology. This is true in particular of migrants, person with disabilities, nomadic peoples, etc. This is also an issue for persons with visual impairments and illiterate persons.

Accordingly, **the author of this report calls for particular vigilance concerning the way in which access to information is granted (as a human right), the limits that may be placed on this and the qualifiers which should be added to it (prior, precise, detailed, understandable information geared to the capacities of the audience)** so as to avoid giving too much room for manoeuvre, thus rendering the right ineffective. For this purpose, states which have not yet done so (particularly EUR-OPA member states) should be encouraged to ratify the Aarhus Convention.

Many researchers have reported that, for numerous reasons, the right to information is very ineffective at national level. Furthermore, in law to date, only information held by the public authorities must be communicated to citizens: this provision is a major problem in itself because the authorities will not necessarily make the effort to collect the information required. For example, in research work that I have been co-ordinating on the digital transition and the reduction in the use of phytosanitary products in the French fruit and vegetable sectors,⁹⁶ I have noted that it is almost impossible for persons living near fields treated with pesticides to know what products or substances they are exposed to despite the fact that these have a real impact on their health. One of the reasons stems from the fact that the public authorities do not make the effort to collect data on the use per region and per sector of sprayed pesticides; the only statistics that are available are those on national phyto sales. In addition to this, the information communicated is either too piecemeal or general.

The right to information is complemented by another right, which is more rarely mentioned, namely the right to science.

3. A right to science:

Access to science is key, both for public policy makers before they take any decision and for citizens so that they can ask governments to account for their actions.⁹⁷ This fundamental right to science is rendered all the more important by the fact that climate sciences are liable to disturb the public authorities in that they present them with “troubling facts” and force them to take a position.⁹⁸

Already Article 27(1) of the Universal Declaration of Human Rights states that “everyone” has the “right ... to share in scientific advancement and its benefits”. Adopting a slightly different wording, Article 15(1)b of the International Covenant on Economic, Social and Cultural Rights provides as follows: “The States Parties to the present Covenant recognize the right of everyone: ... (b) To enjoy the benefits of scientific progress and its applications”. Article 15(2) adds that “the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture”.

Therefore, while historically, the right to science was understood above all as a right to take part in science (given its status as a commons), in the second half of the 20th century it became a passive right to benefit from scientific knowledge. Today, it is accepted that as a fundamental right, it is made up of **three components: the right to take part in the emergence of science, the right to benefit from**

⁹⁶ PHYT'Info research programme. For more information, see the website: numali.unistra.fr.

⁹⁷ ISDR, EUR-OPA, Council of Europe, Climate Change Adaptation and Disaster Risk Reduction in Europe, *A Review of Risk Governance*, June 2011, p.22, online: https://www.preventionweb.net/files/submissions/20591_governanceccriskeurope.pdf (17 August 2024).

⁹⁸ Arnaud Saint-Martin, *op. cit.*, 2020, p. 60.

scientific progress and the right to be protected from the harmful effects of science.⁹⁹ It imposes a duty on states **to support scientific output and its dissemination**, as stated very clearly by the UN Committee on Economic, Social and Cultural Rights in General Comment No. 25 of 2020:¹⁰⁰ “States must take positive steps for the advancement of science (development) and for the protection and dissemination of scientific knowledge and its applications (conservation and diffusion)” (para. 14). Under the heading “obligation to fulfil”, “this includes approving policies and regulations that foster scientific research, allocating appropriate resources in budgets and generally creating an enabling and participatory environment for the conservation, the development and the diffusion of science and technology” (para. 46).

In an area such as climate change it is easy to grasp the importance of the right to science, in its various aspects. Unsurprisingly, the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, has established **the link between the right to science and environmental procedural rights.**¹⁰¹ Several treaties and declarations on environmental and climate issues mention this. For instance, under Article 14 of the Universal Declaration of Humankind Rights of 2015, “The present generations have a duty to guide scientific and technical progress towards the preservation and health of mankind and other species”. Article 5 of the UN Framework Convention on Climate Change of 1992 provides that “the Parties shall: (a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort; (b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries”. Likewise, Article 7, para. 7,c, of the Paris Agreement of 2015 calls on states to strengthen co-operation including with regard to “strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making”; furthermore, in paragraph 5 of this article “Parties acknowledge that adaptation action should ... be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate”.

The **purposes** of the right to science are similar to those assigned to the right to information on the environment. They were summed up as follows by the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (toxics and human rights), Marcos Orellana:¹⁰² “In the specific context of toxic substances, the right to science provides humanity with the tools to confront the severe toxification of the planet and its people. The implications for human rights, including the rights to life with dignity, non-discrimination, health, adequate food and housing, clean air and safe water, a healthy environment and safe and healthy work, are immense” (para. 9). He also points out that “policy mechanisms that integrate scientific evidence and engage the public in the deliberative process can help engender public trust and improve protections against exposure to hazardous substances” (para. 97). The right to science **makes it possible to exercise the right to participation** (which is discussed below) and to maintain good governance; it also **fosters public trust and is supposed to limit public exposure** to

⁹⁹ Samantha Besson, (2024) “Anticipation under the human right to science: concepts, stakes and specificities”, *The International Journal of Human Rights*, 28:3, 293-312, p. 300.

¹⁰⁰ UN, Economic and Social Council, Committee on Economic, Social and Cultural Rights, General comment No. 25 (2020) on science and economic, social and cultural rights, 30 April 2020.

¹⁰¹ A/HRC/20/26, 14 May 2012: Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, The right to enjoy the benefits of scientific progress and its applications, para. 22.

¹⁰² A/HRC/48/61, UN, GA, Human Rights Council, Right to science in the context of toxic substances, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, 26 July 2021.

risks. After all, in a “risk society”, in which zero risk is impossible and individuals are increasingly **required to make choices potentially affecting their health and their physical and mental well-being**, they must know what risks **they are agreeing to expose themselves to** so as to take prevention measures. Scientific knowledge is the only way of generating **public commitment to tough measures to adapt to global warming**, such as relocation to safer sites (**especially given the current mistrust in our societies, where representative democracy is running out of steam**).

EUR-OPA’s activities are constantly inspired by science. An illustration of this is the last article (Article 8) of the Recommendation of 2011 on forest fires, in which it is stated that the EUR-OPA member states should: “Promote wildland fire research, including prevention, effects of wildland fires on people, property and the environment, rehabilitation of fire-damaged sites and improvement of firefighting techniques and technologies”.¹⁰³ Previously, the Recommendation of 2010 on reducing vulnerability in the face of climate change (28 September 2010) had called on states to “recognise the role of knowledge, both science and traditional knowledge, in disaster risk reduction, using existing resources to encourage innovation and favouring exchange of knowledge and good practices; integrate social sciences in to disaster risk reduction, as the human dimension is a key aspect of both preparedness and response”. Promotion of scientific research is also one of the priorities of the current action plan.¹⁰⁴ EUR-OPA also has a network of specialised centres operating at varying levels of activity.¹⁰⁵

For **citizens to exercise their right to science in conjunction with their other participation rights, robust, serious and independent scientific knowledge** needs to be developed, and this calls for state investment and resources so as not to leave scientific development mostly in the hands of industrialists and private parties with profit-making goals; another crucial aspect of citizen participation is the **accessibility and dissemination** of science.

There is also a challenge for public policy makers at another level, namely that of the **full and rapid transmission or communication of the scientific material produced by academics in a language that can be understood by politicians and converted or worked into public policy**. The disconnect between scientific output and public policy making is not a new phenomenon or one that is unique to climate science. It has been noted many times.¹⁰⁶ Developing forums for exchange between academics and decision makers of varying degrees of formality can help to reconnect these people. The scientific community has also attempted in recent years to simplify the results of scientific study to make it more accessible to a less specialised audience. The IPCC, for instance, publishes Summaries for Policymakers. In 2021, the UN Special Rapporteur on toxics and human rights, Marcos Orellana,¹⁰⁷ summed up the problem as follows: “The creation of effective channels connecting science with policymaking is indispensable to advancing the contribution of scientific knowledge to human rights protection. In practice, however, science-policy interface platforms, where they exist, are too often undermined by politics, ideology, lack of transparency, vested economic interests and other conflicts of interest”.

¹⁰³ EUR-OPA, Recommendation 2011 – 2 The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry, 30 September 2011, online:

https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2011-2_WildlandFires_EN.pdf (17 August 2024).

¹⁰⁴ EUR-OPA, AP/CAT(2021)11, 24.11.2021, Medium-term Plan 2021 – 2025 revised, p.8.

¹⁰⁵ <https://www.coe.int/en/web/europarisks/specialised-centres> (18 August 2024).

¹⁰⁶ ISDR, EUR-OPA, Council of Europe, Climate Change Adaptation and Disaster Risk Reduction in Europe, A *Review of Risk Governance*, June 2011, p.26, online:

https://www.preventionweb.net/files/submissions/20591_governanceccriskeurope.pdf (17 August 2024).

¹⁰⁷ A/HRC/48/61, UN, GA, Human Rights Council, Right to science ..., op. cit., 26 July 2021, para. 2.

The other challenge, and without doubt the most formidable, is the **funding of false science** by industrialists with deep pockets on the one hand, while on the other, states are withdrawing their support for public research.¹⁰⁸ It has become urgent to highlight states' responsibilities to fund independent, serious, high-quality scientific output in response to the now well-established impact of false science and ignorance in holding back public decision-making and favouring industrialists. "Certain business entities specialize in deliberately spreading ignorance and confusion in society. Tactics of denial, diversion and distortion are intended to keep hazardous products on the market, despite knowledge of their risks and harms, and at the expense of adequate human rights protections. **The failure by governments to correct disinformation, or to ensure the avoidance of conflicts of interest in science-policy interface mechanisms, often add to confusion within society**".¹⁰⁹ It is true that, on climate issues, the IPCC seems to be regarded now as an authority, whose findings attract consensus on the international stage. However, history shows us that such advances can never be assumed to be definitive.

There is nonetheless a clear and direct path from the rights to education, information and science towards good governance.

B. New governance issues:

Bearing in mind states' responsibilities and the right of peoples within their jurisdiction to be protected from the serious effects of climate change, governance is **the core component of the mechanism for the co-ordination of prevention obligations**. It seems essential at this juncture to outline three principles which should guide EUR-OPA's future activities in this area:

1. Granting and implementing a right to true citizen participation (co-determination):

The first goal is to ensure the effective exercise of the citizens' right to participation, which we deliberately connect with the need for a renewed form of governance. As stated above, the rights to information and to access and contribution to science are the prerequisite for the exercise of the right to citizen participation. It is essential to secure an active form of citizen responsibility, making the transition from representative democracy to full and inclusive participatory democracy rooted in the regions.

References to the right to citizen participation can be found in instruments on the environment and climate change but are sometimes worded so vaguely and generally that they make it possible to repeat old patterns of merely consulting citizens, who remain passive and ultimately, ignored. As early as 1972, Recommendation 97 of the Action Plan adopted at the Stockholm Conference invites the states "to associate the public with environmental management and control".¹¹⁰ Under Article 23 of the World Charter for Nature adopted on 28 October 1982, "All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment". Under Article 7 (para. 5) of the Paris Agreement of 2015, "Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems ...".

Whereas international and regional human rights conventions rarely explicitly grant a right to citizen participation (apart from the right to take part in free elections), legal authors have maintained that

¹⁰⁸ See inter alia the ARTE documentary on "ignorance manufacturing".

¹⁰⁹ A/HRC/48/61, UN, GA, Human Rights Council, Right to science ..., op. cit., 26 July 2021, para. 3.

¹¹⁰ United Nations, Conference on the Human Environment, Stockholm, 5-16 June 1972, (<https://www.un.org/en/conferences/environment/stockholm1972>).

this is an implied right when exercising some other rights given the link between individual rights and concepts of dignity and autonomy.¹¹¹ As pointed out by the Office of the UN High Commissioner for Human Rights, “meaningful, informed and effective participation of all people **is not just their human right, it also leads to more effective, equitable and inclusive environmental action**”.¹¹² In its judgment of 9 April 2024, when talking of the procedural safeguards covered by the right to be protected from the harmful effects of climate change, the **ECTHR** states that “**procedures must be available through which the views of the public, and in particular the interests of those affected or at risk of being affected** by the relevant regulations and measures or the absence thereof, **can be taken into account in the decision-making process**” (para. 554).

The lack of citizen participation or the so-called indifference of individuals is in fact more the fault of states which have failed institutionally to ensure the potential to exercise this right. In Habermas’s view, political participation, in line with the conditions of objective possibilities provided by constitutions, forms the basis of “radical democracy”,¹¹³ enabling the historical fulfilment of rights. **The lack of participation, he says, can be attributed to a shortage of structures to co-ordinate these forums for civic solidarity** (Habermas, 2012).¹¹⁴ It would also seem that NGOs have not yet taken much advantage of the right to participation, partly because of their limited resources and the fact that they do not always consider themselves to have sufficient expertise.¹¹⁵ Consultations are also adjudged to be of poor quality, again because of the lack of active NGO involvement, hence the need to turn towards broader forms of citizen association, while paying full attention to aspects such as the selection process, the access to information and science given to these individuals, the tasks assigned to them and the purpose of the consultation. Habermas focuses on the foundation of citizenship but does not overlook human rights and the principle of equality. This demand for participation rights can be viewed as a consequence of the crisis of representative democracy, in which citizens have the feeling that they are the “**victims of a hoarding of political responsibility not only by their representatives but also by civil servants, experts and, undoubtedly to an even greater extent, by media outlets**”.¹¹⁶ The focus now should be on accepting joint responsibility of stakeholders, based on the establishment of communities charged with identifying shared interests instead of the general interest traditionally imposed by the Nation State.¹¹⁷

While there is consensus on the need to grant the right to citizen participation, it is most certainly far more difficult to agree on what it should actually consist of. Therefore, it is important to understand the **various modes of citizen participation** so as to grasp what issues underly the joint formulation of public policies in a time of climate transition. In France, Michel Prieur has described participation as “a form of association and involvement of citizens in the administrative preparation and decision-making process ...”.¹¹⁸ This right of participation is considered to be the corollary of a duty for individuals to preserve natural resources,¹¹⁹ a dual arrangement (of duties and rights), as described above (see the account of Jean Dabin’s “function rights”, part I). In an article published in 1988, Prieur set out a scale of citizen participation divided into five stages: dispute, dialogue, consultation, participation in

¹¹¹ Nicholas McMurry, 2023, *Participation and democratic innovation under international human rights law*, Routledge, 282 pages.

¹¹² Office of the UN High Commissioner for Human Rights, “Human rights at the heart of the response – Human rights, the environment and Covid-19”, p. 4.

¹¹³ Jürgen Habermas, 1997, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Polity Books

¹¹⁴ Jürgen Habermas, 2012, *The Crisis of the European Union: A Response*

¹¹⁵ C. Abbot & M. Lee, “NGOs shaping public participation through law: the Aarhus Convention and legal mobilization”, *Journal of Environmental law* (2024), Vol. 36, pp.85-106.

¹¹⁶ Jean-Louis Genard, 2007, op. cit., p.12.

¹¹⁷ Jean-Louis Genard, 2007, op. cit., p.13.

¹¹⁸ Michel Prieur, 1988, “Le droit à l'environnement et les citoyens : la participation”, *Revue Juridique de l'Environnement*, no. 4, pp. 397-417, p. 398.

¹¹⁹ Michel Prieur, 1988, op. cit., p.416.

decision making and participation in environmental management.¹²⁰ Here participation is understood in its strictest sense as covering only the latter two scenarios, illustrated mainly by the United States and Switzerland. The right to citizen participation is taken to include, on the positive side, **rights for citizens to contribute to preparing proposals, drafting standard-setting texts and devising public policy** and, on the negative side, **a right to object to texts adopted by public authorities**. The right to participation undoubtedly entails consulting the public at least, but above all enabling them to take part in decision-making and the drafting of risk prevention plans. There is a need to transcend vertical governance patterns, looking beyond the right to non-binding consultation, which has generally proved almost totally ineffective, with no account being taken of citizen's views. One potential idea is to include provision in national constitutions for citizen conventions when the issue at stake is as fundamental as societal change in response to climate change, as called for in France following the experience with the citizen convention on climate.¹²¹ In France, this precedent revealed the determination and expertise of the public, although the results “were treated with extreme distrust by the authorities, particularly the state authorities, which could not bear the thought that collective regulation might escape their control”. The remaining question, as Loïc Blondiaux writes, is “how to go about both preserving the authenticity of these processes of top-down consultation and organising their dissemination, making them more durable, less random and more legitimate in the eyes of the public authorities”.¹²²

In the context of EUR-OPA, the right to participation is mentioned in various documents. For instance, it was accepted in the second Recommendation of 2011, under Article 3 of which the EUR-OPA member states are called on to: “promote the involvement of local populations in the design and implementation of wildland fire prevention policies, emphasizing awareness, the building of a culture of risk and public participation ...”.¹²³ Albeit somewhat indirectly, the question of inclusive and participatory governance also figures in EUR-OPA's Recommendation of 2010,¹²⁴ which calls on states to “improve governance of disaster risk reduction, involving all authorities, integrating science, industry and citizens into appropriate partnerships and encouraging all to act both for mitigation of climate change and contribute to the implementation of adaptation measures that may reduce vulnerability ...” (Article 5). The way in which citizens are involved in public policies is left to the entire discretion of states as the concept of “appropriate partnerships” does not refer to any specific legal category. It has been pointed out by Olivier Galichet that “institutions are not sufficiently prepared for citizens' involvement in crisis management”.¹²⁵ “Mechanisms to ensure comprehensive public and community consultations during the development of such strategies and plans”, while necessary, is probably not sufficient.¹²⁶

As another author points out, “the right to participate in public affairs and decision making is crucial for the preparation of policies and strategies to foster a just transition”.¹²⁷ Citizen participation therefore is **essential for an effective and fair transition**. “Public participation in the adoption of such decisions is made all the necessary by the major impact that these measures will have on their living

¹²⁰ Michel Prieur, 1988, op. cit., p.404.

¹²¹ Léo Cohen, 2022, *800 jours au Ministère de l'impossible*, Les petits matins, 144 pp.

¹²² Loïc Blondiaux, 2010, “Postface”, in Beuret Jean-Eudes and Cadoret Anne, *Gérer ensemble les territoires, Vers une démocratie coopérative*, ed. Charles Léopold Mayer, pp.212-216, p.214.

¹²³ EUR-OPA, Recommendation 2011 – 2 on preventing and fighting wildland fires in a context of climate change, 30 September 2011, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2011-2_WildlandFires_EN.pdf (17 August 2024).

¹²⁴ EUR-OPA, Recommendation 2010 – 1 on reducing vulnerability in the face of climate change, 28 September 2010, Article 5.

¹²⁵ Olivier Galichet, AP/CAT(2023)03, 10 July 2023, p.12.

¹²⁶ EUR-OPA, AP/CAT(2021)11, 24.11.2021, Revised Medium-Term Plan 2021 – 2025, p.10.

¹²⁷ J. Gilbert, “Les droits humains comme prisme d'analyse de la transition écologique”, *Cahiers de recherche*, ed. AFD, May 2024, p.36.

conditions ...".¹²⁸ One obvious example is measures to relocate people whose homes are in areas at high risk of flooding owing to rising sea levels.

2. Reiterating the importance of governance at local and regional level:

Citizen participation, which must be made effective in European states, goes hand in hand with strengthening **local governance** to ensure the prevention and response systems needed vis-à-vis natural disasters linked to climate change.

The need for local authority involvement is widely reiterated in EUR-OPA documents such as the Recommendation of 2008 on “Radiological protection of local communities: improving preparedness and response” (Articles 3 to 5),¹²⁹ which called for provision for “financial support to local and regional authorities to embark on the tasks above” (Article 5). The same point was made in the Recommendation of 2007 on risks in coastal areas.¹³⁰ The Recommendation on “Local and regional authorities preventing disasters and facing emergencies”¹³¹ calls on states to improve, if necessary, “the co-ordination of national, regional and local authorities in their respective fields of competence”, “encourage and facilitate the implication of local and regional authorities in disaster reduction” and “provide appropriate financial support and incentives to local and regional authorities to carry out the necessary disaster risk reduction activities on matters within their competence”. The Recommendation of 2010 on reducing vulnerability in the face of climate change advocated improved governance of “disaster risk reduction, involving all authorities, integrating science, industry and citizens into appropriate partnerships and encouraging all to act both for mitigation of climate change and contribute to the implementation of adaptation measures that may reduce vulnerability” while taking account, “in that framework, of the important federating role of multi-stakeholder national platforms for disaster risk reduction”. **In the absence of any monitoring, it is impossible to gauge how much action has been taken on these recommendations** at national level. Lastly, the current action plan places emphasis on tiers of activity and the role to be played by local stakeholders.¹³²

Lastly, other Council of Europe bodies have expertise in these areas, meaning that **increased interaction** with EUR-OPA could be beneficial. This is particularly the case with the **Parliamentary Assembly and the Congress of Local and Regional Authorities**. We refer in particular to Resolution 2493 (2023), “Political strategies to prevent, prepare for and face the consequences of natural disasters”, adopted by the Parliamentary Assembly of the Council of Europe.¹³³ The Congress of Local and Regional Authorities has highlighted the limited human and financial resources of local and regional authorities in some states.

This requirement is echoed in Priority 2 of the Sendai Framework, which asserts that it is important “to empower local authorities, as appropriate, through regulatory and financial means to work and coordinate with civil society, communities and indigenous peoples and migrants in disaster risk

¹²⁸ Sabine Lavorel, op. cit. (2021), p.108.

¹²⁹ EUR-OPA, Recommendation 2008 - 1 radiological protection of local communities: improving preparedness and response, 30-31 October 2008, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2008-1_ConclusionsIstanbul_EN.pdf (17 August 2024).

¹³⁰ EUR-OPA, Recommendation on risks in coastal areas, 27-28 September 2007, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2007_CoastalRisks_EN.pdf (17 August 2024).

¹³¹ AP/CAT(2006)47rev, 31 October 2006.

¹³² EUR-OPA, AP/CAT(2021)11, 24.11.2021, Revised Medium-Term Plan, 2021 – 2025, p.4, p.10.

¹³³ Paragraph 12.5 “calls on all member States to ... take into account the distribution of roles between levels of governance in the fight against major hazards in order to build the capacity of local authorities, which are in direct contact with the population”.

management at the local level”.¹³⁴ Likewise, according to Principle 6 of the Yokohama Strategy cited above, “Preventive measures are most effective when they involve participation at all levels, from the local community through the national government to the regional and international level”.

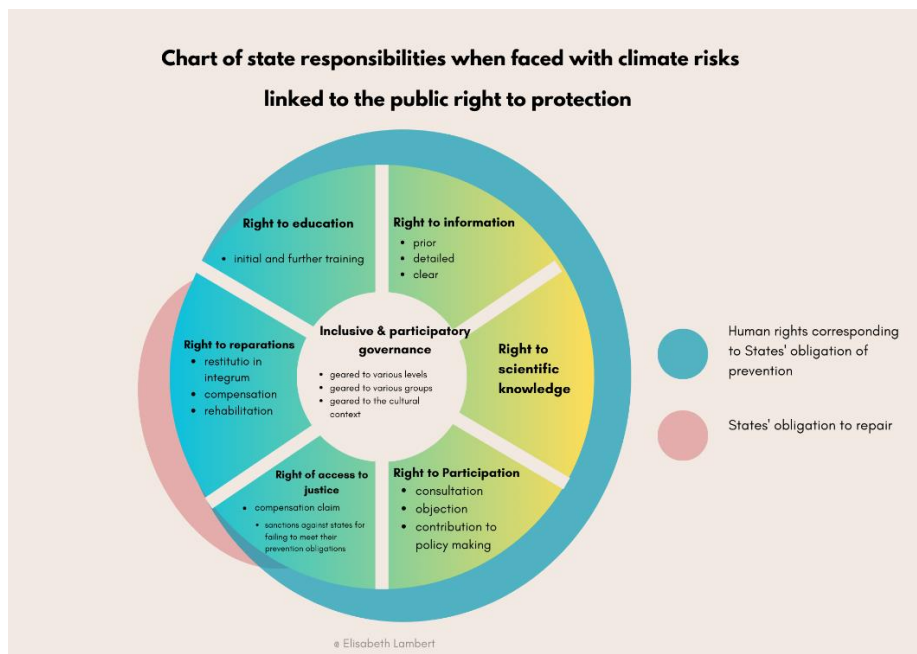
The need to strengthen local governance was also identified in the conclusions of a consortium of researchers meeting in the context of the ESPREsSO project (Enhancing Synergies for Disaster Prevention in the European Union). The article summarising the results of their research highlights the need for transfrontier co-operation between local and regional authorities and gives the example of how co-operation relating to the rivers crossing several European countries has made it possible to pool resources.¹³⁵

3. Reviving links with the academic world:

We would like to conclude this discussion of governance by quoting the Ministerial Declaration of 2021,¹³⁶ which quite deftly summarises a final governance goal, namely to “foster a multidisciplinary, cross-sectoral and participatory approach to better efficiency and effectiveness of disaster risk governance at central, regional and local level”. It also talks of the benefits of co-operation with universities and civil society, resolving to “strengthen the collaboration with the scientific communities and academia”. It was indeed shown above how crucial scientific progress and lifelong risk education for all are and what links can be established between the worlds of academia and politics. For many years EUR-OPA has had links with expert centres, but with partial success. It is certainly worth rethinking these links with the academic world, perhaps in responding to calls for projects with civil society partners and research centres under national and European participatory science research programmes or action research projects, for which more substantial resources are available today, particularly on issues linked to climate change and resilience of societies.

Summing up:

Chart 1: State responsibilities and the right of peoples to be protected from and prepared for climate risks:



¹³⁴ United Nations, UNISDR, Sendai Framework, op. cit.

¹³⁵ ETH Zürich, ESPREsSO, Enhancing synergies for disaster prevention in the European Union, online: <https://cp.ethz.ch/research/ccnh/espresso.html> (18 August 2024).

¹³⁶ AP/CAT (2021) 14, *Building More Inclusive Societies through Better Disaster Risk Management*.

III. GUIDELINES AND RECOMMENDATIONS:

Following the analysis carried out in the first two parts of this report, it is essential to point out to what extent recent EUR-OPA Agreement activities **have contributed genuinely and tangibly to the emergence of a right for present and future generations to be protected from natural hazards connected in particular to climate change**, primarily through a collective preventive approach. However, **means of improvement** have been identified and will be outlined in the paragraphs below. These suggestions may be directed both at states (and their subordinate entities) and at the EUR-OPA Secretariat as we have seen to what extent responsibilities in the face of climate risks lie with states and intergovernmental organisations (in this case, the Council of Europe and, more specifically, EUR-OPA).

Our recommendations centre on **four priority areas**:

A. Setting up monitoring of the implementation of existing texts:

Many recommendations and actions have been taken in the context of EUR-OPA to protect people from the harmful effects of natural and technological hazards. However, no mechanism has been set up to assess the impact of these actions at state level. In 2018, the observation that the assessment of EUR-OPA activities was lacking was expressed as follows: “Many reviews of programmes and activities express their concern that problems are known, the knowledge required to act exists, and recommendations have been given to push action, but too little is carried out and put into practice – be it the translation into policies or implementation on the ground”.¹³⁷ **“The challenge of implementation”** is highlighted by the former Executive Secretary as the first of the “challenges that lie ahead” in a brochure describing EUR-OPA’s activities.¹³⁸

To our knowledge, only three EUR-OPA recommendations (which are among the oldest) include a monitoring requirement, and two of these were drawn up in co-operation with a UN body: the Recommendation of 2009,¹³⁹ which calls on states to “communicate to the Secretariat of the EUR-OPA Major Hazards Agreement and to the UN/ISDR Secretariat, plans to establish national platforms” (Article 9) and to “communicate the creation of national platforms to both the Secretariat of the EUROPA Major Hazards Agreement and to the UN/ISDR Secretariat” (Article 10); the Recommendation of 2003¹⁴⁰ on risk prevention, which requests that “the assessment of these above initiatives be presented in collaboration with the ISDR Secretariat”; and, lastly, the Recommendation of 2006 on education at school,¹⁴¹ in the final paragraph of which “the Ministers RECOMMEND¹⁴² that member States and observer States inform the Committee of Permanent Correspondents of the Agreement by

¹³⁷ EUR-OPA, T-PVS-Inf(2018)11, p.20. **XXX**

¹³⁸ EUR-OPA, Council of Europe, *Facing risks together*, 28 pages, p.19, online:

https://www.coe.int/t/dg4/majorhazards/ressources/pub/FacingRisksTogether_Sept2010_EN.pdf (17 August 2024).

¹³⁹ EUR-OPA, Recommendation 2009 – 2 on the promotion and strengthening of national platforms for disaster risk reduction, adopted at the 57th meeting of the Committee of Permanent Correspondents of the EUR-OPA Agreement, Dubrovnik, Croatia, 15-16 October 2009, online:

https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2009_2_NationalPlatforms_EN.pdf (17 August 2024).

¹⁴⁰ EUR-OPA, Recommendation on risk prevention, 12 December 2003, online:

https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/APCAT_2003_48_rec_adopted_Min_SanMarino_121203_EN.pdf (17 August 2024).

¹⁴¹ EUR-OPA, Recommendation Disaster risk reduction through education at school, 31 October 2006, online:

https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/APCAT_2006_47rev_Rec_adopted_Min_Marrakech_311006_EN.pdf (17 August 2024).

¹⁴² The word is capitalised in the text of the Recommendation.

the end of 2007 of the measures taken to implement the above recommendations". It is worth noting that a deadline was also set in this case.

These demands were not repeated subsequently, and we have no information about how effective the monitoring called for in these three texts has been. In my view, however, the lack of knowledge about the impact of norms adopted previously **limits EUR-OPA's activities and makes it more difficult to decide on appropriate action for the future**. Some of these recommendations deal partly with issues raised in this report and it would be useful **to know what progress has been made on them at national level to guide further activities**. For example, how is the Recommendation of 2016 on the inclusion of migrants, asylum seekers and refugees in disaster preparedness and response implemented? What about the Recommendation of 2013 on the inclusion of people with disabilities in disaster preparedness and response? What action have states taken on the Recommendations of 2009, 2010 and 2011 cited above, which are relevant to climate risk prevention? What difficulties do states and their local entities face when attempting to comply with these texts? How can these standards be implemented more effectively? If a monitoring mechanism could be set up permanently, a **comparative analysis of the responses** could be communicated to national correspondents; above all **best practices** for implementation would be accessible alongside the texts on the EUR-OPA website; their availability might encourage some states or local authorities to **take inspiration from them**. We should not underestimate the need for standards to be geared to the specific features of the geographical areas and the population groups concerned. Local authorities may have specific questions before following these recommendations. This compilation of practice would also have the benefit of **raising the profile of EUR-OPA activities** in risk prevention considering that there has been no real reference to these activities in the relevant grey literature. This raises the issue of communication about Council of Europe activities more generally and the fact that only the European Court of Human Rights has any presence on the European and international stage.

Academics have also highlighted the extent to which **standards in this area are relatively numerous but have little impact because they are often set out in non-binding documents with no monitoring mechanisms**.¹⁴³ A minimum step therefore, where EUR-OPA is concerned, would be to establish a monitoring mechanism. EUR-OPA could base itself on what was built up from nothing by the Secretariat of the Bern Convention (based only on complaints sent in by civil society and the decision to respond to these whereas nothing of this sort was provided for in the texts).¹⁴⁴ Furthermore, Article 7 (para. 7, a) of the 2015 Paris Agreement makes the following recommendation to states "Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions".

→ **In the absence of a monitoring mechanism to ensure the implementation of EUR-OPA standards at national level, assist states with this aim and better direct future activities, it would be desirable to obtain information from states on measures taken and problems encountered at regular intervals and thus (1) to examine the impact of these standards by sending national correspondents a questionnaire (including open-ended questions asking respondents to suggest means of improvement) and (2) to make a comparative analysis of the answers given so as to be able to draft best practice guides and if necessary, clarify issues or make further recommendations according to needs.**

¹⁴³ See on the subject of the Sendai Framework and the priority given to public access to information: Marlies Hesselman, "Access to Disaster Risk Information, Early Warning and Education: Implementing the Sendai Framework through Human Rights Law", chap. 10, pp.188-216, in Katja L. H. Samuel, Marie Aronsson-Storrier and Kirsten Nakjavani Bookmiller (eds), *The Cambridge Handbook of Disaster Risk Reduction and International Law*, CUP, 2019.

¹⁴⁴ <https://www.coe.int/en/web/bern-convention/monitoring1> (19 August 2024).

In addition to receiving information from states, provision could be made, in keeping with the inclusive and participatory approach advocated in this report, for an **online form on the EUR-OPA website open to natural and legal persons** located within the jurisdiction of the EUR-OPA member states, in the various languages of the countries concerned. This form would make it possible to send information on the implementation of EUR-OPA recommendations. Ultimately, an analysis of the data collected (including information from states, comparative analysis by the Secretariat, and information sent in by civil society) could be the subject of an opinion by a **permanent committee set up alongside the Secretariat to clarify the content of recommendations so as to make them as effective as possible**. The legal doctrine has clearly shown that to be properly implemented, recommendations must be sufficiently detailed and relevant and be addressed to the authorities which have the power to follow up on them favourably.

Another monitoring method, which may serve as a complement or an alternative, would be to hold **meetings on the ground between the EUR-OPA Secretariat** and the partners in the member states concerned. These meetings should **involve all the stakeholders including civil society**. This is an approach which the Department for the Execution of Judgments of the European Court of Human Rights is increasingly turning to and seems to have more impact than written exchanges, at least for some countries.

Of course, this extra work will undoubtedly raise issues concerning the material and financial resources currently available.¹⁴⁵

B. Preparing a new recommendation on the protection and preparedness of populations exposed to the serious effects of climate risks

The second proposal relates to the preparation of a **new recommendation addressing state responsibilities and obligations and the right for populations to be protected from serious harmful effects linked to climate change**.

Until now, EUR-OPA's approach has been to target priority groups in vulnerable situations, particularly through the Recommendations of 2013 and 2016 cited above, with the risk that some groups will be neglected (elderly people for example)¹⁴⁶. The other relevant Recommendation addresses a single relevant risk, namely forest fires. This is, of course, the Recommendation of 2011 on preventing and fighting wildland fires in a context of climate change.¹⁴⁷

Therefore, any new recommendation should cover all population groups and all risks linked to climate change, and assert the human rights-based approach, rendering it operational by placing human beings at the core of activities, with reference to the Court judgment of April 2024. It should take account of the specific nature of climate risks (compared to other types of risk), for example by including the rights of future generations. Some rights which have not yet been explicitly established, such as the right to science, could figure in this recommendation. It could also make provision for the establishment of a monitoring mechanism.

¹⁴⁵ EUR-OPA, AP/CAT(2023)01, 23 March 2023, European and Mediterranean Major Hazards Agreement, meeting of the Bureau of the Committee of Permanent Correspondents, "The Agreement is currently functioning with two staff members due to the reduced budget. There is no budget for additional staff in 2023".

¹⁴⁶ For whom work has been done by the CDDH: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/work-completed> (20 August 2024).

¹⁴⁷ EUR-OPA, Recommendation 2011 – 2 on preventing and fighting wildland fires in a context of climate change, 30 September 2011, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2011-2_WildlandFires_EN.pdf (17 August 2024).

→ It is suggested that a **new Recommendation** should be prepared on the protection and preparedness of all people exposed to the various climate risks, stressing the need to gear measures to groups who are particularly vulnerable and/or exposed and taking a culturally-sensitive approach.

This Recommendation would make the following **points in its preamble**: *first*, the particular nature of the climate risks we face. These are known risks for which robust scientific evidence now exists, enabling states to propose solutions to mitigate their impact on human lives; *second*, as a result, the determination of states' responsibilities and the international and European legal foundations: responsibility to prevent, prepare, and give population groups the capacity to respond, and their specific features, namely obligations of result and means concerning the diligence required depending on states' capacities, including a duty for states to co-operate and exercise solidarity. The **body of the text** would set out the participation rights which states must implement, namely **the right to initial and further training for all, including decision makers, the effective right to prior, detailed, accessible and clear information, the right to science and in particular, access to scientific knowledge, entailing an obligation to support high-quality, independent, public science, a genuine right to citizen participation (in the form of joint discussion and joint preparation of public policy), consideration of different tiers of decision-making, particularly the local level and the need to adjust** to differing geographical areas, target groups and cultural features. Lastly, a **monitoring mechanism** should be mentioned. It is strongly suggested that **national correspondents should pass on good practice and clarification** on the implementation of the Recommendation and difficulties encountered, for example within a first period of 18 months then every two or three years (combined with information on the implementation of the other recommendations relating to the subject referred to in this report).

C. Rethinking governance methods at various levels:

At this pivotal time in human history, which some find worrying and others stimulating as it gives us every reason to innovate and think outside the box, the duty to prevent risks and adapt our lives to the serious effects of climate change forces us to **radically rethink our methods and ground rules**. As the prime advocate of the rule of law, fundamental rights and democracy, the Council of Europe is the most qualified organisation to do this. The ground rules laid down after World War Two are no longer valid today; they must change if we wish to manage the required transition, restore human beings to the heart of the process and reach the local authorities which are closest to the territories affected by the risks.

Four approaches seem valid to me: (a) strengthening synergies within the Council of Europe; (b) ensuring that local authorities are fully involved and that their capacities for action are maximised; (c) devising a more participatory form of governance involving citizens; and (d) reviving links with academia.

1. Strengthening synergies within the Council of Europe:

This is an aspect which I already highlighted in my introductory report on the environment and human rights for the political conference of February 2020, prepared at the request of the CDDH; the lack of synergies is indeed a common problem in our over-compartmentalised institutions. It is also an issue I have raised in my research on the execution of the judgments of the Court.

Over and above the synergies currently being discussed between the mechanisms of EUR-OPA and the Bern Convention,¹⁴⁸ the EUR-OPA Secretariat would have much to gain from initiating synergies with other Council of Europe departments, mainly with the **Congress of Local and Regional Authorities**, then with the **Parliamentary Assembly**, and potentially with the **Commissioner for Human Rights**. Meetings should be bilateral or multipartite so as to avoid duplication and above all pool work and expertise (particularly with the Congress). For instance, the Parliamentary Assembly referred to EUR-OPA standards in its work of 2023 following the earthquakes in Syria and Turkey.¹⁴⁹ It would also be a good idea for the EUR-OPA Secretariat **to familiarise the Registry of the European Court of Human Rights** with EUR-OPA's recommendations and the criteria they deploy when assessing the extent to which states' responsibilities are incurred in disputes on the right to be protected from and prepared for climate risks (an aspect which is no doubt rapidly going to increase in scope). The Court has got into the habit of referring more and more frequently to standards drawn up by Council of Europe bodies, such as the Committee for the Prevention of Torture. However, in our research on HUDOC, we were unable to find any cases which referred to EUR-OPA standards. Regarding the right to information on data held by public authorities, it may be worth assessing whether it would be appropriate to hold exchanges with colleagues in charge of implementing the Council of Europe's **Tromsø Convention** (which recently came into effect and for which there is a monitoring committee).¹⁵⁰

2. Getting local authorities fully involved:

While they are shared throughout the world, albeit with certain variations (for example continental Europe is more prone to heatwaves whereas Mediterranean countries are more susceptible to torrential rain and forest fires), one of the specific features of climate risks is that they are very localised. Disasters such as forest fires and mudslides can affect very specific areas. It is essential for local and regional authorities, which often have skills in town planning, spatial planning and environmental protection, work side by side with citizens and are better regarded and trusted than central government, to be involved in devising climate risk protection and preparedness policies. Their role is often mentioned in texts adopted by EUR-OPA. For instance, Article 3 of the Recommendation of 2013 on the inclusion of people with disabilities in disaster preparedness and response recommends that states "design and promote measures at the community level through local administrations and civil protection services, making use of local organisations that provide care and representation to people with disabilities". However, in the absence of any monitoring, it is difficult to assess the impact of this recommendation and what remains to be done. It would also be useful to know how states have implemented the Recommendation of 2009 on the establishment of "national platforms for disaster risk reduction",¹⁵¹ which the local authorities were asked to participate in, and above all the Recommendation of 2006 on "local and regional authorities preventing disasters and facing emergencies",¹⁵² which advocates a sensible approach. This approach could be applied to the

¹⁴⁸ See T-PVS/Inf(2018)11, 23 March 2019, online: <https://rm.coe.int/inf11e-2018-synergies-climate-change-between-bc-and-europa-23-march-20/16809533ec> (17 August 2024).

¹⁴⁹ PACE, Committee on Social Affairs, Health and Sustainable Development, Rapporteur Simon Moutquin, "Political strategies to prevent, prepare for, and face the consequences of natural disasters", Doc.15738, 6 April 2023, online: <https://pace.coe.int/en/files/31691/html> (17 August 2024).

¹⁵⁰ <https://www.coe.int/en/web/access-to-official-documents/> (18 August 2024).

¹⁵¹ EUR-OPA, Recommendation 2009 - 2 (15-16 October 2009), on the promotion and strengthening of national platforms for disaster risk reduction, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/REC_2009_2_NationalPlatforms_EN.pdf (17 August 2024).

¹⁵² EUR-OPA, Recommendation on local and regional authorities preventing disasters and facing emergencies, 31 October 2006, online: https://www.coe.int/t/dg4/majorhazards/ressources/recommendation/APCAT_2006_47rev_Rec_adopted_Min_Marrakech_311006_EN.pdf (17 August 2024).

responsibilities of states and their subordinate bodies in protection from, prevention of and preparedness for risks linked to climate change, provided that the member states provide feedback.

3. Establishing participatory public-policy making processes:

The public authorities tend to underestimate or to overlook the citizens' views for several reasons, one of these being that these are thought to be non-expert views and hence irrelevant. In truth, this overlooks the ability of individuals to consider matters which concern them directly, to understand the phenomena affecting them and to come up with creative ideas. As stated above in part 2, participation should be something more than just consultation of the groups concerned (which often has no effect anyway). Co-construction methods (devising measures jointly) are essential for the success of policies to prevent and adapt to climate change-related risks, so that adaptation is not imposed on people and does not exacerbate already deeply entrenched socio-economic and cultural inequalities. In this connection, EUROPA's Recommendation of 2013 asks states to "ensure that people with disabilities are included in the entire disaster risk reduction process and that, wherever possible, their viewpoints are taken fully into account".¹⁵³ Everyone exposed to climate risks should be able to express their opinion given that they are impacted by the transition measures that will have to be adopted, while there should also be specific procedures geared to the needs of persons in vulnerable situations.

→ **At European level**, one measure which could easily be introduced would be to provide, on the EUR-OPA website **a participatory platform** for the use of citizens, civil society and all stakeholders, preferably in the various languages of the countries concerned so as to reach as many people as possible. This platform could be devised with the other Council of Europe departments and bodies as it could be duplicated and used in other contexts. It should be easily consultable on mobile phones, which are, as we know, used more than computers. **Specific questionnaires** could be prepared following disasters to collect reactions from citizens on measures which worked, those that were missing and those which worked less well or had little effect. For example, we could gauge feelings about the degree of effectiveness of early warning systems and evacuation procedures following forest fires or floods. Persons without access to digital technology should be allowed to use the post.

These measures can only be effective if several conditions are met: firstly, the **platform must be easy and pleasant** to use, it should be **properly publicised on social networks** (with a QR code), the **questionnaires should be relatively short** because people's time and investment are limited, a **reward system** should be set up, for instance for the first 100 participants from each country (e.g. for those who agree, through publication of an extract from their contribution online, or through a small gift), and a **summary of the replies** should be prepared in the language of the country (in the case of a specific questionnaire following a major disaster) and in French and in English in other cases, with **care taken to give details of follow-up measures (which must be real** so as not to lose public motivation). The **staff of the EUR-OPA Secretariat will probably have to be reinforced** to cope with the extra work. If additional resources could be deployed, it might be possible to select, once a year, the most appropriate contact persons who are most representative of the European territories subject to major climate change-related risks and invite them to an **annual forum** (by videoconference) to discuss the summary of measures taken and ways of improving them.

¹⁵³ EUR-OPA, Recommendation 2013 - 1 on the inclusion of people with disabilities in disaster preparedness and response, 24 October 2013.

→ **At national level**, it might be suggested that **participatory mechanisms** geared to the national/local and cultural situation be set up. Every state is in a better position to determine their modalities. Another potential measure would be hold to **citizen meetings or conventions** for the co-construction of climate risk adaptation policies. The **citizen conventions** already held in some European states have clearly shown how serious and engaged the public can be: it is enough to look at the work of the Citizens' Convention on Climate in France to realise this although unfortunately its findings have not yet been taken into account by the authorities. This shows how important it is to ensure that there is follow-up to these governance mechanisms through a **good use charter**.

4. Reviving links with the scientific community:

As stated in the body of the report, science is ever-present when we are thinking about climate risk adaptation policies. Public policy makers must take more account of scientific progress in order to improve prevention measures and make more extensive arrangements for bodies bringing together scientists and public decision makers.

EUR-OPA's co-operation with academic bodies could be given new impetus so as to foster joint activities, bearing in mind that more funding to conduct participatory science (with socio-professional partners) and research-action (with public policy makers) is now available in universities.

Summing up:

Chart 2: Proposed state action in connection with EUR-OPA:

