

Climate Justice Without Inclusion: How the ICJ's historic opinion failed persons with disabilities

By Bhavya Johari - 06 August 2025 | [INTERNATIONAL LAW AND HUMAN RIGHTS \(/ARTICLES/BROWSE/SUBJECT/LIST/23\)](#)



Bhavya Johari calls on for advocates, litigators, and policymakers to ensure that climate justice obligations encompass all members of society, particularly those most vulnerable to climate impacts.

The International Court of Justice's (ICJ) [historic climate advisory opinion](#) (<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-pre-01-00-en.pdf>) delivered on July 23, 2025, affirmed that states have enforceable duties under international law to protect the climate system, marking a

watershed moment in international environmental law. Yet beneath this landmark ruling lies a troubling omission that exposes the persistent marginalization of disability rights in global climate governance. While the Court recognized states' obligations under human rights law to protect the climate system, it overlooked the disproportionate climate impacts experienced by persons with disabilities, who make up [15% of the world's population](#) (<https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html>). This systematic exclusion reflects broader [ableist practices](#) (<https://journals.plos.org/climate/article?id=10.1371/journal.pclm.0000153>) within climate governance structures.

The Inter-American Court's Precedent: A Model for Inclusive Climate Jurisprudence

The ICJ's omission is underscored by the Inter-American Court of Human Rights' (IACtHR) more progressive approach in its recent [Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights](#).

(https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2025/20250703_18528_decision-1.pdf) Unlike the ICJ's generic human rights formulation, the IACtHR [explicitly recognizes vulnerable groups](#), (<https://verfassungsblog.de/inter-american-court-of-human-rights-advisory-opinion-climate/>) including persons with disabilities, as requiring special protection in climate responses. This approach aligns with [emerging scholarship on disability justice frameworks](#) (<https://repository.up.ac.za/server/api/core/bitstreams/29a8452b-4ea1-4994-afe8-79e97dd94fc/content>) that recognize the [interconnected nature of climate and disability vulnerabilities](#) ([https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(24\)00024-X/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(24)00024-X/fulltext)).

The regional precedent demonstrates that explicit disability inclusion in climate jurisprudence is legally feasible and jurisprudentially sound. The IACtHR's approach recognizes that [climate impacts create cascading vulnerabilities](#) (<https://www.justsecurity.org/96690/inter-american-court-climate-displacement/>) that compound existing barriers faced by persons with disabilities, from [evacuation difficulties during extreme weather events](#) (<https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00474>) to [exclusion from post-disaster recovery programs](#) (<https://www.ohchr.org/en/climate-change/impact-climate-change-rights-persons-disabilities>).

The Inter-American Commission's [Resolution No. 3/21 on Climate Emergency](#) (https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/045.asp) further established that climate change affects *groups in situations of vulnerability*, with specific mention of persons with disabilities. This framework, supported by contemporary disability rights scholarship, provides a compelling model for how international climate jurisprudence can and should incorporate intersectional vulnerability analysis while recognizing the [agency and knowledge that persons with disabilities bring to climate solutions](#). (<https://www.scienceopen.com/hosted-document?doi=10.13169/intljofdissojus.4.2.0048>)

Legal Gaps and Reparations Framework Deficiencies

The ICJ's failure to acknowledge these documented realities represents an oversight and a fundamental misunderstanding of intersectional climate vulnerabilities. The practical consequences of this omission are profound. When the Court states that breaches of climate obligations may result in *full reparation to injured States*, it provides no framework for addressing how climate harms specifically affect persons with disabilities within those states. Research consistently shows that [persons with disabilities face disproportionately higher rates of morbidity and mortality](#) (<https://www.brookings.edu/articles/the-disproportionate-impact-of-climate-change-on-people-with-disabilities/>) in climate-related emergencies. Yet, the ICJ's reparations framework offers no mechanism for recognizing or remedying these differentiated impacts.

By relying on abstract human rights formulations, the Court fails to provide concrete tools for addressing disability-specific climate harms. The Court's requirement of a direct and certain causal link for reparations risks excluding disability-related harms, which often manifest in more complex, indirect ways. Without explicit judicial recognition of intersectional climate vulnerabilities, persons with disabilities risk remaining sidelined in international climate governance despite the Court's historic pronouncements.

The limitations become even more apparent when contrasted with the International Tribunal for the Law of the Sea's (ITLOS) May 2024 [Advisory Opinion on Climate Change and International Law](#).

(https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf) While ITLOS also failed to address disability rights explicitly, its detailed analysis of marine ecosystem protection provides a more nuanced framework for understanding how climate obligations must encompass differentiated impacts on vulnerable populations in coastal and island communities.

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The interaction with maritime law reveals the limitations of current international legal frameworks. The ICJ's recognition of complementary United Nations Convention on the Law of the Sea (UNCLOS) obligations creates theoretical space to argue that marine protection must include **accessible coastal adaptation infrastructure** (<https://www.undrr.org/publication/disability-inclusive-disaster-risk-reduction>) and inclusive evacuation planning for island communities. Yet the absence of explicit disability consideration in either the ICJ or ITLOS opinions demonstrates how international courts consistently fail to recognize intersectional climate vulnerabilities, leaving persons with disabilities legally invisible in maritime climate protection regimes.

Strategic Pathways for Disability-Inclusive Climate Justice

Despite these shortcomings, the ICJ's opinion still offers avenues for advancing disability-inclusive climate action. Though not directly referencing disability, the Court's articulation of due diligence can be leveraged to argue that states must ensure climate policies comply with accessibility standards and incorporate universal design principles. The ICJ's affirmation that climate protection is no longer a policy option but a legal duty enforceable under international law reinforces the claim that disability inclusion is likewise mandatory under international human rights law.

The ICJ's articulation of obligations *erga omnes* likewise presents opportunities for disability rights advocacy. By affirming that all states have legal interests in climate protection, the Court theoretically permits third-party interventions on behalf of disability communities facing climate harms. Realizing this potential, however, will require developing legal strategies that explicitly connect climate failures to disability rights violations, drawing on frameworks such as the UN Office for Disaster Risk Reduction's (UNDRR) work on **persons with disabilities in situations of risk** (<https://www.undrr.org/media/85105/download?startDownload=20250802>), as protected under **Article 11 of the UN Convention on the Rights of Persons with Disabilities** (<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>) (UNCPRD).

The opinion's emphasis on cessation of wrongful acts and guarantees of non-repetition may also serve as a legal basis to claim potential remedies for climate policies that systematically exclude persons with disabilities. These legal consequences could support claims for [disability-inclusive climate policies](https://www.internationaldisabilityalliance.org/content/climate-change) (https://www.internationaldisabilityalliance.org/content/climate-change), accessible adaptation infrastructure, and meaningful participation of disability communities in climate governance.

Conclusion

The ICJ's advisory opinion marks a turning point in climate law, but its silence on disability rights underscores the distance still to be travelled. It confirms that states have a legal mandate to act on climate change. Yet it remains for advocates, litigators, and policymakers to ensure that this obligation encompasses all members of society, particularly those most vulnerable to climate impacts. The silence on disability rights in international climate jurisprudence is not inevitable but rather a choice that can and must be corrected through strategic legal action and persistent advocacy for inclusive climate justice.

Bhavya Johari is a Lecturer at Jindal Global Law School, O.P. Jindal Global University, India. He earned his undergraduate law degree from NALSAR University of Law, Hyderabad, India, and holds an LL.M. from Melbourne Law School, University of Melbourne, Australia.

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