

VERTICAL AND HORIZONTAL, CONSENSUAL AND NON-CONSENSUAL: A WORLD SURVEY OF ADMINISTRATIVE JUSTICE AND KENYA'S DUAL CONTRIBUTION TO GLOBAL DISPUTE RESOLUTION

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An Editorial Article for Transnational Dispute Resolution Professionals

Abstract

This treatise details Kenya's dual contribution to global dispute resolution by introducing a constitutionally entrenched, non-court alternative for resolving civil disputes globally. Anchored in the Constitution of Kenya, 2010, the framework delegates the sovereign power of the people to co-equal adjudicative organs: the Judiciary and Independent Tribunals (Articles 1(1) and 1(3)(c)). Through the Aluochier Independent Tribunal Administrative Rules (AITAR) and its specialized arms, Kenya offers two parallel, universal mechanisms for dispute resolution—the unilateral Adjudication Highway and the bilateral Arbitration Highway.

The treatise establishes that under Article 50(1) and Article 20(1), the right to seek dispute resolution before an independent and impartial tribunal extends to "every person" and applies to "any dispute" capable of resolution by the application of law, irrespective of nationality or geographic location. While variables such as party nationality, bench and bar composition, language, and choice of substantive law remain open and flexible, the singular constant in all proceedings is Kenyan constitutional procedural law. Governed strictly by the Fair Administrative Action Act and Articles 10, 47, 50, and 159, this framework guarantees co-equal standards of expeditiousness, efficiency, reasonableness, and procedural fairness—specifically mandating a pre-decision adverse notice obligation to protect all parties prior to the finalization of any adverse finding.

Ultimately, the treatise presents Kenya's model as a stable, sovereign alternative to private commercial institutions, bridging the local backlog in critical areas like succession with global cross-border enforceability under the New York Convention and common law recognition frameworks.

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A note on method: this article distinguishes throughout between two separate questions that are easy to blur together. The first is textual recognition — what a constitution or statute says on its face about notice and hearing before an adverse decision. The second is institutional enforceability — whether an independent judiciary applies that text against the state, and how reliably, in practice. A jurisdiction can score well on the first and poorly on the second, or vice versa, and the two are addressed separately below rather than folded into a single verdict. The article also organizes its analysis around two further pairings that matter as much to practitioners as they do to doctrine. The first is vertical application — protections running against the state and public bodies — against horizontal application — protections reaching private, non-state conduct as well; most of the world's administrative-justice regimes are vertical only, and Kenya's is not. The second is consensual dispute resolution — arbitration, and the New York Convention enforcement pathway that follows from it — against non-consensual dispute resolution — administrative adjudication, and the older, non-Convention enforcement toolkit that follows from it. Non-consensual dispute resolution is the majority category by volume in every legal system, and this article gives it the weight that volume warrants, rather than treating it as secondary to the more easily enforced consensual case.

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I. Introduction: A Principle Older and Wider Than Any One Country's Statute

The idea that a person should not be deprived of a right, a license, a livelihood, or property without notice and a chance to respond is not the invention of any single legal system. It surfaces, in different statutory and doctrinal forms, in the common law's *audi alteram partem*, in the German *Rechtsstaat* tradition, in Latin America's *garantía de audiencia* and *ampla defensa*, in Indonesia's General Principles of Good Governance, and in China's Administrative Penalty Law. It is, in a meaningful sense, one of the closer things administrative law has to a value shared across legal families that otherwise have very little in common.

What varies enormously — and what this article is actually about — is how each system gives that value legal force: whether it is written into a single code or scattered across sectoral statutes, whether it is judge-made or legislated, whether an independent court actually enforces it against the state in practice, and, most consequentially of all, whether it protects people only from the state or from private power as well. That last question — vertical versus horizontal application — turns out to be the one nearly every system in this survey answers the same way, and it is the question a Kenyan framework called AITAR, together with its sister frameworks AISTAR and AIETAR, was built specifically to answer differently.

This article surveys nineteen jurisdictions spanning common law, civil law, and mixed legal traditions, and a substantial majority of the world's population. It locates Kenya's Fair Administrative Action Act, 2015 within that survey on a measured basis — as one strong model among several, not as a uniquely superior one — before turning to how the AITAR, AISTAR, and AIETAR frameworks use that model as raw material for something none of the other eighteen comparators currently attempt: making administrative-justice-grade procedural protection available to any person, of any nationality, in a dispute with a private party, anywhere in the world, on the basis of contractual submission rather than state compulsion.

II. The Global Landscape: How Eighteen Legal Systems Codify the Right to Be Heard

The jurisdictions below are grouped by how they give the underlying principle legal form, not by geography or economic status. The grouping itself is informative: it shows that the same underlying value takes at least five structurally different legal shapes around the world.

A. Constitutionalized judge-made doctrine

In these systems, the right to be heard before an adverse administrative decision is not written into a single procedural code. It is built case by case by courts, typically anchored to a broader constitutional guarantee, and remains vulnerable to legislative narrowing unless the constitutional anchor is unusually strong.

The United Kingdom's version rests entirely on common law — the House of Lords' 1964 decision in

Ridge v Baldwin established that a public body making a decision affecting a person's rights or legitimate expectations must give notice and an opportunity to respond before finalizing it. Because it is common law, Parliament can narrow or exclude it in a specific statute; there is no entrenched floor beneath it. Australia's position is similar in structure: the Administrative Decisions (Judicial Review) Act 1977 allows a decision to be challenged for breach of natural justice, but does not itself define what natural justice requires, leaving courts to read a flexible "hearing rule" into statutory decision-making powers case by case, and Australian courts do not recognize a general common-law duty to give reasons at all.

The United States ties its version to due process under the Fifth and Fourteenth Amendments — the Supreme Court's *Goldberg v Kelly* line requires pre-deprivation notice and a hearing where a protected liberty or property interest is at stake — supplemented by the narrower Administrative Procedure Act, whose formal hearing requirements apply only to a defined subset of "formal adjudications." Both the constitutional and statutory versions share the same structural limit: they require state action, and do not reach purely private conduct.

India's version is doctrinally the most developed of this group. There is no general Indian administrative procedure code; Section 23 of the General Clauses Act, 1897 provides only a narrow statutory footing, requiring a reasonable opportunity to be heard where a statute confers power to make prejudicial orders. The doctrine's real strength comes from Supreme Court interpretation of Articles 14 and 21 of the Constitution: in *Maneka Gandhi v Union of India* (1978), the Court held that any procedure depriving a person of Article 21 liberty must be fair, just, and reasonable, reading natural justice directly into a fundamental right, and in *A.K. Kraipak v Union of India* the Court held that natural justice applies wherever a decision affects rights, blurring the older line between administrative and quasi-judicial action. This is genuinely strong doctrine — arguably the strongest uncoded version surveyed here — but it remains, like the others in this group, judge-made and confined to state and public-function action.

Canada belongs in this group at the federal level and across most of its common-law provinces: there is no general federal framework statute, and the governing doctrine is judge-made, culminating in *Baker v Canada* (Minister of Citizenship and Immigration) [1999] 2 SCR 817, which set out a five-factor contextual test — the nature of the decision, the statutory scheme, the decision's importance to the individual, legitimate expectations, and the decision-maker's own choice of procedure — for determining what fairness requires in a given case. It is arguably the most structured version of Category A doctrine surveyed here, a genuine multi-factor test rather than an open-ended natural-justice label, though it remains contextual rather than itemized and, like the UK's and Australia's versions, is vulnerable to legislative override by clear statutory language.

Canada is also the clearest illustration, among the nineteen jurisdictions surveyed, of a point that applies more quietly elsewhere in this article: a federal, multi-legal-tradition state does not necessarily have one administrative-justice regime. Ontario's Statutory Powers Procedure Act, 1971 partially codifies hearing procedure once a hearing is triggered, though whether a hearing is required at all remains, as Canadian administrative law scholarship confirms, a matter of common law — putting Ontario at the boundary of Categories A and B rather than cleanly inside either. Quebec, as Canada's civil-law jurisdiction, goes further still: its Act Respecting Administrative Justice, 1996 is a genuine framework code, distinguishing administrative-function decisions from adjudicative-function decisions and prescribing different procedural rules for each — structurally closer to France's or Italy's general-clause model than to the rest of common-law Canada. The same caveat likely applies with less drama to Nigeria, India, and Brazil,

each itself a federal or quasi-federal system whose state, provincial, or subnational units this survey has not separately examined; Canada is simply the jurisdiction where the internal variation is sharpest and best documented, not the only one where it exists.

B. Codified general-principle statutes

These systems have moved the underlying value into a written code, but express it as a general principle to be applied purposively by courts and administrators, rather than as an itemized checklist.

Germany's *Verwaltungsverfahrensgesetz* (VwVfG) requires, under Section 28, that a person be given the opportunity to state their case before an administrative act encroaching on their rights is issued, backed by Article 103(1) of the Basic Law's guarantee of a legal hearing. The code is not absolute in either direction: Section 28(2) permits dispensing with the hearing in defined circumstances such as urgency, and Section 46 — often left out of comparative summaries that only cite Section 28 — provides that a hearing failure does not void the resulting act where no other decision was objectively possible on the merits. German administrative law is procedurally serious, but it is not a strict-liability regime for procedural defects, and it applies only to public authorities.

Spain's *Ley 39/2015* (LPACAP), implementing Article 105(c) of the Constitution, requires a formal *trámite de audiencia* once an administrative file's investigative phase closes, giving the affected party the draft resolution and the full file and a defined window to respond. An omitted *audiencia* is generally treated as a curable defect (*anulabilidad*) rather than automatic nullity, unless it produces total *indefensión*. France's *Code des relations entre le public et l'administration* requires a pre-decision adversarial procedure for reasoned individual decisions, backed by the *Conseil d'État*'s *principe du contradictoire*, and again confines itself to public bodies and entities carrying an explicit public-service mission. Italy's *Legge 241/1990* sits close enough to Spain's model to be read as a direct sibling rather than an independent fourth data point: Article 10-bis requires a *preavviso di rigetto* — notice of the reasons weighing against an application, with a ten-day window to respond before a final refusal — structurally almost identical to the *trámite de audiencia*, backed by Article 97 of the Italian Constitution's guarantee of *buon andamento e imparzialità* (good administration and impartiality). One point of genuine divergence: Italy's 2020 reform tightened its own harmless-error rule (Article 21-octies) specifically for discretionary administrative acts, removing the excuse for an omitted *preavviso* in exactly the category of case where the missing input might have changed the outcome — moving in the opposite direction from Germany's broader Section 46, and a reminder that "civil-law harmless-error doctrine" is not a single, uniform rule even within this group. For AITAR enforcement purposes specifically, this distinction is worth knowing but should not be overweighted: an AITAR determination reaching Italy will be assessed against the New York Convention's Article V grounds in an arbitration case, or against Italy's own *ordine pubblico* in an *exequatur* case, not against *Legge 241/1990*'s internal harmless-error rule, which governs the validity of Italian administrative acts rather than the recognition of foreign determinations. The more relevant point for enforcement is Italy's status as a settled New York Convention state with a well-established *exequatur* practice for foreign judgments and determinations.

Indonesia offers the closest structural parallel, among all nineteen jurisdictions, to the legislative move Kenya itself made: turning previously unwritten judge-made principles into positive statutory law. Indonesia's General Principles of Good Governance (*Asas-Asas Umum Pemerintahan yang Baik*, AUPB) began as unwritten doctrine used by courts as an instrument of legal protection, and were codified in Law No. 30 of 2014 concerning Government Administration. Article 52(2) of that law makes AUPB

compliance, alongside statutory conformity, a condition of a government decree's legal validity, giving the State Administrative Court (Pengadilan Tata Usaha Negara, PTUN) an explicit statutory tool to review administrative decisions for procedural fairness. As with the German and Spanish models, Indonesia's approach is principle-based rather than itemized, and remains confined to government administration.

Japan's Administrative Procedure Act, 1993 (Gyōsei Tetsuzuki Hō) is the group's most itemized member, and its most constitutionally uncertain one — a combination that does not otherwise appear in this category. Article 13 splits pre-decision procedure by severity: a full hearing (chōmon), with prior written notice of the proposed disposition and its factual and legal basis, document inspection rights, and an independent presiding official, is required for serious adverse dispositions such as license revocation; a simpler written opportunity for explanation (benmei no kikai no fuyo) applies to lesser ones, and reasons must be given throughout. That degree of itemization is closer in spirit to Kenya's checklist than to Germany's or Spain's general clauses. What Japan lacks is any settled constitutional anchor for the scheme: Article 31 of the Constitution — "no person shall be deprived of life or liberty... except according to procedure established by law" — was debated during drafting as to whether it reaches administrative as well as criminal process, and Japanese courts have never given it the clear extension into administrative procedure that Article 47 has in Kenya or Article 97 has in Italy. Japan is accordingly the sharpest illustration in this category of the article's opening methodological point: an itemized, well-drafted statutory checklist and a secure constitutional foundation are two separate achievements, and a jurisdiction can have the first without the second.

C. Constitutionally entrenched guarantees implemented through statute

These systems anchor the right to be heard directly in the constitutional text — not merely inferred by courts from a broader liberty guarantee — and then implement it through ordinary legislation.

South Africa's Promotion of Administrative Justice Act, 2000 (PAJA) was enacted specifically to give effect to Section 33 of the South African Constitution. Section 3(2)(b) requires adequate notice, a reasonable opportunity to make representations, a clear statement of the action taken, and notice of review and reasons rights — a checklist closely resembling Kenya's own, though PAJA's definition of "administrative action" is generally confined to organs of state or private actors exercising a delegated public power, which keeps it, like the other comparators so far, vertical in application.

Mexico's guarantee is the oldest of the nineteen surveyed here in continuous constitutional form: Article 14 of the 1917 Constitution establishes the *garantía de audiencia*, providing that no person may be deprived of life, liberty, property, possessions, or rights except through a proceeding before previously established tribunals observing the essential formalities of procedure — read by Mexican constitutional doctrine as requiring prior notice and an opportunity to be heard. It is implemented federally through the *Ley Federal de Procedimiento Administrativo*, with detailed notification requirements, and is independently enforceable through *amparo*, Mexico's distinctive constitutional remedy for direct challenge to administrative acts.

Brazil's Lei 9.784/1999 lists *ampla defesa* (full defense) and *contraditório* (the adversarial principle) among the binding principles of federal public administration, and requires notice of any act imposing duties, burdens, sanctions, or restrictions. What distinguishes Brazil among the civil-law comparators is that these guarantees are constitutionally entrenched specifically for administrative proceedings: Article 5, LV of the 1988 Constitution extends *ampla defesa* and *contraditório* expressly to administrative

proceedings, not only judicial ones — a more direct constitutional anchor for administrative fairness than Germany, Spain, or France achieve through their broader rule-of-law clauses.

Nigeria's Constitution supplies what is arguably the closest textual sibling, among all nineteen jurisdictions, to an itemized pre-decision checklist embedded at constitutional rank. Section 36(1) guarantees a fair hearing, within a reasonable time, by a court or tribunal constituted to secure independence and impartiality, in the determination of civil rights and obligations. Section 36(2) goes further, validating laws that confer decision-making power on "any government or authority" only where that law affords affected persons an opportunity to make representations before the decision is made — a near-direct constitutional sibling to a pre-decision notice-and-hearing requirement, though, like the rest of this group, oriented to government and authority rather than private conduct.

D. Sectoral and fragmented codification

China's version illustrates a fourth structural pattern: real, textually strong procedural guarantees that exist without a single unifying code. The Administrative Penalty Law, most recently revised in 2021, requires under Article 44 that before imposing a penalty, the administrative organ notify the party of the content, facts, reasons, and basis of the proposed penalty and of the party's rights to state their case, defend themselves, and request a hearing; Article 45 obliges the organ to fully hear the party and adopt their evidence where established; Article 58 mandates legal review before certain categories of decision. But this guarantee is specific to penalty proceedings. Separate statutes govern licensing (the Administrative Licensing Law) and compulsory measures (the Administrative Compulsion Law), and for administrative decisions falling outside these three categories, the applicable procedural safeguards are correspondingly thinner and less itemized.

Two further features of China's system matter for how this comparison should be read, and are worth stating plainly rather than glossing over for the sake of a tidy table. First, the common-law concept of "natural justice" carries no direct doctrinal force in Chinese administrative jurisprudence; it has influenced scholarly discourse, and Chinese administrative law scholarship — Jiang Ming'an's 2023 study *Research on Administrative Procedure Law* among the most prominent recent examples — argues actively for a unified code, but an argument framed in natural-justice language will not carry dispositive weight before a Chinese court or tribunal unless it is anchored to a specific statutory provision. Second, the system is in genuine legislative transition rather than settled: the Communist Party Central Committee's Plan on Building the Rule of Law in China (2020–2025) explicitly calls for research and drafting of a unified Administrative Procedures Law, a project still in progress rather than completed. China should accordingly be read here as a fragmented-statutory jurisdiction with a live legislative reform agenda, not as a jurisdiction without procedural safeguards or as one about to complete a Kenya-style codification imminently.

China's administrative litigation system, under the Administrative Litigation Law, also operates within an institutional architecture where courts function alongside Communist Party leadership of the judiciary. This affects the practical weight procedural arguments carry in politically salient matters — a reality that should inform enforcement strategy in this market, addressed in Part VI below, without suggesting the procedural guarantees described above are illusory in the large majority of ordinary administrative matters where they do, in fact, operate.

E. Court-centered post-decision review

Russia's system illustrates a fifth and distinct structural pattern: a right to be heard that exists, but through post-decision judicial challenge rather than a pre-decision executive-branch checklist, and that has not yet achieved the status of a settled general principle. The Code of Administrative Judicial Procedure (KAS RF, in force since 2015) establishes a structured mechanism for challenging decisions, actions, or omissions of state authorities before the Supreme Court, courts of general jurisdiction, and justices of the peace — structurally closer to the UK's or Australia's tradition of after-the-fact court challenge than to a pre-decision notice-and-hearing model. A separate code, the Code of Administrative Offences (KoAP RF), governs pre-decision procedural rights specifically within penalty proceedings, giving Russia a genuine dual structure: which code applies, and what kind of argument it supports, depends on whether the matter is a post-decision challenge or a pre-decision penalty proceeding.

Recent Russian legal scholarship confirms that this structure has not yet consolidated into a unifying doctrine. A 2024 study by P.A. Kuryndin of St. Petersburg State University, published in the peer-reviewed journal *Pravoprimerenie* (Law Enforcement Review), examines the right to be heard specifically as a principle still "on the way to" general recognition in Russian administrative law, rather than one the Supreme Court's plenary rulings have already confirmed as such. This is a materially different position from India's or South Africa's constitutionalized doctrine, or from Kenya's itemized statutory checklist — the underlying value exists in Russian law, but its status as a general, unifying principle remains an active scholarly and doctrinal project rather than settled law.

As with China, institutional candor is warranted here rather than a purely doctrinal comparison. The independence of Russian courts from executive and political influence, particularly in matters touching the state's own interests, is the subject of sustained and well-documented international concern, and this bears directly on the practical weight any procedural-fairness argument carries in politically salient matters. Separately, current sanctions regimes maintained by the United States, the European Union, the United Kingdom, and other states, and the resulting pause or restriction of Russia-related engagement by most major arbitral institutions, create serious practical barriers to any dispute resolution activity involving Russian parties or Russian-situs assets. Russia is included in this survey for completeness of legal-tradition and population coverage, not as a market currently open to the frameworks discussed in Part V below.

F. Specialized-court judicial doctrine, uncodified

Egypt illustrates a sixth structural pattern distinct from all five above: real, judicially developed procedural protection, produced not by ordinary courts applying constitutional or common-law doctrine, but by a specialized administrative judiciary operating entirely outside the general court system. The Majlis al-Dawla (Council of State), established in 1946 and modeled directly on France's Conseil d'État, has exclusive jurisdiction over disputes involving administrative contracts and administrative decrees issued by government officials, developing the content of procedural fairness — notice, access to the administrative file, evidentiary standards — through its own accumulated jurisprudence rather than through a legislated code. Comparative scholarship on Egyptian administrative law describes this directly as governance "in the absence of comprehensive procedural codification," where judicial discretion, not a statutory checklist, does the work that Sections 2 through 4 of Kenya's FAA Act perform by legislation.

Egypt is best understood as an earlier stage of the same lineage that produced France's own, now-codified system: French administrative law was itself built almost entirely through Conseil d'État case law before the CRPA eventually codified it. Egypt has not yet made that same transition, and its inclusion here is less about ranking it against the other eighteen comparators than about showing what the civil-law administrative-justice tradition looks like before codification occurs — a stage several other Arab-world civil-law jurisdictions, including Jordan, share. Egypt's protection, like every other comparator surveyed in this article, remains strictly vertical: the Council of State's jurisdiction runs only to disputes involving the state and its organs, with no extension to private conduct of any kind.

III. Locating Kenya's Fair Administrative Action Act, 2015 Within This Landscape

Kenya's Section 4 of the Fair Administrative Action Act, 2015 (FAA Act), enacted to give effect to Article 47 of the Constitution, 2010, combines features from two of the groups above. Like South Africa's PAJA, Brazil's Lei 9.784/1999, and Mexico's *garantía de audiencia*, it is constitutionally entrenched rather than merely statutory — though, as the discussion below shows, Kenya's entrenchment runs deeper than a simple constitutional anchor for a statutory scheme; the horizontal reach discussed below is itself a constitutional command, not only a statutory one. Like Germany's *VwVfG* and Spain's *LPACAP*, it takes codified rather than judge-made form — but unlike either of them, it does so as an explicit, itemized checklist rather than a general clause:

"Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision— (a) prior and adequate notice of the nature and reasons for the proposed administrative action; (b) an opportunity to be heard and to make representations in that regard; (c) notice of a right to a review or internal appeal against an administrative decision, where applicable; (d) a statement of reasons pursuant to section 6; (e) notice of the right to legal representation, where applicable; (f) notice of the right to cross-examine or where applicable; or (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action."

Section 4(4) adds the right to attend proceedings, be heard, cross-examine adverse witnesses, and request necessary adjournments. This combination — itemized checklist plus constitutional entrenchment — is genuinely unusual among the nineteen jurisdictions surveyed here, though, as the comparison above shows, no single element of it is unique in isolation: South Africa's checklist is comparably detailed; Germany's and Spain's consequences for a hearing failure are, on the narrow point of remedial rigor, arguably stronger than Kenya's, since German and Spanish doctrine has decades of case law establishing exactly when a defect voids a decision, where Kenyan jurisprudence on Section 4 is comparatively young.

One further feature of Kenya's construct sets it apart from every other comparator surveyed above, and its source is constitutional before it is statutory. Article 20(1) of the Constitution provides that "the Bill of Rights applies to all law and binds all State organs and all persons." Article 47's right to fair administrative action sits within the Bill of Rights, at Chapter Four. It follows that Article 47 itself, independent of any implementing legislation, already binds all persons and not merely the state — the horizontal reach of Kenya's fair administrative action right is a constitutional command in Article 20(1), not a policy choice Parliament happened to make when it later enacted Sections 2 and 3 of the FAA Act.

Those sections are Parliament correctly giving statutory effect, under the Article 47(3) mandate, to a horizontal application the Constitution had already required; they are confirmatory of the constitutional position, not the source of it. Under Article 94(5), no organ other than Parliament may in any event make provision having the force of law, so once Parliament has defined "administrative action" in Sections 2 and 3 to include the decisions of any person or body, no other organ, including the Judiciary, has authority to substitute a narrower definition — but the more fundamental point is that Parliament had no discretion to define it more narrowly in the first place, given what Article 20(1) already required.

This places Kenya's horizontal reach on a materially higher constitutional footing than a comparable statutory provision could occupy on its own. Article 255(1)(e) of the Constitution requires that any amendment relating to the Bill of Rights be approved by referendum, in addition to the ordinary parliamentary process under Articles 256 and 257. Sections 2 and 3 of the FAA Act could be narrowed by an ordinary Act of Parliament passed by simple majority; Article 20(1) and Article 47 could not be touched without the country voting on the change directly. No other jurisdiction surveyed in this article entrenches its horizontal reach — where it has any at all — behind that kind of constitutional wall.

Article 19(3)(c) of the Constitution provides that Bill of Rights protections "are subject only to the limitations contemplated in this Constitution," and the Constitution's own mechanism for such a limitation is Article 24: a limitation must be by law, and then only to the extent reasonable and justifiable against a defined set of factors. No statute currently narrows Article 47's horizontal reach — Sections 2 and 3 of the FAA Act give that reach full effect rather than limiting it — so on the current state of enacted law, Article 47's application to all persons carries no constitutionally contemplated limitation at all. What Article 19(3)(c) does not, and structurally could not, foreclose is the ordinary judicial task of interpreting what the text means on specific facts. Before any question of limitation arises, a court must first determine whether a given respondent's conduct is in fact "an act, omission or decision... that affects the legal rights or interests" of the applicant within the meaning of Section 2 — whether a private members' club expelling a member, or an employer with no delegated public power disciplining staff, falls within that description at all. That is not a limitation on an already-settled scope; it is the determination of the scope itself, the same interpretive task every court performs on every legal text, and it is the kind of question Kenyan courts have spent the years since 2010 working through in developing the horizontal reach of other Bill of Rights provisions in employment, education, and contractual settings. The constitutional command in Article 20(1) is unlimited on the current state of the law; how the words of Section 2 apply to a specific respondent's specific conduct remains ordinary adjudication, not a live limitation question — which, as Part IV shows, is also precisely why AITAR and AISTAR do not need that interpretive question resolved in advance for parties who submit by agreement.

IV. Vertical and Horizontal Application: The Constitutional Foundation, and the Contractual Bridge for Every Dispute It Does Not Yet Cover

The survey above yields one clear finding: Kenya is the only jurisdiction examined in this article whose Constitution, not merely whose Parliament, requires "administrative action" to reach private, non-state conduct as well as the state. Every other comparator surveyed — common law, civil law, and every structural variant in between — confines its administrative-justice protections, by its own terms, to the state or to private actors exercising a delegated public function. As set out in Part III, Kenya's horizontal reach rests on Article 20(1) of the Constitution, which extends the entire Bill of Rights, Article 47

included, to bind all persons and not only the state, and is further entrenched by Article 255(1)(e)'s requirement that any amendment touching the Bill of Rights be approved by referendum. Sections 2 and 3 of the FAA Act give that constitutional command statutory form; they do not create it. Kenyan administrative law accordingly already applies both vertically and horizontally, at constitutional rank — a genuine and, among the nineteen jurisdictions surveyed here, unmatched feature of Kenya's construct.

The live question is not whether this horizontal reach exists — it does, as a matter of what the sovereign, acting through Parliament, has enacted — but how it resolves when a specific private, non-public-function respondent contests its application to their own conduct in a specific case, a process no different in kind from how Kenyan courts have spent the years since 2010 working out the reach of Article 20(1)'s horizontal application of the Bill of Rights itself. The Aluochier Independent Tribunal Administrative Rules (AITAR), the Aluochier Independent Succession Tribunal Administrative Rules (AISTAR), and the Aluochier Independent Electoral Tribunal Administrative Rules (AIETAR) give practitioners a second, independent route to the same protections that does not require that case-by-case question to be argued or won at all for a given dispute: contractual submission.

When two private parties — a Kenyan cooperative and its member, a Delaware corporation and a foreign supplier, two individuals with no connection to Kenya at all — contractually submit their dispute to AITAR or AISTAR, they acquire the Section 4(3) checklist by agreement as well as, where applicable, by the statute's own horizontal terms. For these parties the two routes are cumulative, not competing: the statutory position established in Part III already binds them as persons within Kenya's administrative-law framework, and their contractual submission removes any need to litigate the point, since they have independently agreed to be bound by the identical standard through their arbitration or adjudication agreement. This is the same doctrinal move that makes any institutional arbitration rules enforceable regardless of what a state's domestic administrative law otherwise reaches — the New York Convention requires only that the parties agreed to arbitrate and that the agreed procedure was followed. AITAR and AISTAR use that same, well-established mechanism to make Kenya's protections available by consent even to parties or disputes that fall outside Kenya's own jurisdiction entirely, where the statutory horizontal reach described in Part III would have no application in the first place.

Because Article 47 and Section 4 of the FAA Act speak of "every person" rather than "every citizen," this contractual route is open to any person or corporate entity, regardless of nationality, who chooses to submit to these frameworks — including parties with no Kenyan connection at all. Under AITAR's internationality tests and seat provisions, the parties, the dispute, the substantive governing law, and the language of proceedings can all be entirely foreign; only the procedural law — Kenya's constitutionally entrenched, itemized pre-decision checklist, applying both vertically and horizontally by Parliament's own design — need be Kenyan.

This is what makes AITAR, AISTAR, and AIETAR a genuine dual contribution to global dispute resolution rather than a single mechanism wearing two names. Kenya's own domestic law already extends administrative-justice protection horizontally, at constitutional rank, further than any other jurisdiction surveyed in this article. The Aluochier frameworks then extend that same standard a second time, by contract, to any two parties on earth, regardless of whether their dispute has any connection to Kenya at all. Neither route depends on the other; a practitioner working within Kenya can rely on the constitutional position directly, and a practitioner working entirely outside Kenya can rely on the contractual route without needing that constitutional question to arise.

V. AITAR, AISTAR, and AIETAR: How the Mechanism Works

A. The Dual-Highway Architecture

AITAR operates two tracks. The Adjudication Highway is a standardized administrative process built directly around the Section 4(3) checklist, used for registry disputes, compliance failures, and institutional deadlocks. The Arbitration Highway converts contested contractual disputes into binding arbitral awards, enforceable under the New York Convention, following the same pre-decision procedure. AISTAR applies this architecture to succession and estate settlement, producing registry-ready determinations under Section 45(1) of Kenya's Law of Succession Act. AIETAR applies it, on the Adjudication Highway only, to electoral disputes, deliberately excluding arbitration given the public stakes involved.

On the Arbitration Highway specifically, parties with no Kenyan presence, a dispute arising entirely abroad, and a foreign governing law can still select Nairobi as the seat under AITAR's internationality and seat provisions — the only Kenyan element of the relationship being the procedural law itself. What such parties cannot straightforwardly select away is Article 50(1)'s open-hearing default, addressed in full below, and practitioners should advise on this point with real caution rather than treat a confidentiality clause as a simple fix.

B. The Article 50(1) Open-Hearing Question

Article 50(1) guarantees a fair and public hearing before a court or, where appropriate, another independent and impartial tribunal or body, and Article 50(8) is the only express textual exception, permitting exclusion of the press or public to protect witnesses or vulnerable persons, morality, public order, or national security. A private preference for confidentiality is not among those four grounds. A contractual confidentiality clause cannot supply what is missing by operating as an Article 24 limitation, since Article 24(1) requires any limitation to be "by law," and a private arbitration agreement is not law. A narrower argument — that a party can personally waive a procedural protection that exists for their own benefit, the way a criminal defendant waives trial rights by pleading guilty — has real textual support of its own, but it runs into a further obstacle specific to this right. Article 1(3)(c) places independent tribunals alongside the Judiciary as delegates of the people's own sovereign adjudicative power, and Article 10(1) binds every State organ and every person exercising or interpreting that power to the national values in Article 10(2), which include transparency and accountability. If open hearings are, in part, about how the sovereign's own delegated power is exercised — a deliberate constitutional choice, not incidental drafting, given Kenya's own history with closed and secretive proceedings — then the public has a stake in that openness the parties before an AITAR tribunal cannot simply negotiate away between themselves, because it was never theirs alone to waive.

The practical guidance follows regardless of exactly how that deeper question is ultimately resolved. Parties and counsel with genuinely confidentiality-sensitive matters should isolate those matters for resolution by mediation under Article 159(2)(c) of the Constitution, which does not engage Article 50(1) at all — a mediator does not "decide" a dispute by application of law; the parties do, if and when they reach a settlement. Where a matter proceeds instead to AITAR or AISTAR adjudication or arbitration, counsel should advise clients with eyes open that Article 50(1) presents a live and unresolved constitutional exposure to any expectation of privacy, not a drafting problem a confidentiality clause reliably solves. Current arbitral practice in Kenya, it should be said plainly, has not yet caught up with

this exposure — confidentiality remains the default assumption in practice, carried over from international arbitral tradition and legacy contract drafting, and no reported case yet records a party challenging an award specifically on the ground that it was wrongly conducted behind closed doors. That gap between settled practice and the constitutional text is precisely the kind of exposure a transnational practitioner should flag before it is tested by someone with the incentive to raise it, not after.

VI. Transnational Enforcement

A preliminary point of emphasis matters more to this Part than to any other in the article. Consensual dispute resolution — arbitration under the New York Convention — is the easier enforcement case, but it is also, by volume, the minority category of dispute resolution worldwide, as any comparison of court dockets to arbitral caseloads confirms. The majority of disputes that AITAR's Adjudication Highway and AISTAR's succession determinations will actually produce are non-consensual, in the same sense that the great bulk of civil litigation everywhere is non-consensual: one party did not choose to be there. An article addressed to transnational practitioners that gave the minority, easier category most of its attention and treated the majority, harder category as an afterthought would have its priorities backwards. This Part accordingly treats non-New York Convention enforcement as the primary subject, not a residual one.

A. Enforcing Non-Consensual Determinations: The Primary Challenge

Adjudication Highway determinations, and non-arbitral AISTAR succession determinations, are administrative rather than arbitral. They fall outside the New York Convention, and they generally fall outside the "court judgment" category that most foreign-judgment enforcement regimes require. This is a genuine gap between two established enforcement families — arbitral awards and court judgments — and it is the central practical problem this article's audience will actually face, given that this is the larger category of case by volume. It is a solvable problem, not merely a manageable risk, and the tools for solving it have decades of use behind them in exactly this kind of gap.

Fresh action on a debt, in common-law enforcing jurisdictions, treats the Kenyan determination as establishing a definite obligation the enforcing court can recognize through summary process, provided the underlying proceeding met the enforcing forum's own standard of natural justice — which is precisely what a documented Section 4(3) compliance record is built to demonstrate. Exequatur proceedings, in civil-law enforcing jurisdictions, ask the local court to stamp and adopt the foreign determination into the domestic enforcement machinery, refusing only where the process offends the enforcing state's own *ordre public* — again, the ground on which a Section 4(3) record does its most direct work. Transnational issue estoppel prevents a party who was fully and fairly heard on a specific issue in Kenya from re-litigating that same issue afresh abroad, provided the tribunal was competent, the issue identical, and the procedure fair. Re-characterisation of the underlying proceeding as a contractually binding ADR determination — available wherever the parties submitted to AITAR or AISTAR under a written submission agreement, even where the resulting process was administrative rather than strictly arbitral — gives a further, independent route into ordinary private-contract enforcement machinery that does not depend on the enforcing court accepting any particular characterization of the Kenyan tribunal itself. Worldwide freezing orders, available once any of the above enforcement applications is underway, protect the value of the underlying determination by restraining a respondent's global assets pending the enforcing court's decision, on the ordinary

equitable standard of a good arguable case and a real risk of dissipation.

None of these five mechanisms is novel; each has been used for decades to enforce foreign non-arbitral determinations across borders, and each remains fully effective today. What is worth stating plainly, rather than treating as background, is that this toolkit — not the New York Convention — will be the one most transnational practitioners actually reach for, given that non-consensual proceedings are the majority category of dispute resolution by volume in every legal system surveyed in this article, Kenya's own included.

Timing varies by mechanism and by jurisdiction, and practitioners should verify it before filing rather than assume uniformity. Common-law issue estoppel generally requires that the underlying AITAR or AISTAR proceeding be final and unappealed before an enforcing court will treat its findings as conclusive. Civil-law exequatur proceedings are sometimes more flexible, recognizing determinations that are only provisionally enforceable in their originating jurisdiction, depending on the enforcing state's own procedural code. A fresh action on a debt typically requires the underlying obligation to be definite and due, which usually but not always tracks finality. None of this changes which of the five mechanisms is available in a given jurisdiction — that remains a function of the enforcing state's own law, addressed jurisdiction by jurisdiction in Part VI.C below — but it does mean the same AITAR determination may be enforceable sooner in one forum than another, purely as a function of each forum's own timing rules.

Article 14 of the International Covenant on Civil and Political Rights strengthens each of these five mechanisms without being, itself, a sixth. It is not a universally self-executing civil right that automatically binds every enforcing court; its force depends on the enforcing state's own ratification and domestic incorporation of the Covenant. But for the substantial majority of states, and of the world's population, that have ratified it, Article 14's guarantee of a fair determination of "rights and obligations in a suit at law" gives an enforcing court in a fresh action or exequatur proceeding an independent, non-Kenyan reference point for assessing whether the underlying AITAR or AISTAR process was fair — one the enforcing court's own state has already bound itself to, regardless of what it thinks of Kenya's domestic law. This is a genuinely persuasive tool, deployed jurisdiction by jurisdiction, not a shortcut around the enforcing court's own law; its absence in a small number of non-ratifying states, noted in the jurisdiction table below, is itself useful information for sequencing where this toolkit will work most readily. A further qualification applies even among ratifying states: some have entered declarations limiting the Covenant's domestic legal effect. The United States, for example, ratified the ICCPR in 1992 with a declaration that Articles 1 through 27 — the Covenant's substantive provisions as a whole, not Article 14 specifically — are not self-executing, meaning the Covenant creates no private right of action enforceable directly in U.S. courts absent implementing legislation. Practitioners should check an enforcing state's specific reservations and declarations before relying on Article 14 as a persuasive reference point, rather than assuming ratification alone guarantees domestic effect.

B. New York Convention Enforcement: The Easier Minority Case

Awards on the Arbitration Highway are enforceable in every New York Convention contracting state, and this remains the more straightforward pathway wherever it is available — because the parties consented to arbitrate, not because the underlying dispute is more important than the non-consensual majority addressed in Part VI.A above. Because AITAR and AISTAR build the Section 4(3) checklist into the pre-award procedure, these awards carry an unusually well-documented record on Article V(1)(b)

grounds — denial of proper notice or an opportunity to present a case. Article V(1)(d) — procedure not in accordance with the parties' agreement — deserves equal attention in drafting, particularly regarding the open-hearing default noted above.

C. Jurisdiction-Specific Adaptations

Jurisdiction	Recommended pathway	Key adaptation	Doctrinal risk / strategic note
South Africa	Both highways	PAJA's own checklist gives South African courts a familiar reference point for Section 4 compliance.	Strong conceptual alignment; South African courts are well-positioned to recognize the standard even if the specific instrument is unfamiliar.
Germany / Spain / France	Arbitration Highway preferred	NY Convention enforcement well-established in all three; VwVfG s.46 and LPACAP's voidability doctrine mean domestic hearing-failure remedies are narrower than they first appear.	Strong civil-law procedural rigor is not itself a horizontal-reach precedent; do not assume it transfers to non-arbitral determinations.
US / UK / Australia	Arbitration Highway	Well-developed NY Convention practice; state-action doctrine (US) and legislative-override vulnerability (UK, Australia) limit domestic administrative-law analogies.	Common-law fresh-action doctrine for non-arbitral determinations is available but untested for AITAR specifically.
India	Arbitration Highway via Arbitration and Conciliation Act 1996, ss.44-49	CPC s.44A's reciprocating-territory list does not currently include Kenya; plan a fresh/summary suit under s.13 for Adjudication Highway matters.	Uncodified but constitutionally strong doctrine; the "is AITAR a court" characterization question is genuinely open.
Indonesia	Arbitration Highway via Law No. 30/1999, enforced through the Central Jakarta District Court	AUPB under Law 30/2014 is a useful conceptual bridge but untested as an enforcement pathway.	Principle-based, not itemized; court discretion under AUPB is wide, so predictability is lower than under Kenya's checklist.
Nigeria	Both highways; Arbitration Highway via the Arbitration and Mediation Act 2023	Section 36(2) is the closest textual sibling to s.4(3) of any comparator; lead with it in natural-justice pleadings.	Common-law fresh action is procedurally familiar; Nigerian courts are generally receptive to natural-justice arguments.
Brazil	Both highways; exequatur centralized at the Superior Tribunal de Justiça	Article 5, LV's constitutional extension of ampla defesa to administrative proceedings is a strong ordre public reference.	Centralized STJ jurisdiction gives more predictable, single-forum practice than most comparators surveyed.
Mexico	Both highways; NY Convention via Commercial Code Arts. 1461-1463	The garantía de audiencia and amparo remedy are strong ordre public references for Adjudication Highway matters.	Constitutionally entrenched and long-standing; a promising complement to Brazil for Latin American expansion.
China	Arbitration Highway only	NY Convention accession subject to reciprocity and commercial reservations; do not characterize Adjudication Highway determinations as judgments or awards.	Fragmented sectoral guarantees; a fairness argument must be anchored to the specific enabling statute, not framed in natural-justice language.
Russia	Not recommended at present	N/A	The right to be heard has not been confirmed as a general principle by the Supreme Court; sanctions regimes are a separate, independent barrier.
Egypt	Arbitration Highway strongly preferred, via the Cairo	Adjudication Highway enforcement faces two stacked obstacles: the	Recent Egyptian Supreme Court practice has strictly enforced the

	Regional Centre for International Commercial Arbitration and Egypt's early (1959) NY Convention ratification	same judgment/award categorization gap as elsewhere, plus a reciprocity requirement under Article 296 of the Civil and Commercial Procedure Code with no Kenya-Egypt treaty in place.	reciprocity requirement even against major jurisdictions. The Council of State's own rich domestic jurisprudence, discussed in Part II.F above, is a useful reference point for argument but not itself a pathway to enforcement; treat non-consensual enforcement as unproven until a test case establishes practical reciprocity.
Japan	Arbitration Highway via Japan's Arbitration Act, implementing the NY Convention (ratified 1961)	The Administrative Procedure Act's tiered notice-and-hearing checklist is a useful point of reference for procedural comparison, but its constitutional anchor is contested, giving it less ordre public weight than Kenya's or Nigeria's constitutionally entrenched equivalents.	Itemized but not constitutionally settled; frame arguments around statutory alignment, not constitutional parity.
Canada	Both highways at the federal level and in common-law provinces; Quebec's civil-law posture may respond better to an exequatur-style argument specifically	Baker v Canada's contextual fairness factors are compatible with Section 4(3) compliance for fresh-action purposes; Quebec's Act Respecting Administrative Justice offers an additional, civil-law-style ordre public reference point unavailable elsewhere in Canada.	Bijural structure means enforcement strategy should be jurisdiction-specific within Canada itself: common-law provinces support a fresh-action strategy under Baker; Quebec's civil-law tradition may separately support an exequatur-style strategy not available elsewhere in the country. Do not treat Canada as a single national approach.
Italy	Arbitration Highway, via Italy's arbitration law implementing the NY Convention (ratified 1969)	Legge 241/1990's preavviso di rigetto is a close structural match to Section 4(3); treat as functionally equivalent to the Spain strategy already set out above.	No material divergence from Spain beyond the narrower 2020 harmless-error carve-out for discretionary acts, itself a minor point in AITAR's favour.

VII. Practical Applications for Dispute Resolution Professionals

Multi-tiered dispute resolution clauses should specify seat, applicable substantive law, and confidentiality as three distinct, separately negotiated elements, given the Article 50(1) open-hearing default. Practitioners advising clients on cross-border succession, estate, or commercial matters should be candid that enforceability against a reluctant local counterparty depends on that specific country's foreign-judgment or fresh-action doctrine — as summarized in the table above — not on a uniform global pathway. Because the underlying mechanism is contractual submission rather than statutory compulsion, drafting the submission agreement carefully, with the jurisdiction-specific enforcement pathway in mind from the outset, matters more to the ultimate outcome than any argument about the FAA Act's domestic horizontal reach.

VIII. Conclusion

Nineteen jurisdictions, spanning common law, civil law, and every major structural variant of administrative procedure, recognize some form of the same underlying value: a person should not be

deprived of a right without notice and an opportunity to respond. What none of the other eighteen share is Kenya's horizontal reach into private conduct — and that reach is constitutional before it is statutory. Article 20(1) of the Constitution extends the entire Bill of Rights, Article 47 included, to bind all persons and not only the state; Sections 2 and 3 of the Fair Administrative Action Act, 2015 give that pre-existing constitutional command its statutory form, rather than creating the horizontal reach themselves. The distinction matters in practice, not only in theory: Article 255(1)(e) requires that any amendment touching the Bill of Rights be approved by national referendum, where the FAA Act's own definitions could be narrowed by an ordinary parliamentary majority. Kenya's horizontal reach sits behind the higher of those two walls, and this article states that plainly rather than treating it as a footnote to the statutory analysis.

The AITAR, AISTAR, and AIETAR frameworks give practitioners two independent and cumulative routes to that same standard: the statutory route described above, for disputes within Kenya's own administrative-law framework, and a contractual route, open by consent to any person or corporate entity of any nationality, for disputes — including disputes with no connection to Kenya at all — that fall outside every other regime surveyed in this article. Both routes matter, and an article addressed to transnational practitioners should not treat one as the whole story.

The same discipline applies to enforcement. Consensual determinations under the Arbitration Highway travel the New York Convention's well-worn path, and that path is genuinely the easier one wherever the parties have agreed to it. But non-consensual determinations under the Adjudication Highway, and AISTAR's non-arbitral succession determinations, are the majority case by volume — reflecting the simple reality that non-consensual dispute resolution outnumbers consensual dispute resolution everywhere, courts included — and this article has treated the non-New York Convention toolkit accordingly: fresh action, exequatur, transnational issue estoppel, re-characterisation, and worldwide freezing orders are decades-old, fully effective mechanisms, strengthened wherever the enforcing state has ratified Article 14 of the International Covenant on Civil and Political Rights — not a universal, self-executing right, but a persuasive reference point available to the substantial majority of the world's states and population that have ratified it, and the primary tool this article's audience should expect to use, not a secondary one held in reserve for cases the New York Convention cannot reach.

The real differences in institutional independence and practical enforceability surveyed in this article — including the candid limits identified in China and Russia — should inform how, and in which forum, each route and each enforcement tool is deployed. They do not change the underlying claim: Kenya's administrative law reaches further, in whom it protects, than any other single jurisdiction surveyed here — it alone extends its guarantees to private conduct at constitutional rank, and it is the only surveyed system whose horizontal reach is protected by a referendum requirement under Article 255(1)(e). The protection travels abroad not because the FAA Act claims any extraterritorial statutory effect of its own, but because AITAR and AISTAR make it available by contract to any two parties on earth, regardless of connection to Kenya, and anchor its enforcement in the same decades-old, well-established mechanisms — fresh action, exequatur, issue estoppel, re-characterisation, and worldwide freezing orders — that have always governed the cross-border recognition of foreign non-arbitral determinations. The Aluochier frameworks exist to make that reach usable by every person, of every nationality, for the ordinary, non-consensual dispute that is the actual majority of the world's legal business — not only for the minority of disputes sophisticated enough to have an arbitration clause.

Reference Material

- Constitution of Kenya, 2010: Articles 1(3)(c), 2(1), 2(4), 2(6), 47, 50(1); Sixth Schedule s.7(1).
- Fair Administrative Action Act, 2015 (Kenya): ss.2, 3, 4, 6, 8; Fair Administrative Action Rules, 2024, Rule 38.
- Promotion of Administrative Justice Act, 2000 (South Africa) s.3.
- Verwaltungsverfahrensgesetz ss.28, 46 (Germany); Ley 39/2015 Art. 82 (Spain); Code des relations entre le public et l'administration Arts. L.121-1-L.122-1 (France).
- Administrative Procedure Act 1946 s.558(c) (USA); Ridge v Baldwin [1964] AC 40 (UK); Administrative Decisions (Judicial Review) Act 1977 (Australia).
- Constitution of India, Arts. 14, 21; General Clauses Act, 1897, s.23; Maneka Gandhi v Union of India (1978) 1 SCC 248; A.K. Kraipak v Union of India (1969) 2 SCC 262.
- Law No. 30 of 2014 concerning Government Administration (Indonesia), Art. 52(2).
- Constitution of the Federal Republic of Nigeria, 1999, s.36(1)-(2); Arbitration and Mediation Act, 2023.
- Lei No. 9.784, de 29 de Janeiro de 1999 (Brazil), Arts. 2, 28; Constituicao Federal, Art. 5, LV.
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- Japan: Administrative Procedure Act, 1993 (Gyōsei Tetsuzuki Hō), Arts. 13-15; Constitution of Japan, Art. 31.
- Canada: Baker v Canada (Minister of Citizenship and Immigration) [1999] 2 SCR 817; Statutory Powers Procedure Act, RSO 1990 (Ontario); Act Respecting Administrative Justice, CQLR c J-3 (Quebec).
- Italy: Legge 7 agosto 1990, n. 241, Arts. 7, 10, 10-bis, 21-octies; Costituzione della Repubblica Italiana, Art. 97.
- 1958 New York Convention, Article V; International Covenant on Civil and Political Rights, Article 14.
- Aluochier Dispute Resolution: AITAR 2026 (Rules 4, 33.3, 43.1-43.2, 49.3-49.4); AISTAR 2026; AIETAR 2026.