



ICAO UNITING AVIATION

NO COUNTRY LEFT BEHIND



AFI PLAN AIG Project ATELIER AIG

Cotonou, Benin

12 – 15 November 2019



ICAO UNITING AVIATION

NO COUNTRY LEFT BEHIND



Legal documents hierarchy





Warning

*States are called to **transpose** ICAO provisions in accordance to its **unique national** legal framework*

For more information see Doc 9734, sections 3.1 and 3.2.1



WARNING

- Each State is **different**, and has different legal organization, habits and specificities.
- Therefore, the following general principles **need to be adapted** to each **national context**.



Annex 13 versus National legislation

- Indeed, **Annexes** contain SARPs, which are designed to provide the **minimum** necessary and desirable **requirements** to be met by all Member States.
- However, Annexes, generally are **not written in a manner that supports verbatim transposition** into a State's regulation. It is the responsibility of States to develop regulations which contain sufficient details and are consistent with their legal frameworks, and State organization, including non-aviation aspects. (Doc 9734)



Annex 13 versus National legislation

- The State's regulations need to be formulated in **legal phraseology**. They should also be written in such a way that they can be **easily understood** and used by the other authorities, industry as well as by the staff Accident Investigation Authority, in the execution of their day-to-day activities.
- State should ensure the **overall consistency of the legal framework** in place, taking care to avoid contradictions and/or inconsistencies between provisions contained in different Laws/regulations in force.



Annex 13 versus National legislation

Example :

- **A13 §3.3** *“The State of Occurrence shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation.”*
- **National law** : *“When an accident, cf. § xxx, has occurred over or on STATE territory, the aircraft, its parts or contents or other traces must not be removed or touched, before the Accident Investigation Board has concluded its investigations, unless the Police so permits in concert with the Board.*
- *(2) Besides, the Board shall decide when the investigation permits release of the aircraft in full or in part.”*



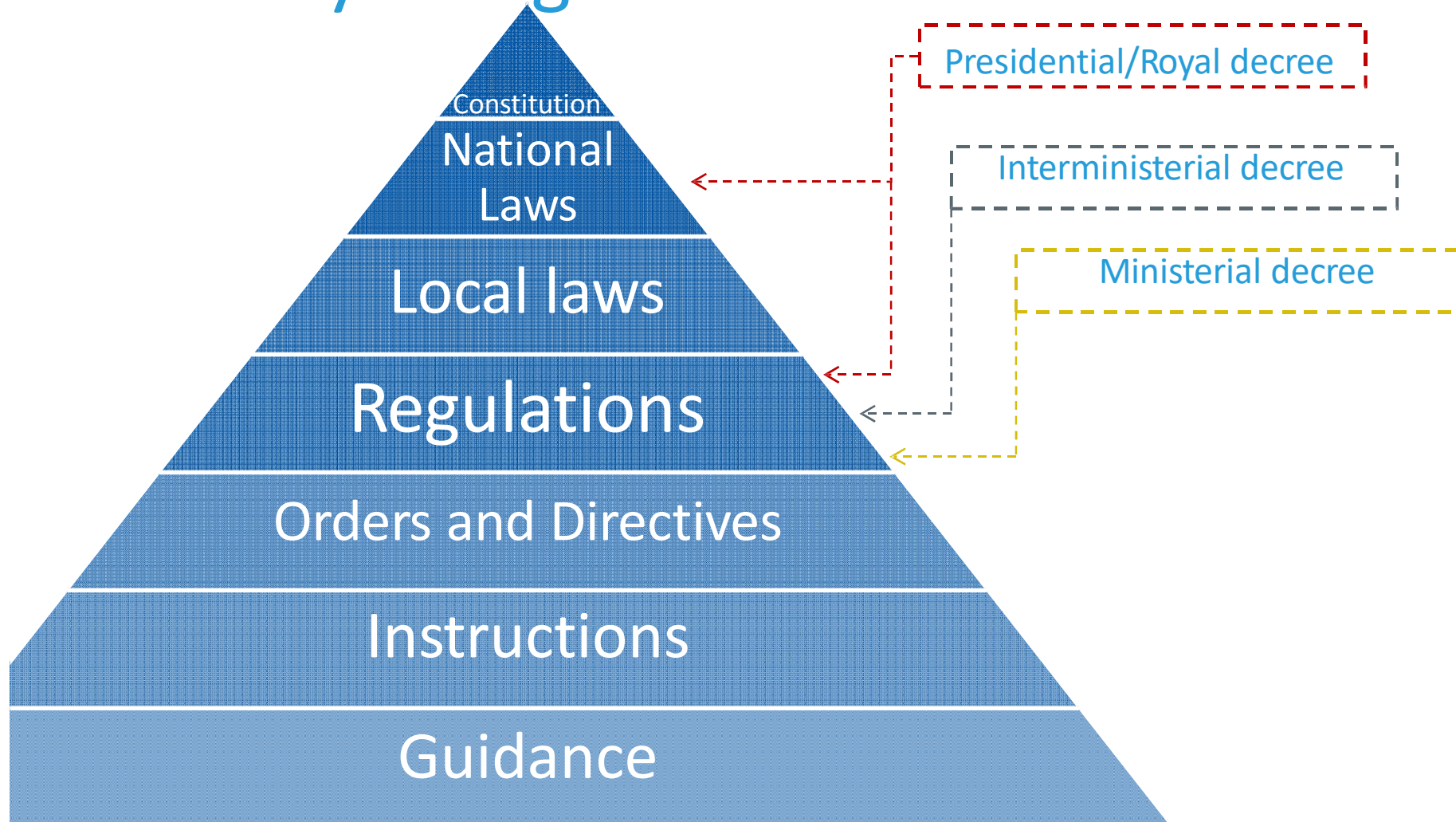
Annex 13 versus National legislation

Example :

- **A13 §3.3** *“The State of Occurrence shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation.”*
- **National law** : *“When an accident, cf. § xxx, has occurred over or on STATE territory, the aircraft, its parts or contents or other traces must not be removed or touched, before the Accident Investigation Board has concluded its investigations, unless the Police so permits in concert with the Board.*
- *(2) Besides, the Board shall decide when the investigation permits release of the aircraft in full or in part.”*



Hierarchy of legal texts





Issuing authority

- **Laws :** Parliament,
- **Presidential/Royal decree :** President, King/Queen
- **Interministerial decree/reg. :** Cabinet of Ministers, Prime Minister, or several Ministers co-signing
- **Ministerial decree/regulation:** Minister in charge of the subject
- **Order/ Directive :** delegated Authority in charge of the subject
- **Instructions :** Authority ruling the organization
- **Guidance material :** Identified official



Enforcement

- **Laws :** All persons or organizations within State jurisdiction
- **Presidential/Royal decree :** All persons or organizations within State jurisdiction
- **Interministerial decree/reg. :** All persons or organizations whose activities are ruled by concerned Ministers
- **Ministerial decree/regulation:** All persons or organizations whose activities are ruled by the signing Minister
- **Order/ Directive :** All persons or organizations whose activities are ruled by the signing Authority
- **Instructions :** Staff under the signing Authority
- **Guidance material :** *No legal value*



Delegation of Authority

- A lower hierarchy document cannot contradict or go beyond the originating legal instrument
- Legislation (primary legislation or specific operating regulation) must establish which lower level document an Authority is entitled to issue, starting from the Constitution, to instructions.
- As an example, the constitution shall describe the process to enact the laws :
« the laws are established and voted by the parliament, and the law must be ratified by the king to become applicable »



ICAO

UNITING AVIATION

NO COUNTRY LEFT BEHIND



Delegation of Authority

- Civil Aviation Proclamation :

- « **92. Power to issue Regulations and Directives**

- 1/ *Law* : The Council of Ministers may issue regulations necessary for the proper implementation of this Proclamation.

- 2/ *Interministerial Regulation* : The Authority may issue directives containing rules and standards necessary for the proper implementation this Proclamation. »

- Manual of Aerodrome *Standards (signed by the DG)* :

- “Now thereby, the *XXX Authority* under its power given by article 92/2 of the Civil Aviation Proclamation n° *XXX*, issued the following Implementation Standards”



Legislation-making considerations to implement Annex 13 provisions

- Q1 : to whom will the provision apply?
- Q2 : Who will implement the provision?
- Q3 : Does the provision need a legal prescriptions?
- Q4 : are other considerations linked to the national legal system?



Adopting or adapting regulations from other States or regional organizations

- This has some advantages, as you use texts already established and in use.
- **BUT, it may be dangerous, if you do not customize them**
- To make it successful :
 - Ensure that the State providing laws/regulations has a similar legal system, and a similar environment;
 - Take into consideration the differences between the 2 systems, environments, culture, ...
 - Remember the advice from the previous slides
 - Ensure consistency with existing national legal documents, avoid contradictions and/or inconsistencies between provisions contained in different regulations in force
 - Ensure that the provisions adopted, can be fully implemented in your State (or adapt them)
 - Ensure the documents adopted address the latest version of Annex 13
- Ref: ICAO doc 9734 §3.2.2 (and 3.3.3)



Example 1 of Annex 13 implementation

- A13 §5.1 :STD «The State of Occurrence shall institute an investigation into the circumstances of the accident ...»
- **By which type of legal mean should this standard be transposed in the national legal system?**



Example 1 of Annex 13 implementation

A13 §5.1 :STD «The State of Occurrence shall institute an investigation into the circumstances of the accident ...»

Standard  ~~Guidance material~~

Enforceability? State = ?

State = Accident Investigation Authority (or above)

 ~~Instruction~~



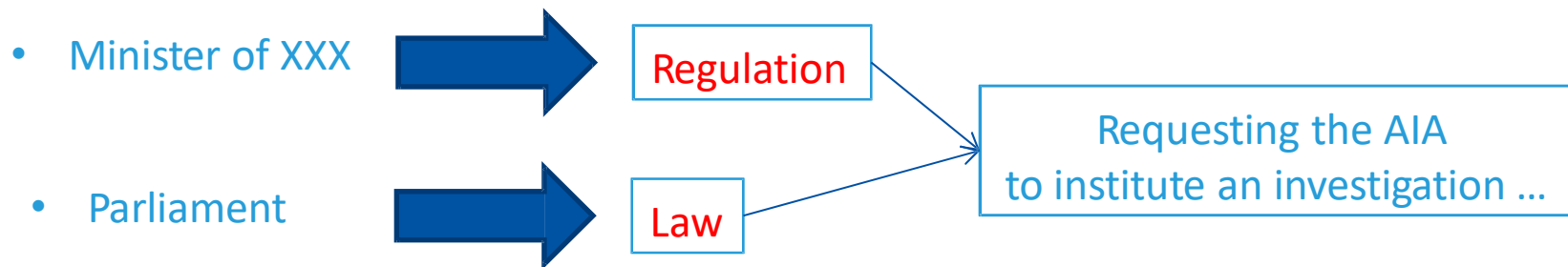
Example 1 of Annex 13 implementation

A13 §5.1 :STD «The State of Occurrence shall institute an investigation into the circumstances of the accident ...»

Enforcement? State = ?

State = Accident Investigation Authority

What is the Authority just above the AIA?





Example 2 of Annex 13 implementation

A13 §5.6 The investigator-in-charge shall have unhampered access to the wreckage (...), and shall have unrestricted control over ...

Standard → ~~Guidance Material~~

Enforceability?

All authorities, organizations and citizens in the State



Example 2 of Annex 13 implementation

A13 §5.6 The investigator-in-charge shall have unhampered access to the wreckage (...), and shall have unrestricted control over it ,,,.

A national LAW is necessary to implement this provision



Example 3 of Annex 13 implementation

A13 §4.2 The notification shall be in plain language and contain as much of the following information as is readily available, but its dispatch shall not be delayed due to the lack of complete information:

- a) for accidents the identifying abbreviation ACCID, for serious incidents INCID;
 - b) manufacturer, model, nationality and registration marks, and serial number of the aircraft;
- ETC.

Enforceability?



ICAO

UNITING AVIATION

NO COUNTRY LEFT BEHIND



Example 3 of Annex 13 implementation

A13 §4.2 The notification shall be in plain language and contain as much of the following information as is readily available, but its dispatch shall not be delayed due to the lack of complete information:

- a) for accidents the identifying abbreviation ACCID, for serious incidents INCID;
 - b) manufacturer, model, nationality and registration marks, and serial number of the aircraft;
- ETC.

Enforceability : AIA investigators



an AIA chief instruction is enough

(it may be contained in the Investigators manual (signed by the AIA chief, or an authority above)

Content : refer to the presentation on Procedures





North American
Central American
and Caribbean
(NACC) Office
Mexico City

South American
(SAM) Office
Lima

**ICAO
Headquarters
Montreal**

Western and
Central African
(WACAF) Office
Dakar

European and
North Atlantic
(EUR/NAT) Office
Paris

Middle East
(MID) Office
Cairo

Eastern and
Southern African
(ESAF) Office
Nairobi

Asia and Pacific
(APAC) Office
Bangkok

Thank You