



Clear Sky and Transparent Sea

Transparency and Citizen Access Rights at
the International Civil Aviation Organization
and the International Maritime Organization

A study by

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Opportunity
Green

Written by Carly Hicks, Opportunity Green, with the support of ClimateWorks Foundation

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About Opportunity Green

Opportunity Green is an NGO working to unlock the opportunities from tackling climate change using law, economics and policy. Opportunity Green builds ambitious coalitions, supports climate vulnerable countries in accessing international negotiations and finds innovative legal ways to reduce emissions. At Opportunity Green we believe lawyers are obligated to analyse the existing legal systems and regulations to stop climate change. We use legal innovation to forge new pathways on climate action or where that is not possible, find pathways within the present legal structure to facilitate the legislation needed to slash carbon pollution.

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Executive Summary:

ICAO

The International Civil Aviation Organization has failed to adapt to manage the responsibility of reducing emissions from international aviation in the manner appropriate of a United Nations (UN) organization. The absence of effective access rights for citizens to the decision-making processes of the organization, and the resultant inability to hold ICAO to account are both cause and symptom of this failure.

Access to information, public participation and access to justice in environmental decision making (referred to as “the access rights”) are not only aspirational hallmarks of good governance and democratic legitimacy, but guaranteeing them is a legal requirement for states who have ratified the Aarhus Convention or the Escazú Agreement (those states are referred to throughout this paper as “Parties”). Those Parties have not only an obligation to ensure the access rights are given effect in order to contribute to the overarching purpose of the Aarhus Convention and the Escazú Agreement – namely the protection of the individual right to live in a healthy environment – but also to promote their achievement in international organizations. ICAO is one such organization.

The ICAO’s 41st Assembly in September 2022 came at a crunch point for the climate and was the first Assembly to be held in the aftermath of the Covid-19 pandemic. The pandemic saw flights grounded and passenger numbers plummet, but aviation passenger numbers are expected to return to 2019 levels by 2024, and the sector’s share of global emissions is expected to increase in the future: both because other sectors have started to decarbonise, and because demand for international aviation is expected to continue to grow.¹ In 2016, the US Environmental Protection Agency found that greenhouse gas emissions from the aviation sector ‘endanger the public health and welfare of current and future generations’.² While ICAO member states agreed a goal of net zero emissions in 2050 at the recent Assembly, this is only ‘aspirational’ and has not yet been accompanied by any legally binding regulations from member states. Moreover, ICAO’s public ‘vision’ remains the ‘sustainable growth’ of the aviation sector, a position that is incompatible with the need to decarbonise the sector in accordance with Paris Agreement goals.³ The public will not be able to hold ICAO or its member states responsible for their commitments due to the lack of transparency around key environmental decision-making committees. As the United States delegation to ICAO has recently highlighted, ICAO must greatly “increase the transparency of its decision-making processes to improve its accountability to the

¹ ‘International Aviation’, Climate Action Tracker <https://climateactiontracker.org/sectors/aviation/> (accessed 10 August 2022)

² Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 81 Fed. Reg. 54,422 (Aug. 15, 2016)

³ ‘About ICAO’, <https://www.icao.int/about-icao/Pages/default.aspx>, (accessed 14 July 2022)

public it seeks to serve", and in doing so meet the Aarhus Convention requirements for international UN organizations.⁴

ICAO's decisions and its decision-making processes therefore have considerable global reach and impact. As such, the Aarhus Convention, and its sister, the Escazú Agreement, recently concluded between states in South America, (referred to in this paper either individually or as the Agreements) apply to both the member states of ICAO and to ICAO itself. ICAO falls squarely within the remit of the Aarhus Convention as it applies to international organizations. Aarhus Convention Parties have developed a specific set of Guidelines, known as the Almaty Guidelines, to comprehensively set out the standard of transparency and accessibility required of international organizations such as the ICAO. ICAO should apply the Almaty Guidelines to increase public access rights to its institution. At a frightening time for the climate, reform to ICAO's processes is urgently needed, not only to bring the organization in line with legal requirements, but politically to demonstrate that it and its member states are taking the challenges of the climate crisis seriously, and are willing to be accountable to citizens for the same.

The paper prioritises the analysis of the Agreements in respect of ICAO and the IMO as stand-alone bodies, by comparing the requirements set out in the Almaty Guidelines against ICAO and IMO working practice from the perspective of an interested member of the public (the intended beneficiary of the access rights guaranteed by the Agreements). It will set out a comprehensive series of recommendations that both bodies should adopt in order to bring their working processes in line with international legal frameworks.

However, it remains that it is member states of ICAO and the IMO, who are also Parties to the Aarhus Convention and the Escazú Agreement, who are internationally legally bound to deliver on the requirements in those two agreements and who have a legal responsibility to promote the principles they contain in international organizations such as ICAO and IMO. Where member states have not historically delivered on this, their legal obligation is to be positive advocates for change at a time when scrutiny and accountability of sovereign states and industry is paramount to the achievement of required decarbonisation efforts, and environmental issues are being mainstreamed into the public dialogue. If they do not do so, or are not seen to be doing so, they could risk legal action from members of the public seeking to hold national governments to account for failure to act. We therefore include recommendations for ICAO and IMO member states in our analysis.

⁴ "Views of the United States on Future Work in the CAEP", CAEP.12.WP_.061.16.en-VIEWS-OF-THE-UNITED-STATES-ON-FUTURE-WORK-IN-THE-CAEP13-CYCLE.pdf (usmission.gov) para. 3.1.

Access to Information

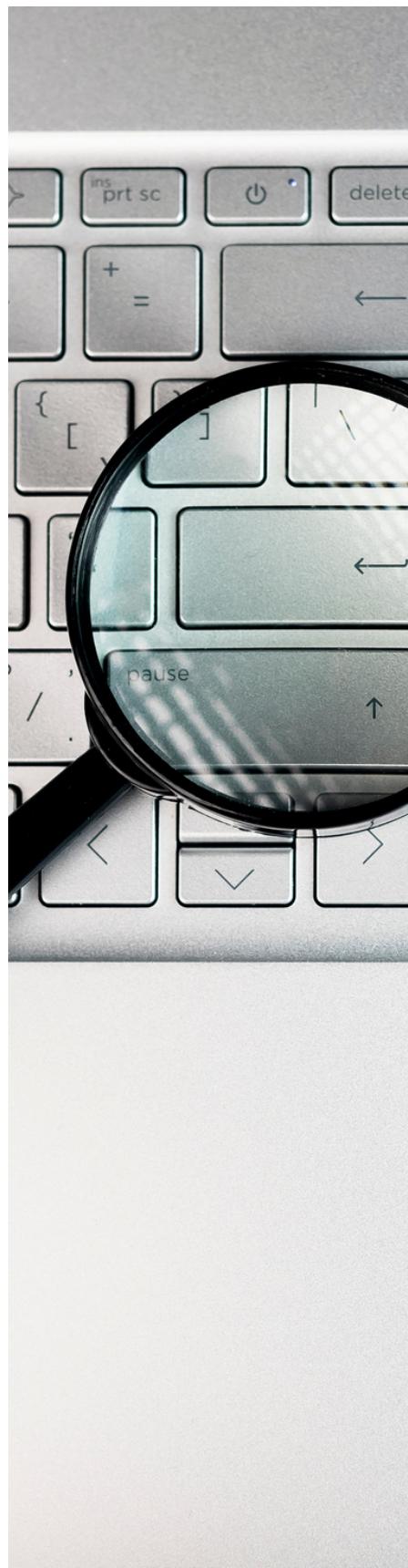
In this analysis we have included both our own investigations of the existing ICAO website and other publicly available information (such as ICAO TV and the E-library). We have also incorporated other analysis and evidence where relevant.

By way of overarching comment, it is worth noting at this point that, in general, the ICAO website is large and complex. It is not always easy to navigate to a webpage containing the information sought; each page has a number of subpages, and clicking through a link or opening one of these subpages will often take you through to further subpages and links, which are not always signposted at parent pages. As a point of principle relating to public access to information, this complexity is unhelpful. As a consequence, considerable time has been spent searching the website for information relating to the points below, but it cannot be excluded that a document or other information that may otherwise have been relevant is available but was not located during this analysis.

Where any registration was required to access certain information (for example ICAO TV), we used a personal email address not associated with a business or NGO, to best replicate how a member of the public would access this information.

Analysis

Meaningful public participation in decision making in international forums is contingent on good information being made available in a timely way, accompanied by transparent processes. The public does have some access to general environmental information on the ICAO website. However, almost none of this is relevant to specific decisions or decision-making processes, and it is not organised or signposted in a cohesive way. Instead, it is



spread across the website and requires investing significant time resource to find. It is perhaps helpful to know the Council and CAEP timetable, but without having access to the information that delegates will consider, member state submissions, or what decisions will be or have been taken (particularly with regards to CAEP), merely having access to a schedule is of little practical use. Access to information is one of the prerequisites for public participation, and effective public participation requires knowledge of upcoming meetings and events, as well as existing member state positions, to make any participation meaningful.

There is considerable industry sponsored information (particularly that which is available on ICAO TV) or information that is outdated to the extent that access to it would not give the public any realistic opportunity to influence decisions. The only CAEP document that was available for public access was at a considerable, prohibitive cost and was three years out of date.

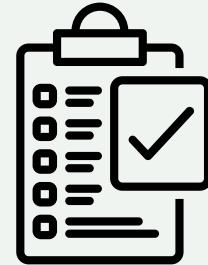
There is currently no means for the public to access further information on environmental matters as the contact details for environment matters are not active. We did not receive a response to an email we sent to two further email addresses found via an online search.

Overall, the access to meaningful information on environmental matters through ICAO is limited at best and must be improved in order to meet the Aarhus Convention and Escazú Agreement principles. While an analysis of the reasons behind the lack of full public availability of environmental information is beyond the scope of this report, we recognise that there could be some challenges in opening the decision making and participation process to the public – for example, protecting commercial confidentiality. However, ICAO's sister organization for the maritime sector already offers a significantly greater degree of information to the public than is the case for ICAO within the same or similar bounds. Moreover, Parties to the Aarhus Convention and Escazú Agreement have legal obligations to promote improved access to information within ICAO, and ICAO itself has the obligation to work towards the achievement of the Almaty Guidelines, even where this requires an evolution of existing working practices, and must therefore approach the current limitations with a view to challenge rather than accept the status quo.

Member states should in particular consider that to the extent that they may seek to rely on confidentiality agreements to prevent disclosure of environmental information to interested citizens at a domestic level, these decisions may be open to challenge in national courts. Member states who are Aarhus Convention and/or Escazú Agreement signatories should take positive steps within the Council and CAEP in particular to improve ICAO's information provision to the public and interested organizations, and to encourage the adoption of the recommendations below.



ICAO Working Procedures Recommendations



1. The ICAO website overall is large and complex. There is a wealth of information across hundreds of different pages, but this is in many instances unhelpful to the person trying to find something specific. The website generally requires streamlining. There are also three distinct repositories of information – the website, the E-library service and ICAO-TV. These should also be streamlined and integrated to provide a more accessible service.
2. In particular, the current Environmental Reports and Environment Publications webpages are large and complex, containing a lot of superfluous information. These should be streamlined to make access more manageable and meaningful. Information that relates to specific decisions or decision-making processes should be made distinct.
3. ICAO must develop and publish clearly on its website a specific policy relating to access to environmental information, including:
 1. Webpage location and access to information that is under current discussion in the Assembly, Council, CAEP and the CAEP working groups (including member state submissions);
 2. Information on how to obtain access to information that is not currently published, in a timely way (see recommendation 4 below);
 3. Signposting to information held elsewhere on the website and/or in other official documents; and
 4. Information on how to participate in decision making.
4. ICAO should develop a policy governing the provision of additional environmental information to the public, which should be made accessible on the website. The provision of any such information should not be contingent on the requestor evidencing any specific interest or expertise. This policy should include:
up-to-date contact details;

5. The streamlined Environment webpage should be updated in a timely way to facilitate meaningful access and participation in current decision-making processes. For example, sharing member state submissions in advance of meetings. All member state submissions to the CAEP, Council and Assembly should be made public by default.
6. ICAO must enable the live webcasting of the Assembly, Council and CAEP meetings (including working groups) to the general public. This includes ensuring that the public and interested organizations are able to find the information that they need to access any such webcasting in a timely way. We note the recent livestreaming of the HLM on LTAG meeting, which confirms that such webcasting is technically and practically possible.
7. Official documents should be made available as soon as possible both prior to and following the meeting to which they relate, preferably online. ICAO should remove any cost barriers to the provision of information in official documents. If costs are to be applied, these should be reasonable with the aim of increasing, not restricting, the distribution of information.
8. ICAO should remove as a matter of urgency, where they still exist, extremely prohibitive and onerous access requirements for Council and CAEP meetings, including non-disclosure or confidentiality agreements. CAEP working documents must be made publicly available by default in advance of meetings.
9. ICAO should amend its Rules of Procedure of the Assembly and the Council where required to deliver the above.

Obligations on Member States

Member States who are also Aarhus Convention and Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Work with the ICAO Secretariat to amend its Rules of Procedure of the Assembly, the Council and CAEP as a priority to open up the decision-making bodies to interested parties.
2. Enable public access to information relating to ICAO on a domestic level, including making submissions to the Council and CAEP public.
3. Work with the ICAO Secretariat to implement the Working Procedures Recommendations above.

Member States who are also Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Promote the distribution of information and contributions prepared for ICAO to the public in accordance with Article 7(12) of the Escazú Agreement, to the extent that they are different to the above.

Public participation in environmental decision-making

Analysis

ICAO has made some encouraging innovations in recent years that have improved the availability of public information and transparency. The release of the recent LTAG report, and the webcasting of associated meetings, is a good example of this and we strongly encourage ICAO to expand the use of these tools to be accessible to the general public, irrespective of whether they have Observer status.

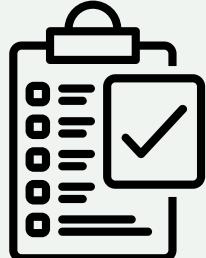
It is particularly important that access is enabled at the correct level; while livestreaming of the ICAO Assembly is appreciated, it is the CAEP and Council where environmental decisions are developed and where efforts to increase participation should be concentrated. Additionally, we urge ICAO to develop a more transparent process for attaining (and retaining) Observer status and to prioritise the inclusion of a more diverse range of voices at all levels of environmental decision-making.

The availability of provisional agendas for Assembly and Council meetings is also welcome. However, given the lack of information available relevant to these meetings, and the lack of opportunity for public participation, this is of limited practical use. Moreover, the fact that any decision-making body has discretion to take its meetings private at will is far from good governance, and this has arguably had significant impact in previous decision-making processes. Proactive efforts must be made to widen participation and increase the opportunities for intervention, and therefore increase the democratic legitimacy of ICAO decisions on matters related to the environment.





ICAO Working Procedures Recommendations



Accordingly, and on the basis of the Almaty Guidelines above, we recommend that ICAO should continue to broaden the real opportunities for participation in the following ways:

1. Create a dedicated section of the ICAO website which could be used to highlight environment-related workstreams and calls for evidence with associated timetables and submission obligations. Members of the public, or civil society groups representing their interests, should be entitled to make submissions. All submissions should be made public.
2. Ensure that Rules of Procedure for the Assembly, Council and CAEP are published and up to date. Restrictions on participation should be limited and clearly stated, and changes should not be able to be made at the relevant body's discretion.
3. The decision-making structure of ICAO bodies should be made clear and made publicly available. The current structural complexity does not facilitate effective public participation.
4. A publicly accessible decision tracker should be introduced charting the progress of environment-related decisions from the point of inception to the point of decision. It is currently unclear at what point decisions are made, and by whom. This makes intervention very difficult.
5. ICAO (and the CAEP in particular) should broaden participation to ensure that those most at risk from climate change are represented more effectively. This must include granting Observer status to additional non-industry organizations. Positive steps should be taken to promote representatives from climate vulnerable countries, different ethnic groups, women and young people (for example). A more equal balance of industry and non-industry organizations should be achieved, given the global impact of the aviation sector on the environment.

6. ICAO should ensure that accreditation processes for Observer status are clearly outlined on the website, including any restrictions on accreditation. The current invite-only approach should be abandoned in favour of completion of a transparent accreditation process. Post-Covid, hybrid online/in person meetings provide an opportunity to broaden the numbers of those who receive accreditation where physical space to accommodate a maximum number of delegates is less important.

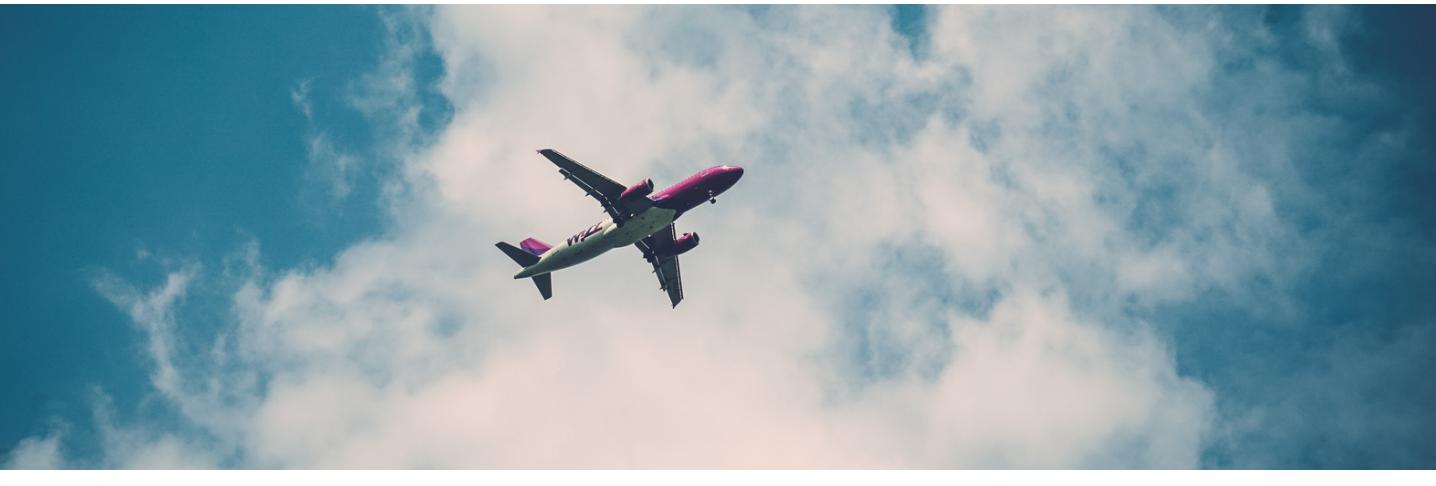
7. ICAO should continue to publish Assembly and Council agendas and summary information and broaden this to the CAEP. It should continue expanding webcasting provision, particularly given that the technology is already developed. The website should clearly state what meetings are available to access via webcasting.

Obligations on Member States

Member States who are Aarhus Convention and/or Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Increase the gender, social and ethnic diversity of their delegations.
2. Publish their submissions to ICAO publicly, in particular on environmental matters.
3. Endeavour to give better consideration of public views on environmental decisions at ICAO, including by holding public consultations on key decisions at the national level (for example, translating the ICAO long term aspirational goal into national legislation). Any such consultation should specifically include consideration of those groups most at risk from the climate crisis or whose voices are not traditionally heard.
4. Advocate within ICAO at the appropriate levels to ensure that it continues to improve public participation in relation to environmental decisions made at ICAO, including by adopting the recommendations above.

Access to Justice



Access to Justice is the final pillar of the Aarhus Convention, and the principle also forms part of the Escazú Agreement requirements. The access to justice requirements aim to provide access to review procedures with respect to access to information and public participation requests, as well as challenges to breaches of environmental law in general. It therefore 'points the way to empowering citizens and NGOs to assist in the enforcement of the law'.⁵ ICAO itself is not a regulatory body, however it remains that it does perform a semi-regulatory role at the international level and takes key decisions that ultimately impact upon the environment, which should be able to be held to account by the general public. For this reason, and the fact that it is a UN body performing a public function, ICAO and its decision-making processes must be able to be held accountable by the global community.

In October 2020, ICAO and its working practices were the subject of discussion at the Public Participation in International Forums working group under the Aarhus Convention. ICAOs approach to applying the expected standards on access to information, public participation and access to justice were considered at length, with the conclusion that while 'in the field of civil aviation, transparency of decision-making processes, promoting access to information and participation [...] was needed' at the international level, but that within ICAO 'access to information and participation remained restricted'. The Chair encouraged the Parties to 'reflect on how they could fulfil their obligations under the Aarhus Convention and promote the Convention's principles within ICAO'.⁶ Perhaps most notably, ICAO failed to send any representatives to contribute or respond to the discussion, evidencing an extraordinary lack of accountability.⁷

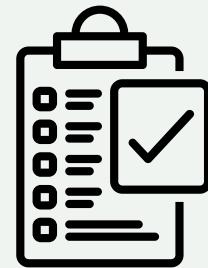
⁵ "Access to Justice" [Access to Justice](#) | UNECE (accessed 22 November 2022).

⁶ 'Report of the Working Group of the Parties on its twenty fourth meeting', Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters', 5 February 2021, para. 63-64.

⁷ *Ibid.*, para. 63.



ICAO Working Procedures Recommendations



ICAO should do the following:

1. Open all of ICAO's decision-making forums to the press and ensure that the press accreditation process is clear and transparent.
2. Demonstrate its accountability by playing an active role in Aarhus Convention and Escazú Agreement Compliance Committee and working group meetings. ICAO should apply recommendations from such bodies.

Obligations on Member States

Member States who are also Aarhus Convention and/or Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Advocate for ICAO to develop a transparent review procedure relating to its application of rules and standards, particularly where this relates to the accreditation of non-governmental organizations and the press.
2. Actively participate in Aarhus Convention and Escazú Agreement working groups relating to the improvement of ICAO processes and the application of the Aarhus Convention and Escazú Agreement principles at a national level relating to ICAO decisions on the environment.
3. Enact domestic legislation to give effect to the long term aspirational goal, which should be subject to all normal domestic judicial review arrangements.

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