

Unlocking Non-Consensual Transnational Enforcement: The Adjudication Highway Toolkit

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In international dispute resolution, consensual arbitration under the 1958 New York Convention is routinely celebrated as the gold standard for cross-border enforcement. However, a critical volume mismatch defines global legal practice: consensual arbitration represents only a small minority of disputes resolved worldwide.

The vast majority of real-world legal business—including commercial defaults, registry deadlocks, and inheritance partitions—is inherently **non-consensual**. One party does not voluntarily choose to be subjected to a claim.

THE GLOBAL DISPUTE VOLUME MATRIX	
CONSENSUAL (Minority Case)	NON-CONSENSUAL (Majority Case)
* Private Arbitration * Voluntary Submission * Enforced via New York Convention * High-Cost / High-Margin	* Adjudication Highway (AITAR) * Estate Partitions (AISTAR) * Registry & Debt Gridlocks * Enforced via 5 Cross-Border Mechanisms & ICCPR Art. 14

When non-consensual determinations emerge from administrative tracks—such as the **Adjudication Highway** under the Aluochier Independent Tribunals Administrative Rules (AITAR) or succession determinations under AISTAR—they fall outside the New York Convention and outside standard court judgment regimes.

Rather than presenting an insurmountable barrier, this gap can be bridged using five established cross-border mechanisms, reinforced by Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

The 5 Non-Consensual Cross-Border Mechanisms

Transnational practitioners seeking to enforce non-arbitral, administrative determinations against reluctant counterparties or foreign-situs assets rely on five foundational private international law tools:

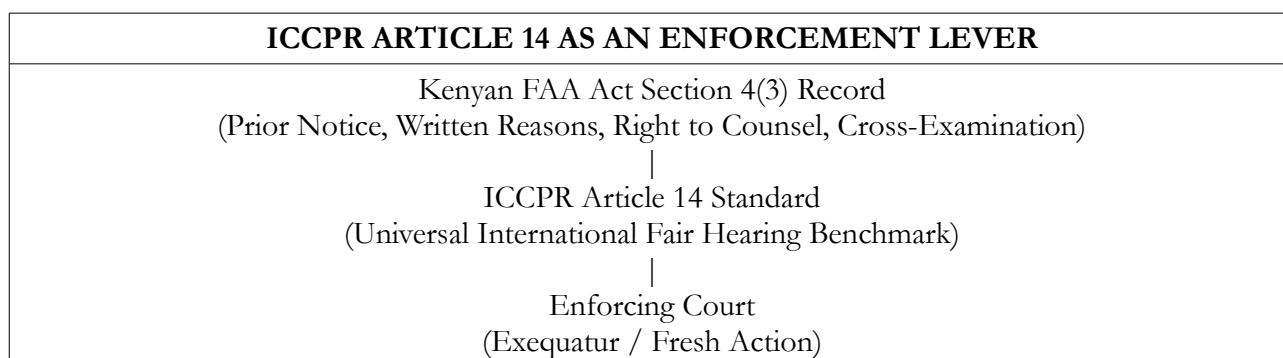
AITAR / AISTAR Adjudication Highway Final Determination				
1. Fresh Action	2. Exequatur	3. Issue Estoppel	4. Re-Characterisation	5. Freezing Orders
Common law summary action on a debt	Civil law judicial adoption stamp	Prevents re-litigation of decided facts	Enforcing via private contract submission	Worldwide preservation pending enforcement

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1. **Fresh Action on a Debt (Common Law):** In common law enforcing forums (e.g., the UK, US, Australia), an administrative determination is treated as creating a definite, liquidated monetary or contractual obligation. The applicant initiates a summary process based on the determination, using the documented Section 4(3) compliance record to establish natural justice and defeat procedural defences
2. **Exequatur Proceedings (Civil Law):** In civil law jurisdictions (e.g., France, Germany, Spain, Brazil), local courts stamp and adopt foreign determinations into domestic enforcement machinery. The inquiry focuses primarily on whether the underlying procedure offended the enforcing state's public order (*ordre public*). A Section 4(3) compliance record directly addresses this standard.
3. **Transnational Issue Estoppel:** Prevents a party who was fully notified and heard before an independent tribunal in Kenya from re-litigating identical factual or legal issues in a foreign court, provided the tribunal held competent jurisdiction and observed procedural fairness.
4. **Contractual Re-Characterisation:** Where parties submitted to AITAR or AISTAR via a written agreement, the resulting determination can be enforced through standard private contract enforcement machinery, bypassing debates regarding the tribunal's administrative classification.
5. **Worldwide Freezing Orders (Mareva Relief):** Once enforcement proceedings commence in any target jurisdiction, equitable freezing orders can restrain a respondent's global assets upon demonstrating a good arguable case and a real risk of dissipation.

The Universal Benchmark: ICCPR Article 14

The execution of these five mechanisms is strengthened by **Article 14 of the International Covenant on Civil and Political Rights (ICCPR)**. Ratified by the vast majority of the world's nations, Article 14 guarantees a fair and public hearing by an independent and impartial tribunal in the determination of "rights and obligations in a suit at law".



While Article 14 is not a universally self-executing private right of action in every domestic court (for instance, the US ratified with non-self-executing declarations), it provides enforcing courts with an international reference point. When an applicant presents an AITAR determination accompanied by a verified Section 4(3) compliance record, the enforcing court evaluates the process against a standard its own state has treaty-bound itself to respect.

Comparative Enforcement Pathway Matrix

Enforcing Jurisdiction	Primary Recommended Pathway	Key Procedural Adaptation	Strategic & Doctrinal Notes
South Africa	Both Highways	PAJA's checklist aligns with FAA Act Section 4(3).	High conceptual alignment in local courts.
Germany / France / Spain	Arbitration preferred; Exequatur for Adjudication	Civil law <i>ordre public</i> review evaluates Section 4(3) record.	Strong civil law procedural rigour; verify local harmless-error rules.
United States / United Kingdom	Arbitration Highway; Fresh Action for Adjudication	Common law summary action on a debt.	ICCPR Art. 14 is non-self-executing in US; rely on common law debt principles.
India	Arbitration Highway (ss. 44–49)	Section 13 CPC summary suit for non-arbitral matters.	CPC s.44A list omits Kenya; fresh action under s.13 required.
Nigeria	Both Highways	Section 36(2) Constitution mirrors Section 4(3).	Receptive common law courts; strong natural justice alignment.
Brazil	Both Highways (Exequatur via STJ)	Article 5, LV Constitution extends <i>ampla defesa</i> .	Centralised STJ jurisdiction provides predictable single-forum practice.
China	Arbitration Highway preferred	Anchor fairness arguments to specific statutory texts.	Common law "natural justice" carries no direct force; rely on explicit codes.

Practical Strategy for Transnational Practitioners

- Document the Section 4(3) Record:** The primary asset in non-consensual enforcement is the administrative record. Ensure the tribunal record explicitly logs prior notice, written reasons, opportunity for cross-examination, and legal representation rights.
- Assess Local Timing Rules:** Common law issue estoppel typically requires the originating determination to be final and unappealed, whereas civil law exequatur in certain jurisdictions may recognise provisionally enforceable determinations.

3. **Draft Dual Submission Clauses:** When structuring commercial or institutional agreements, include express contractual submission to AITAR/AISTAR rules to enable Contractual Re-Characterisation if traditional judgment recognition faces local procedural barriers.