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COMPARATIVE LEGAL PERSPECTIVES ON HUMAN RIGHTS

Article



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FIFA's Experience in the Implementation of the United Nations Guiding Principles on Business and Human Rights

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Abstract: Sporting activities generate impacts on a wide range of human rights. However, international sports organizations who are not subjects of public international law for a long time did not view themselves bound by international human rights standards. The situation began to change when the United Nations Guiding Principles on Business and Human Rights (UNGPs) were adopted in 2011, obliging businesses, including entities engaged in sports activities, to implement human rights due diligence (HRDD) requirements, namely to identify, mitigate, assess and remedy adverse human rights impacts of their activities. The International Olympic Committee (IOC) that started to embrace consistently the HRDD model is setting a good example to follow.

International Federation of Association Football (FIFA) demonstrates a responsible approach to human rights issues. By means of adopting its own normative documents, namely FIFA's Human Rights Policy of 2017 and FIFA World Cup 2026 Sustainability and Human Rights

Strategy of 2024, FIFA signals its readiness to be guided by HRDD in its global operations. A specific unit named the Human Rights Advisory Board (HRAB) operated within FIFA from 2017 to 2021, after which it was disbanded. It analyzed the human rights situation in global football and formulated recommendations on the steps FIFA was expected to undertake to fulfill its human rights obligations more effectively. The authors of the article consider it necessary to revive the FIFA Human Rights Advisory Board.

Furthermore, based on the analysis of the most recent human rights violations that occurred at sporting events organized by CONMEBOL (South American Football Confederation), the authors believe that this entity should align itself with FIFA's normative provisions on human rights and integrate HRDD requirements into its practical activities. The most effective way for regional football confederations to achieve this goal would be to adopt their own human rights policies and establish the necessary bodies to ensure commitment to the UNGPs and FIFA's Human Rights Policy.

Keywords: FIFA; IOC; business; human rights due diligence (HRDD); United Nations Guiding Principles on Business and Human Rights (UNGPs); FIFA Human Rights Advisory Board (HRAB); confederations; CONMEBOL

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I. Introduction

It is quite obvious that sports can be linked to situations involving discrimination, harassment, and violence,¹ sexual abuse,² labor abuse, child exploitation, abuse of representatives,³ violence at sport-

¹ Horror en Avellaneda: cronología del escándalo en Independiente-Universidad de Chile [Horror in Avellaneda: a Chronology of the Scandal at Independiente-Universidad de Chile]. *Entertainment and Sports Programming Network (ESPN)*, 21.08.2025. Available at: https://www.espn.com.ar/futbol/copa-sudamericana/nota/_/id/15571914/horror-avellaneda-cronologia-escandalo-independiente-universidad-de-chile [Accessed 06.08.2026].

² El escándalo por las denuncias de abuso sexual de menores que sacude al mundo del fútbol en Argentina [The scandal over allegations of child sexual abuse rocking the world of soccer in Argentina]. *BBC News*, 02.04.2018. Available at: <https://www.bbc.com/mundo/noticias-america-latina-43623464> [Accessed 06.08.2026]; Estremecedora declaración de Simone Biles en el juicio a Larry Nassar: "Sabían que estaba siendo abusada" [Simone Biles's Shocking Testimony at Larry Nassar's Trial: "They Knew I Was Being Abused"]. *Infobae*, 15.09.2021. Available at: <https://www.infobae.com/america/deportes/2021/09/15/estremecedora-declaracion-de-simone-biles-en-el-juicio-a-larry-nassar-sabian-que-estaba-siendo-abusada/> [Accessed 06.08.2026]; El Manchester City indemnizará a niños que fueron víctimas de abuso sexual por parte de un entrenador [Manchester City to Compensate Children Who Were Victims of Sexual Abuse by a Coach]. *El País*, deportes, 12.03.2019. Available at: https://elpais.com/deportes/2019/03/12/actualidad/1552393480_122496.html [Accessed 06.08.2026].

³ Falsa promesa. Tiene 14 años, lo llevaron a probarse a un club de Primera y lo dejaron abandonado a 700 kilómetros de su casa [False Promise. He is 14 years old; they took him to try out for a First Division club and left him stranded 700 kilometers from his home]. *Clarín*, 15.05.2022. Available at: https://www.clarin.com/sociedad/14-anos-llevaron-probarse-club-primera-dejaron-abandonado-700-kilometros-casa_o_uYrKgR54Yx.html [Accessed 06.08.2026].

ing events,⁴ violations of the right to the protection of sensitive personal data,⁵ corruption among authorities,⁶ drug abuse,⁷ etc. To what extent are sports organizations responsible for these negative consequences? How should they address their adverse impacts on human rights? The authors of the present article are attempting to outline answers to these complex questions.

For a long time, States were viewed as the only duty bearers of human rights obligations while sports governing organizations such as the International Olympic Committee (IOC) or international federations, shielded by the principle of sport autonomy, were not bound by international legal obligations in the sphere of human rights (Rietiker, 2022, pp. 24, 37, 199). The rationale behind it seemed understandable: international sports governing organizations were not subjects of public international law, and they did not assume such obligations voluntarily (Zakharova, 2020, pp. 62–63).

However, the scope of the “autonomy of sport” concept evolves over time. It has been noted in the academic literature that at the present stage international human rights instruments can restrict the autonomy

⁴ Impactante violencia en México: Querétaro vs Atlas, suspendido por batalla campal [Shocking violence in Mexico: Querétaro vs Atlas match suspended due to a brawl]. *TyC Sports*, 06.03.2022. Available at: <https://www.tycsports.com/futbol-internacional/queretaro-atlas-violencia-incidentes-muertos-mexico-id417177>. html [Accessed 06.08.2026].

⁵ Lara, M.A. and Calderón, J.L. La “Ley Bale”: los jugadores emprenden la batalla por proteger su información médica [The “Bale Law”: Players Take Up the Fight to Protect Their Medical Information]. *Marca*, 27.10.2019. Available at: <https://www.marca.com/futbol/real-madrid/2019/10/27/5db5fc1722601d76268b459a.html> [Accessed 06.08.2026].

⁶ EEUU indemnizó a la FIFA con USD 201 millones por los escándalos de corrupción de sus dirigentes [The U.S. awarded FIFA \$ 201 million in compensation for corruption scandals involving its leaders]. *Diario Infobae*, 24.08.2021. Available at: <https://www.infobae.com/america/mundo/2021/08/24/eeuu-indemnizara-a-la-fifa-con-usd-201-millones-por-los-escandalos-de-corrupcion-de-sus-dirigentes/> [Accessed 06.08.2026].

⁷ El calvario de la cocaína en el rugby de Francia: confesiones de jugadores y cómo evitan dar positivo en los controles [The cocaine crisis in French rugby: players’ confessions and how they avoid testing positive]. *Diario La Nación*, 17.04.2022. Available at: <https://www.lanacion.com.ar/deportes/rugby/el-calvario-de-la-cocaina-en-el-rugby-de-francia-confesiones-de-jugadores-y-el-por-que-de-una-nid15042022/> [Accessed 06.08.2026].

of sport (Cornu et al., 2017, p. 22). The economic dimension of sports activities provides additional justification for the need to limit the autonomy of sport, “The autonomy of sports organizations is far narrower — and their subjection to state law relatively greater — when sport is considered to be an economic activity. In respect of labor relations, commercial contracts and also sponsorships, sport must effectively be regarded as an activity like all others” (Cornu et al., 2017, p. 24). A significant contribution to this understanding was made by the Court of Justice of the European Union (the CJEU) who starting from 1974 has differentiated in its decisions between issues in which the sports movement undoubtedly retains its autonomy, and the economic (labor) activities of athletes, which are subject to the Community (Union) law (Weatherill, 2014, pp. 24–55, see also an overview of the benchmark decisions rendered by the CJEU in cases involving athletes and sports organizations in: Zakharova and Melnik, 2020, pp. 297–304).

The present paper begins with an overview of the developments that were initiated by John G. Ruggie in his capacity of the United Nations (UN) Secretary-General’s Special Representative for Business and Human Rights back in 2008 (Section I). In the following sections we highlight, respectively, normative premises that originated within the UN framework in 2011, primarily the Guiding Principles on Business and Human Rights (UNGPs) (Section II), and were further developed in the more specific FIFA normative documents (Section III), namely in FIFA’s Human Rights Policy elaborated in 2017 and in FIFA World Cup 2026 Sustainability and Human Rights Strategy adopted in 2024.

Section IV is dedicated to the analysis of the most recent human rights violations that occurred at sporting events organized by CONMEBOL (South American Football Confederation), despite significant efforts to seriously address human rights violations. The authors believe that CONMEBOL should fully accept FIFA’s normative provisions on human rights and integrate human HRDD requirements into its practical activities. The most effective way for regional football confederations to achieve this goal would be to adopt their own human rights policies and establish the necessary bodies to ensure commitment to the 2011 UNGPs and FIFA’s 2017 Human Rights Policy.

The modern business and human rights debate originated back in the 2000s.⁸ John G. Ruggie, a Harvard professor who served as the UN Secretary-General's Special Representative for Business and Human Rights during the period from 2005 to 2011, elaborated in 2008 a framework concerning the duties of States and business enterprises from a human rights perspective, which was entitled "Protect, Respect and Remedy." According to it, States have a duty to protect citizens from human rights violations by companies (Para. 27–50); corporations have a responsibility to respect human rights and must act with due diligence (Para. 51–64); citizens have the right to have access to remedies and seek remediation if they have suffered from the actions of businesses, and the process of ensuring their access to legal protection should involve both States through the judicial grievance mechanisms (Para. 88–91) and non-judicial mechanisms (national human rights institutions, for example, ombudsmen — Para. 92, 96–99), and businesses themselves through the creation of company-level grievance mechanisms (for instance, hotlines for raising complaints, advisory services for complainants, expert mediators, wholly external mechanisms — Para. 93–95). Assessing business impact on human rights most often affected in particular business sectors or situations (Para. 52), John Ruggie points out primarily to civil rights (freedom of association; right to a fair trial; right to non-discrimination; abolition of slavery, forced labor, child labor, etc.) and labor rights (right to work; right to equality at work; right to just and favorable remuneration; right to a safe work environment; right to rest and leisure, etc.).

In the final part of his well-known report "For the Game. For the World. FIFA and Human Rights" prepared in 2016, Professor Ruggie stated, "FIFA has made an important start. Now comes implementation."⁹

⁸ Ruggie, J.G., (2008). *Protect, Respect and Remedy: a Framework for Business and Human Rights*: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. A/HRC/8/5. 07.04.2008. Available at: <https://digitallibrary.un.org/record/625292?v=pdf> [Accessed 06.08.2026].

⁹ Ruggie, J.G., (2016). *For the Game. For the World. FIFA and Human Rights*. Corporate Responsibility Initiative Report No. 68. Cambridge, MA: Harvard Kennedy School, p. 36. Available at: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Ruggie_humanrightsFIFA_reportApril2016.pdf [Accessed 06.08.2026].

The authors of this article attempt to make their modest contribution and outline their answer to the question of what steps FIFA, its regional confederations and national football associations could take at the present stage in order to move forward to new benchmarks in the human rights sphere.

II. Guiding Principles on Business and Human Rights (UNGPs) of 2011 and a Reference Model for Their Implementation in the Olympic Movement

II.1. Origins, Adoption and Purpose of the UNGPs

The United Nations Guiding Principles on Business and Human Rights (the “Guiding Principles,” or “UNGPs”) were unanimously endorsed by the UN Human Rights Council on 16 June 2011, through Resolution 17/4. They were the culmination of a six-year mandate carried out by John Ruggie, the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprise.¹⁰

Their adoption responded to a long-standing accountability gap: international human rights treaties bind States, not corporations, yet globalization had made clear that business enterprises could — and did — affect the enjoyment of human rights on a scale comparable to States. Earlier attempts to close this gap, most notably the 2003 UN Draft Norms on the Responsibilities of Transnational Corporations, had failed to secure consensus precisely because they sought to impose binding obligations directly on companies. Ruggie’s approach broke that impasse by building on a differentiated, three-pillar framework — “Protect, Respect and Remedy” — first presented to the Human Rights Council in 2008 and subsequently operationalized through the 2011 Guiding Principles.¹¹

¹⁰ United Nations General Assembly, Res.17/4 (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. The Office of the UN High Commissioner for Human Rights (OHCHR), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf [Accessed 27.07.2026].

¹¹ Ruggie, J.G., (2008). *Protect, Respect and Remedy...*; Deva, S. and Bilchitz, D., (eds) (2013). *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect*. Cambridge University Press.

II.2. Addressees, Main Provisions and Significance of the UNGPs

The Guiding Principles rest on three pillars: (i) the State duty to protect against human rights abuses by third parties, including businesses; (ii) the corporate responsibility to respect human rights, which exists independently of State willingness or ability to fulfil its own duties; and (iii) the need for greater access to effective remedy, judicial and non-judicial, for victims of business-related abuse. Principle 14 clarifies that the responsibility to respect applies to all business enterprises, regardless of their size, sector, operational context, ownership or structure — a formulation broad enough, as later analysis confirmed, to encompass sports governing bodies operating on a for-profit or not-for-profit basis alike.¹²

Operationally, the UNGPs require enterprises to adopt a public policy commitment to respect human rights and to carry out ongoing human rights due diligence (HRDD) — a process to identify, prevent, mitigate and account for actual and potential adverse impacts — complemented by grievance mechanisms capable of providing or contributing to remediation. Their significance lies less in creating new substantive rights than in providing, for the first time, a globally endorsed a “common reference point” — agreed by States, business and civil society alike — for how corporate responsibility for human rights should be understood and operationalized.¹³

As a soft law instrument, the UNGPs are not directly binding, yet the 15 years since their adoption have shown their capacity to generate hard law effects: over 30 States have adopted National Action Plans on business and human rights, and the UNGPs’ due diligence logic underpins binding instruments such as the EU Corporate Sustainability Due Diligence Directive and mandatory HRDD statutes in France, Germany and Norway. Ten years after their adoption, the 2021 anniversary reaffirmed their continued relevance, while negotiations toward a legally

¹² UN General Assembly, Res.17/4 (2011). P. 15; Ruggie, J.G, (2016). *For the Game. For the World.*

¹³ OHCHR (2014). *Frequently Asked Questions on the Guiding Principles on Business and Human Rights*, HR/PUB/14/3.

binding treaty on business and human rights continue within the UN Open-Ended Intergovernmental Working Group, without having so far displaced the UNGPs as the operative global standard.¹⁴

A parallel and complementary instrument is the Guidelines for Multinational Enterprises, the oldest multilateral instrument on responsible business conduct, adopted in 1976 by the Organization for Economic Cooperation and Development (OECD). A major revision of the Guidelines carried out in 2000 introduced an implementation procedure based on National Contact Points (NCPs). The 2011 edition of this document added a specific chapter on human rights aligned with the newly adopted UNGPs. Furthermore, in June 2023, the OECD adopted its first substantive update in more than a decade, renaming the instrument the “OECD Guidelines for Multinational Enterprises on Responsible Business Conduct” and expanding due diligence expectations to include climate change, technology, and artificial intelligence, as well as the protection of civic space, while maintaining the six-step risk-based due diligence framework first established in 2018.

II.3. The UN Working Group on Business and Human Rights

The UN General Assembly Resolution 17/4 also established the Working Group on the issue of human rights and transnational corporations and other business enterprises — commonly known as the UN Working Group on Business and Human Rights — with the mandate to promote the effective and comprehensive dissemination and implementation of the UNGPs. Its mandate has since been renewed by the Human Rights Council in 2014, 2017, 2020 and, most recently, in 2023 through Resolution 53/3.¹⁵

The Working Group is composed of five independent experts of balanced geographical representation. It guides and chairs the annual UN Forum on Business and Human Rights, which has become the world's largest global gathering on the topic, it conducts country visits,

¹⁴ OHCHR (2021). 10th Anniversary Materials on the UN Guiding Principles on Business and Human Rights.

¹⁵ OHCHR (2011). Human Rights Council Resolution 17/4; OHCHR (2023). Human Rights Council Resolution 53/3.

issues thematic reports to the Human Rights Council and the General Assembly, and engages directly with States and enterprises, including, as our earlier research documented, sport-related businesses through communications requesting explanations on their human rights due diligence processes, as illustrated by its 2021 communication to Adidas concerning allegations of forced labor linked to Uyghur workers in its supply chain (Gómez et al., 2021, p. 40). Although the Working Group cannot adjudicate individual complaints, this dialogic function has made it an increasingly relevant reference point for sports governing bodies, including FIFA, in benchmarking their own human rights due diligence architecture — the subject covered in Section III.

In conclusion, strengthening the global framework for business and human rights requires elevating the role of the UN Working Group, transforming its predominantly dialog-based function into a more assertive mechanism for oversight and accountability. In the context of international sports, this implies recommending that sports governing bodies not only formally adopt the Guiding Principles in their bylaws and tenders, but also be subject to periodic, standardized, and independent scrutiny by the Working Group regarding their HRDD processes. Establishing closer oversight between the UN and sports organizations, such as FIFA and CONMEBOL, will help bridge the gap between voluntary corporate commitments and the effective protection of people affected by major sporting events and commercial operations.

II.4. IOC's Good Example to Follow

In its Resolution 24/1 “Promoting human rights through sport and the Olympic ideal” of 26 September 2013, the UN Human Rights Council (HRC) stated that “sport and major sporting events such as the Olympic and Paralympic Games can be used to promote human rights and strengthen universal respect for them, thus contributing to their full realization” and recognized the efforts of the Olympic and Paralympic Movement to use sport as a tool for the promotion of human rights, development, peace, dialogue and reconciliation (Para. 3).¹⁶

¹⁶ United Nations Human Rights Council. A/HRC/RES/24/1. 26.09.2013. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/A_HRC_RES_24_1_ENG.pdf [Accessed 07.08.2026].

In March 2014, in response to the HRC Resolution 24/1, the IOC presented its report to demonstrate how the principles of the Olympic Charter align with fundamental human rights. In it, it highlighted the second of the Fundamental Principles of Olympism, established in the Olympic Charter (in force as from 24 June 2026), which aims “to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.”¹⁷ The fourth Fundamental Principle of Olympism, enshrined in the Olympic Charter, views the practice of sport as a human right, “Every individual must have access to the practice of sport, without discrimination of any kind in respect of internationally recognized human rights within the remit of the Olympic Movement.” Olympism has evolved significantly in terms of prohibiting discrimination. In the Olympic Games of ancient Greece, slaves, barbarians (those who could not prove that they were Greeks and free people), persons who had broken the law (primarily those guilty of murder and sacrilege), citizens who had been fined, and women were prohibited from participating (Mestre, 2009, p. 6). Today, the prohibition of discrimination is enshrined in the sixth Fundamental Principle of Olympism, and the list of possible grounds on which discrimination is prohibited is quite extensive — “race, color, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The IOC's 2014 response report also noted that through its sport development activities, the IOC and the Olympic Movement promote peace, youth development, education, culture, healthy lifestyles, sustainable development, gender equality, mutual understanding between peoples, and the rights of vulnerable groups and human rights in general. In its report, the IOC cited a number of examples of socially significant projects it had successfully implemented over the past two decades, which were aimed at protecting the rights of vulnerable groups such as women, children, persons with disabilities, refugees and internally dis-

¹⁷ International Olympic Committee. Available at: <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf> [Accessed 07.08.2026].

placed persons in Afghanistan, Cambodia, Kenya, Namibia and Haiti.¹⁸ Thus, it can be stated that the IOC leading the Olympic movement has always demonstrated respect for the need to preserve human dignity and respect for human rights as proclaimed in the Olympic Charter.

The UNGPs expectations directed at a business can be summarized as follows: first, adopting a policy commitment to respect human rights; second, assessing human rights risks and adverse impacts of its activities; third, monitoring the company's responses and providing an array of the means to address negative impacts (Rietiker, 2022, p. 38). The IOC is taking action in each of the three areas. First human rights-related recommendations were formulated in the Olympic Agenda 2020 adopted in December 2014.¹⁹ In February 2017, human rights duties were incorporated for the first time into the Host City Contract for the 2024 Olympic Games (Grell, 2018, pp. 160, 164). In March 2021, the IOC established an internal Human Rights Unit in its Corporate and Sustainable Development in order to ensure compliance with these recommendations in managing human rights risks.²⁰ In September 2022, the IOC adopted the Strategic Framework on Human Rights in which it affirmed its commitment to respecting human rights in accordance with the UNGPs. It clearly indicated in this document 5 focus areas in its activities (equality and non-discrimination; safety and well-being; livelihood and decent work; the right to freedom of speech, freedom of association and peaceful assembly; the right to privacy) and defined 16 specific target objectives in the field of human rights as an organization, owner of the Olympic Games and leader of the Olympic Movement.²¹ In 2024, an independent IOC Advisory Committee on Human Rights was established

¹⁸ In more detail, see UN Office on Sport for Development and Peace. Annual report for the year 2014. Available at: <https://digitallibrary.un.org/record/798332> [Accessed 07.08.2026].

¹⁹ Olympic Agenda 2020. 20+20 Recommendations. Adopted on 09.12.2014. Available at: https://stillmed.olympic.org/Documents/Olympic_Agenda_2020/Olympic_Agenda_2020-20-20_Recommendations-ENG.pdf [Accessed 07.08.2026].

²⁰ International Olympic Committee. Available at: <https://www.olympics.com/ioc/news/ioc-approves-strategic-framework-on-human-rights> [Accessed 07.08.2026].

²¹ IOC Strategic Framework on Human Rights. 09.09.2022. Available at: <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Strategic-Framework-on-Human-Rights.pdf>. Pp. 27–43 [Accessed 07.08.2026].

to provide regular third-party oversight and strategic guidance. It advises the IOC bodies on human rights matters, indicates ways to minimize human rights risks and points out to major institutions capable of giving support to the IOC in reaching these goals, examines annual reports presented by the IOC Human Rights Unit and issues recommendations thereupon.²² Thus, since the adoption of the UNGPs in 2011, the IOC has been consistently shifting in its human rights policies from a purely declaratory stance characterized by the absence of any significant policy document in the area of human rights (Zakharova, 2020, p. 66) to an institutional model of HRDD, and it is definitely a good example for all sport organizations of the Olympic movement to follow.

III. FIFA's Regulatory and Institutional Framework in the Sphere of Human Rights

III.1. FIFA's Human Rights Policy of 2017

Since 2014, international human rights bodies and officials have been urging FIFA to pay greater attention to the need to be guided by international human rights standards in its activities. In June 2014, Mary Robinson, former President of Ireland and UN High Commissioner for Human Rights, and John Ruggie, in their joint open letter on behalf of the Institute for Human Rights and Business (IHRB), called upon FIFA to integrate human rights considerations into its decision-making. They formulated five recommendations to international sports governing organizations such as FIFA, namely:

- to make a commitment to respect human rights and establish a human rights strategy based on the UN Guiding Principles on Business and Human Rights;
- to require sponsors and media partners to adopt a human rights policy statement and disclose information on their efforts to implement

²² IOC Advisory Committee on Human Rights Terms of Reference. September 2022. Available at: <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/TOR-Advisory-Committee-EN.pdf> [Accessed 07.08.2026].

human rights due diligence and eliminate negative human rights impacts;

- to revise candidate requirements in force at that time to conduct an impact assessment concerning human rights considerations;
- to require local organizers to adopt human rights policies;
- to appoint an ombudsman under the auspices of the respective sports organizations to investigate human rights abuses involving the activities of organizing committees and commercial partners.²³ This document marked the beginning of the process thanks to which FIFA formulated policy provisions regarding human rights and started to incorporate them into its regulatory acts.

In December 2015, FIFA asked Professor Ruggie to develop recommendations on the ways to embed respect for human rights across FIFA's operations of FIFA on a global scale in accordance with the UN Guiding Principles on Business and Human Rights of 2011. The report that followed in April 2016 was entitled, "For the Game. For the World. FIFA and Human Rights." It contained 25 detailed recommendations for FIFA's action based on the concept of HRDD.²⁴

Scholars keep searching for answers to the difficult question, "Who will decide what HRDD entails when disputes arise — corporations, national administrations, national courts, the Court of Justice of the European Union, NCPs for Responsible Business Conduct envisaged by the 2018 OECD Due Diligence Guidance for Responsible Business Conduct,"²⁵ civil society organizations or all of them simultaneously? Antoine Duval argues that at present "corporations are mostly in the driving seat when engaging in HRDD, identifying their human rights

²³ Open Letter of Mary Robinson, Patron of IHRB John Ruggie, Chair of IHRB Former President of Ireland Former UN Special Representative Former UN High Commissioner for Human Rights and John Ruggie, Chair of IHRB Former President of Ireland Former UN Special Representative Former UN High Commissioner for Human Rights on Business and Human Rights to Joseph Sepp Blatter, President of FIFA. 11 June 2014. Available at: <https://ihrb-org.files.svdcn.com/production/assets/uploads/statements/2014-06-11-Open-Letter-FIFA.pdf?dm=1726490132> [Accessed 07.08.2026].

²⁴ Ruggie, J.G. (2016). *For the Game. For the World*. Pp. 28–34.

²⁵ Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57/15f5f4b3-en.pdf [Accessed 07.08.2026].

risks and determining their responses almost unchecked.” However, he continues, “if HRDD is to be true to Ruggie’s design, its processes must be shaped much more actively from outside businesses and subjected to the constant input and scrutiny of the affected public” (Duval, 2023, p. 301).

In 2016, Art. 3 of the FIFA Statutes for the first time enshrined the organization’s pledge to respect human rights, “FIFA is committed to respecting all internationally recognized human rights and shall strive to promote the protection of these rights.”²⁶ Art. 4 of the FIFA Statutes prohibits discrimination of any kind against a country, individual or group of individuals on the grounds of race, color, ethnic, national or social origin, gender, disability, language, religion, political opinion or other belief, financial status, birth or any other status, sexual orientation or any other reason.

As a follow-up to new statutory human rights commitment in May 2017, the FIFA Council, the organization’s executive body, published a fundamental document, FIFA’s Human Rights Policy.²⁷ This document currently provides key guidelines for FIFA’s activities in this area. The document is consistent with the UN Guiding Principles on Business and Human Rights, which were approved by the UN Human Rights Council in 2011 and currently serve as the fundamental document reflecting the UN’s approaches to business and human rights issues.²⁸

The document consists of 13 paragraphs. Para. 2 of the FIFA’s Human Rights Policy states that FIFA is committed to the human rights set out in the Universal Bill of Human Rights (the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social and Cultural Rights and the 1998 ILO Declaration on Fundamental Principles and Rights at Work). It is noted in the academic literature

²⁶ FIFA Statutes of 6 June 1990 (as amended on 5 June 2019). Fédération Internationale de Football Association. Available at: <https://resources.fifa.com/image/upload/fifa-statutes-5-august-2019-en.pdf?cloudid=ggymhxxv8jrdfbekrrm> [Accessed 08.08.2026].

²⁷ Fédération Internationale de Football Association. Available at: <https://img.fifa.com/image/upload/kro5dqyhwr1uhqy2lh6r.pdf> [Accessed 08.08.2026].

²⁸ United Nations General Assembly, Res.17/4 (2011).

that though FIFA's Human Rights Policy does not refer to the 1950 European Convention on Human Rights as a potential point of reference, it can be beneficial for FIFA to take into account the far-reaching and extensive case law of the European Court of Human Rights since FIFA is a legal entity under Swiss law and Switzerland bears special responsibility as the host state and a party to the 1950 Convention (Rietiker, 2022, pp. 41, 49–51).

FIFA is prepared to be guided by other specific international standards in relation to vulnerable groups such as indigenous peoples, women, national, ethnic, religious and linguistic minorities, children, persons with disabilities, migrant workers and members of their families, and human rights defenders, in those areas where its activities may have an adverse impact on the rights of persons belonging to these communities. Furthermore, if FIFA carries out its activities in situations of armed conflict, it will comply with the requirements of international humanitarian law.

In accordance with the UNGPs, in Para. 3 of its Human Rights Policy, FIFA declares its commitment to the principle of due diligence in order to avoid human rights violations in its activities and to address their consequences if they do occur.

Paragraph 5 outlines quite realistically FIFA's main risks in the area of human rights. They affect the following areas:

— labor rights (FIFA employs several hundred people; in addition, the labor rights of workers engaged by FIFA's business partners to build stadiums and infrastructure facilities, provide accommodation and food, and produce licensed goods may be affected) — FIFA declares its readiness to support and promote the highest international labor standards, in particular the principles enshrined in the eight fundamental conventions of the ILO;²⁹

— land acquisition and housing rights (land acquisitions often occur during the construction of sports infrastructure facilities intended

²⁹ International Labor Organization. Available at: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> [Accessed 08.08.2026].

for FIFA competitions or built by national associations with the FIFA funding) — FIFA encourages respect for international human rights standards when land acquisitions involve expropriation and displacement of people;

- discrimination, which was described as “a problem in the world of football both on and off the pitch” — FIFA strives to create an environment free from discrimination in accordance with Art. 4 of its Statutes, which, since April 2016, has reproduced the expanded list of grounds prohibiting discrimination in the Olympic Charter, including the one on the basis of sexual orientation. In addition, FIFA pays particular attention to identifying and eliminating discriminatory attitudes based on gender, promoting gender equality and preventing all forms of violence, including sexual harassment;

- ensuring the safety and security of spectators and other persons involved in or affected by FIFA sporting events that may impact fundamental human freedoms such as freedom of movement, freedom of expression and freedom of assembly;

- FIFA undertakes to engage with governments of host countries and private sector actors to ensure that any such impact is minimized and is necessary and proportionate in accordance with international security and human rights standards (during the selection of candidate countries for the 2026 FIFA World Cup, human rights provisions were included for the first time in the bilateral agreement between FIFA and the three host countries where football competitions under its auspices were planned to be held);

- the rights of players, primarily in connection with their employment and transfers (the most pressing issues are the timely payment of salaries, the fight against doping and match manipulation, combating human trafficking and respecting the rights of underage football players). Since these issues, if they are transnational, are resolved by FIFA's jurisdictional bodies without recourse to national courts of general jurisdiction, FIFA undertook to review existing regulations and procedures and, if necessary, implemented additional measures to eliminate the relevant risks on the recommendation of the HRAB.

FIFA's approach to human rights is based on the following four core commitments.

I — commit and embed: FIFA regards its human rights commitments as political obligations of the highest level and undertakes to implement them within all its bodies and among its member associations. To this end, FIFA will establish the necessary internal structures and initiate the necessary processes under the leadership of the FIFA Secretary General and will adapt its codes, guidelines and guiding principles in accordance with this policy (Para. 9);

II — identify and address: FIFA continuously identifies potential and actual situations of adverse human rights impacts related to its activities and addresses such risks through adequate prevention and mitigation measures. As a part of these efforts, FIFA includes risks to people in its risk assessments and identifies the most significant risks, and requires the same approach from organizations mandated to organize FIFA-sponsored competitions: confederations, national associations, business partners and other organizations in the supply chain in their interactions with FIFA. FIFA reflects its commitment to human rights in its requirements for the selection of countries hosting FIFA competitions, in particular by including a provision on the principles of the "FIFA Human Rights Policy" in such requirements and by defining and implementing specific action plans (Para. 10);

III — protect and remedy: FIFA will respect and will not interfere with the activities of human rights defenders who raise concerns about adverse human rights impacts and members of the media covering events organized under the auspices of FIFA and will take measures to protect their rights. FIFA will require parties organizing competitions under the auspices of FIFA to establish competent and independent bodies to deal with possible complaints of human rights violations in consultation with FIFA and, in particular, its Governance Committee. Such bodies must meet the effectiveness criteria listed in Para. 31 of the UNGPs: legitimacy, accessibility, predictability, fairness, transparency, compliance with international human rights law, etc. (Para. 11);

IV — engage and communicate: FIFA will engage with all stakeholders and the general public and inform them of its efforts to ensure respect for human rights. FIFA will engage constructively with the Hu-

man Rights Advisory Council and consult with stakeholders, including groups and individuals whose rights may be affected (Para. 12).

In the period from 2017 to 2021, a specific structural unit known as the Human Rights Advisory Board functioned within the institutional framework of FIFA in order to monitor compliance with the FIFA Human Rights Policy. It included eight experts representing UN agencies, trade unions and other public organizations, academic circles and FIFA sponsors. The Advisory Board reviewed the current state of affairs and made recommendations on what the organization should do to implement its human rights obligations more effectively. It produced five reports, the last of which was published in February, 2021.³⁰ The mandate of the HRAB expired in March 2021, after which FIFA moved to using internal and specialized advisory groups (for example, on matters related to the preparation and staging of the 2026 World Cup) (Duval, 2023).

The cessation of the Advisory Board's activities is regrettable, and it was criticized by human rights groups who called on FIFA to re-establish it on a permanent basis.³¹ Suggestions of the academic community also include using disciplinary procedures and sanctions more effectively to align them with FIFA's human rights commitments (in particular, strengthening accountability of the World Cup hosts and other FIFA's business associates in the situations when human rights are at risk); vesting FIFA's Ethics Committee with a broader mandate to address human rights complaints; allowing affected third-parties to challenge FIFA's decisions on human rights grounds at the Court of Arbitration for Sport (Duval and Heerdt, 2019).

III.2. FIFA's Experience in the Field of Human Rights: Identifying Problems and Finding Solutions

The FIFA HRAB has, in its reports, identified systemic problems in FIFA's activities that affect human rights and urgently require res-

³⁰ Fédération Internationale de Football Association. Available at: <https://img.fifa.com/image/upload/pyume2cahuue2szxgiwq.pdf> [Accessed 09.08.2026].

³¹ Sport & Rights Alliance. 06.08.2026. Available at: <https://sportandrightsalliance.org/fifa-governance-crisis-reveals-urgent-need-for-rights-reform/> [Accessed 09.08.2026].

olution. One of these systemic problems is discrimination, including gender discrimination. Back In 2014, at the 64th FIFA Congress in Sao Paolo, Brazil, one of the 10 key principles for the development of women's football was the idea that football is a powerful tool for empowering women to realize their potential in sport and society; no woman should be discriminated against, violated, or diminished in her rights because of her gender, and football will be a global leader in spreading this message. These provisions, as well as the call for more equitable representation of women in the governing bodies of football organizations at all levels, are set out in more detail in the FIFA Women's Football Strategy of 17 September 2018.³²

During its activities from 2017 to 2021, among the pressing issues that required the organization's urgent attention in the area of women's rights, the HRAB repeatedly pointed out to human rights violations in women's football (in particular, the inadmissibility of sexual harassment in Afghan women's football)³³ and the continued ban on women attending football matches in Iran. In this regard, the HRAB called on FIFA to use all possible levers of influence on the Islamic Republic of Iran Football Federation to ensure its compliance with the FIFA Statutes, namely Art. 3 ("Human Rights") and Art. 4 ("Prohibition of Discrimination, Equality and Neutrality") — the ban on women attending

³² Fédération Internationale de Football Association. Available at: <https://resources.fifa.com/image/upload/women-s-football-strategy.pdf?cloudid=z7w21ghir8jb9tgubvcq> [Accessed 08.08.2026].

³³ A group of female athletes who were members of the Afghan national team accused officials of the Afghan Football Federation of sexual harassment during the period between 2013 and 2018. 8 June 2019 the FIFA Ethics Committee found in its decision violations of Art. 23 (protection of physical and mental integrity) and Art. 25 (abuse of office) of the FIFA Code of Ethics in the actions of the former President of the Afghan Football Federation Keramuudin Karim, banned him for life from all football-related activities at national and international level and imposed a fine of 1 million Swiss francs — see the Decision of the FIFA Ethic Committee at: <https://resources.fifa.com/image/upload/ac-12-2019-8-06-2019-keramuudin-karim.pdf?cloudid=fryqw5hiyifbaxva6nwd> [Accessed 08.08.2026]. K. Karim filed an appeal to the Court of Arbitration for Sport in Lausanne (CAS), which CAS rejected on 14 July, 2020, upholding the decision of the FIFA Ethics Committee — see CAS 2019/A/6388 Karim Keramuddin v. FIFA. Arbitral award. 14 July 2020. Court of Arbitration for Sport. Available at: https://www.tas-cas.org/fileadmin/user_upload/Award_Final_6388.pdf [Accessed 08.08.2026].

sports matches involving men's football teams in Iran, although relaxed in October 2019, was not completely lifted.

Another systemic problem the HRAB considered was the violation of workers' rights by FIFA's business partners during the construction of stadiums, hotels, other infrastructure facilities, the production of licensed goods, etc. In preparation for the 2022 FIFA World Cup the HRAB welcomed the results of its engagement with the Qatari Supreme Committee for the Delivery and Legacy of the 2022 FIFA World Cup. According to experts, through the preparation and hosting of the FIFA World Cup, FIFA had a significant impact on improving the working conditions of a large number of migrant workers arriving in Qatar from Muslim countries in the Middle East. On 16 October 2019, the Qatari government made an official statement announcing the complete abolition of the *kafala* system,³⁴ which raised concerns among human rights organizations and academics,³⁵ as well as members of the FIFA HRAB,³⁶ and the introduction of a minimum wage on a non-discriminatory basis — this decision was the result of a study carried out jointly by the ILO and the Ministry of Development, Labor and Social Affairs of Qatar.³⁷

³⁴ The *kafala* (sponsorship) system emerged in the 1950s to regulate relations between employers and migrant workers in the Gulf States (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), as well as in Jordan and Lebanon. Under this system, a migrant worker is linked to a specific employer, or sponsor (*kafil*), for the duration of the contract. A *kafil* provides sponsorship to a foreign worker, but the worker cannot enter the country, change jobs, or leave the country without receiving written permission from the *kafil*. Quite often, the *kafil* exercises other control over the employee, depriving him of his passport and travel documents. See more details: Reform of the Kafala (Sponsorship) System. International Labor Organization, <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf> [Accessed 09.08.2026].

³⁵ Ruggie, J. For the Game. For the World. P. 4. See also Jerabek, M.M., Ferreira de Andrade, A.M. and Figueroa, A.M. FIFA's Hegemony: Examples from World Cup Hosting Countries. *Global Society*. 2017. Vol. 31. Issue 3. P. 418, doi: 10.1080/13600826.2016.1261807 [Accessed 09.08.2026].

³⁶ Recommendations R66-R71. Third report by the FIFA Human Rights Advisory Board, May 2019, p. 10. Available at: <https://resources.fifa.com/image/upload/third-report-by-the-fifa-human-rights-advisory-board.pdf?cloudid=sxdtbmx6wczrmwlk9rcr> [Accessed 09.08.2026].

³⁷ International Labor Organization. Available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_724052/lang--en/index.htm [Accessed 09.08.2026].

The FIFA HRAB also called for the establishment of new human rights responsibilities in the work of the FIFA Council, its Management Committee, its standing and independent committees, for the inclusion of human rights obligations in the statutes of national football associations, and for raising awareness among confederations in this area.³⁸ Following the Advisory Board's cessation of activities in 2021, FIFA continued to identify existing human rights issues within its areas of responsibility and in the activities of its business partners, guided by its commitments set out in the 2017 Human Rights Policy.

III.3. FIFA World Cup 2026 Sustainability and Human Rights Strategy of 2024

Before staging the 2026 FIFA World Cup, FIFA in cooperation with stakeholders — local authorities, public organizations, trade unions developed in December 2024 the Strategy for Sustainable Development and Human Rights, which outlined key objectives for FIFA in general and the host cities in particular. The strategy was aimed at minimizing the negative impacts of the World Cup on society and the environment, enhancing the positive impact of the World Cup and creating a long-term legacy. The strategy includes social, environmental, economic, and management aspects. It covers three stages of the FIFA World Cup: its preparation, its staging and events that take place after its closing, up to the publication of the final report on sustainable development and human rights.

For the first time FIFA was guided by human rights requirements integrated into the bidding and selection processes for the 2026 World Cup — requirements for the absence of which FIFA faced criticism prior to the 2006, 2010, 2018 and 2022 World Cups (Rietiker, 2022, p. 39). These requirements were also set out in the hosting arrangement be-

³⁸ FIFA Human Rights Advisory Board, Fourth Report by the FIFA Human Rights Advisory Board, January 2020, Recommendation R79, p. 12. Available at: https://media.business-humanrights.org/media/documents/files/FIFA_HRAB_Fourth_Report_Feb2020_Final_O.pdf [Accessed 09.08.2026]; see also FIFA Human Rights Advisory Board, Fifth Report by the FIFA Human Rights Advisory Board, February 2021, p. 19 (reaffirming Recommendation R79). Available at: <https://media.business-humanrights.org/media/documents/vforeieiz1fho6ld4a36.pdf> [Accessed 09.08.2026].

tween three member associations and FIFA for the 2026 FIFA World Cup. Prior to that, Canada, Mexico, and the United States submitted a joint proposal on human rights — the 2026 Proposal for a United Human Rights Strategy. During the host city selection process from 2019 to 2021 each of the 16 cities planned to host the matches prepared two independent plans, a Host City Environmental Plan and a Host City Human Rights Action Plan.

Host cities were required to develop and implement their own environmental management plan to meet FIFA's environmental requirements. In addition, it was necessary to demonstrate how the hosting of the World Cup could be used to accelerate the planning and implementation of specific environmental projects at the local level. Host cities could work across different thematic areas or focus on several of them, depending on previously established national and local priorities and available infrastructure. The host cities were also required to develop a human rights action plan in cooperation with civil society organizations. In this process they were expected to build on the initial plans developed previously during the host city selection process.³⁹

In the run-up to the 2026 FIFA World Cup the 2024 FIFA Human Rights Framework 2024 was also adopted.⁴⁰ It reiterated that the document is based on the 2011 United Nations Guiding Principles on Business and Human Rights and the 2017 FIFA Human Rights Policy, as well as international human rights standards developed by the UN, the ILO and the OECD. After reviewing the submissions from the host city committees, the document's developers focused on three key areas requiring priority attention: *inclusion and safeguarding, workers' rights, and access to remedies*.

The first area of activity was *inclusion and safeguarding*. It concerned the rights of players, officials, employees, volunteers, spectators, community members, and other groups who could be at increased risk of negative impact. Vulnerable groups under international law include indigenous peoples, women, national or racial, ethnic, religious and

³⁹ Available at: <https://inside.fifa.com/tournament-organisation/world-cup-2026-sustainability-strategy/strategy> [Accessed 10.08.2026].

⁴⁰ Available at: https://digitalhub.fifa.com/m/494d934f7de1bad/original/FWC26-Human-Rights-Framework_Final_EN_24-July-2024.pdf [Accessed 10.08.2026].

linguistic minorities, children, persons with disabilities, immigrants, migrant workers and their families, human rights defenders, journalists and other media workers, sexual minorities, refugees and asylum seekers.

The FIFA 2024 Framework Document prohibits any discriminatory conduct or practice in connection with the staging of the FIFA World Cup (in particular, the creation of barriers to equal participation and equal access to public services and World Cup-related events, the negative impact on livelihoods, the creation of unsafe housing and short-term rental conditions); calls for the prevention of all forms of violence and abuse, in particular against children (through the development of missing child protocols, the identification, prevention and remediation of human trafficking, sexual abuse of children and other sexual assaults); strives to ensure compliance with security measures at stadiums in cooperation with law enforcement agencies, security personnel, including private security; proclaims the right to peaceful assembly, the right to freedom of opinion and expression, as well as the right to freedom of the press (with particular attention to the rights of human rights defenders, journalists and other media workers); uses the principles of universal design and reasonable accommodation, first formulated in the 2006 Convention on the Rights of Persons with Disabilities (compliance with national and local regulations, as well as FIFA documents regarding accessibility standards at match venues); calls for the adoption of measures to protect the environment, prevent and mitigate the consequences of environmental degradation and its impact on human rights.

Regarding the second problem area — *workers' rights* — FIFA's Human Rights Framework calls to focus on priorities such as the elimination of discrimination against workers in payment, hiring, and promotion; ensuring decent working conditions (provision of housing, equal pay for work of equal value, in accordance with the recommendations set out in the 2024 ILO Expert Report on Wage Policy, including a Living Wage,⁴¹ creation of healthy and safe working conditions); respect for the right to rest and limits on daily and weekly working

⁴¹ International Labor Organization. Report of the Meeting of Experts on wage policies, including living wages. 19–23 February 2024. Available at: <https://www.ilo.org/public/eng/mediacentre/press/2024/02/20240224-01.htm>

hours, adequate payment for overtime); respect for the right to freedom of association and the right of workers or their representatives to collective bargaining with employers); protection from physical, emotional and psychological violence, exploitation, discrimination, abuse in the workplace, including violence and harassment based on gender or sexual orientation; prohibition of forced labor, trafficking in persons for the purpose of exploitative labor, as well as child labor in accordance with the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 1999 (Art. 3, in particular, contains a list of prohibited forms of child labor)⁴² and the ILO Convention No. 138 on the Minimum Age for Admission to Employment (in particular, in accordance with Art. 1 and 2.3, no one under 15 years of age had the right to perform work for the World Cup, Art. 3.1 obliged states parties to the Convention not to allow adolescents under 18 years of age to perform work that could harm their health, safety or morals⁴³); respect for the rights of migrant workers and members of their families (their access to information and legal assistance in a language they understand, as well as the prohibition of economic coercion; ensuring equal employment opportunities for underserved communities and individuals facing barriers to employment, without discrimination; contracting practices that ensure that goods, services and construction work related to the staging of the World Cup are purchased from contractors that demonstrate a commitment to human rights and environmental protection.

With regard to the third area requiring attention — *ensuring effective access to remedies* — the FIFA Human Rights Framework points to the need for complaint mechanisms and redress procedures to ensure that human rights issues are addressed effectively and appropriately.

ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_915989.pdf [Accessed 10.08.2026].

⁴² International Labor Organization. Convention on Worst Forms of Child Labour Convention. 1999 (No. 182). Available at: https://normlex.ilo.org/dyn/nrm-lx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 [Accessed 10.08.2026].

⁴³ International Labor Organization. Minimum Age Convention. 1973 (No. 138). Available at: https://normlex.ilo.org/dyn/nrm-lx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 [Accessed 10.08.2026].

The emphasis is placed on ensuring proper interaction between state judicial and non-judicial mechanisms and the internal complaints mechanism provided by the World Cup Local Organizing Committee and the organizing committees of the host cities, in particular. It also points out to the need to take into account the traumatic experience of those filing complaints and the accessibility of mechanisms and procedures for resolution for them in terms of the language. Particular attention was recommended to be paid to protecting the rights of persons with disabilities and the rights of migrant workers (in particular, the latter risk facing the threat of retaliatory measures, including deportation and blacklisting).

IV. From Regulatory Compliance to Human Rights Due Diligence: Strengthening FIFA's Governance through Its Confederations (the Case of CONMEBOL)

FIFA's commitment to the UNGPs, formalized through the 2016 amendment of Art. 3 of its Statutes and the 2017 Human Rights Policy, is expressly framed as extending to "entities affiliated with FIFA or acting under its auspices,"⁴⁴ including six regional confederations: UEFA (Union of European Football Associations), CONMEBOL, CONCACAF (Confederation of North, Central America and Caribbean Association Football), CAF (African Football Confederation), AFC (Asian Football Confederation), and OFC (Oceania Football Confederation). In practice, however, this extension has remained largely declaratory.

Now, neither CONMEBOL nor CONCACAF, nor a single one of the 146 CONMEBOL first-division clubs surveyed has adopted a human rights policy meeting the standard of Principle 16 of the UNGPs (in more detail, see Gómez et al., 2021, p. 11). Notwithstanding this, FIFA's Statutes require confederations to accept CAS jurisdiction and to comply with its disciplinary regime (Art. 24, 57–59),⁴⁵ yet impose

⁴⁴ FIFA Statutes (2022/2024 eds), Art. 3 of the FIFA Statutes and Art. 23 of the FIFA Code of Ethics.

⁴⁵ FIFA. (2024). FIFA Statutes: Statutes, Standing Orders of the Congress, General Provisions. Fédération Internationale de Football Association, Art. 24, 57–59.

no equivalent, enforceable obligation to adopt a human rights policy or to operate a HRDD process of their own.⁴⁶ The consequence is a governance gap between FIFA's own institutional commitment and the practice of the confederations, which is precisely where most football-related human rights impacts actually materialize.

In cases where confederations have taken action, their responses — outlined in their disciplinary regulations — remain reactive, driven by specific incidents and focused on sanctions rather than prevention. In this regard, CONMEBOL's response to discriminatory chants and racist incidents illustrates this pattern. A clear example occurred in the 2022 River Plate — Fortaleza match when CONMEBOL raised the minimum fine for discriminatory conduct to USD 100,000,⁴⁷ however, several of those same Argentine clubs have been repeatedly sanctioned to this day. Another example is the violent incidents provoked between fans of different teams who attend stadiums to watch international tournaments — the Copa Sudamericana and Copa Libertadores — as well as the excessive use of force and repression by security forces against the visiting teams' supporters. A clear example of this, unfortunately, occurred in August 2025 during the match between Independiente de Avellaneda (Arg) and Universidad de Chile (Chi),⁴⁸ as well as during the South American World Cup qualifiers between the Argentinian na-

⁴⁶ Human Rights Watch (2023). FIFA Statutory Human Rights Requirements: Overview of UN Guiding Principles Commitments, Relevant FIFA Statutes and Structures, and Human Rights Bidding Requirements for the FIFA Men's World Cups, 27 October 2023, noting that FIFA's Statutes and Human Rights Policy bind FIFA itself, but do not impose an equivalent, directly enforceable obligation on its member confederations. Available at: <https://www.hrw.org/news/2023/10/27/fifa-statutory-human-rights-requirements> [Accessed 06.08.2026].

⁴⁷ CONMEBOL Disciplinary Code. Available at: <https://www.conmebol.com/wp-content/uploads/documents/codigo-disciplinario-conmebol-2021.pdf>.

⁴⁸ Infobae Sports Center, "Massacre in Avellaneda" and "outbreak of violence": the European media's reaction following the incidents at the Independiente vs U de Chile match on 21 August 2025. Available at: <https://www.infobae.com/deportes/2025/08/21/masacre-enavellaneda-y-estallido-de-violencia-la-reaccion-de-los-medios-en-europa-tras-los-incidentes-en-independiente-u-de-chile/https://www.marca.com/otros-deportes/2021/05/23/60aa0fe2ca474185098b459a.html> [Accessed 10.08.2026].

tional team and the Brazilian national team at Maracanã Stadium in November 2023.⁴⁹

The recurrence of such conduct indicates that a disciplinary response calibrated after the fact, however severe, does not substitute for the preventive, risk-based architecture the UNGPs require — namely, identifying foreseeable risks, assigning responsibility to the appropriate institutional level, and monitoring the effectiveness of preventive measures before harm occurs (Principles 17–20).⁵⁰

This section argues that FIFA's own due diligence, as clarified in the 2016 recommendations elaborated by Ruggie,⁵¹ cannot be considered complete while it excludes systematic oversight of the governance bodies through which it operates in every region of the world. The key point is that, just as FIFA requires confederations to apply its disciplinary and refereeing standards as a condition of membership, it should likewise require, as a parallel governance condition, that each confederation should adopt a public human rights policy and implement an HRDD process proportionate to its size and risk profile — extending inward, into its own structure, the concept of “leverage” that Principle 19 of the UNGPs already requires FIFA to exercise over its external business relationships.

⁴⁹ BBS, World News. The disturbances at the Maracanã that led Messi to lead the Argentine national team players off the field. Available at: <https://www.bbc.com/mundo/articles/c99edzd5z1ro> [Accessed 10.08.2026].

⁵⁰ According to the Commentary on Principle 17, “The human rights due diligence process should be initiated as early as possible when a new activity is undertaken or a business relationship is established, since risks to human rights can be mitigated or exacerbated as early as the stage of drafting contracts or other agreements, and such risks may also be inherited through mergers or acquisitions.”

According to the commentary on Principle 18, “The first step in the human rights due diligence process is to identify and assess the nature of current and potential adverse human rights impacts in which a business may be involved. The objective is to understand the specific impacts on specific individuals in a specific operational context.”

The commentaries on Guiding Principle 19 state that “There are situations in which the company lacks the influence to prevent or mitigate adverse impacts and is unable to increase its influence. In such cases, it should consider terminating the relationship, taking into account a reasonable assessment of the adverse impacts that such a decision may have on the human rights situation.”

See: United Nations General Assembly, Res.17/4 (2011).

⁵¹ Ruggie, J.G. (2016). *For the Game. For the World.*

In this sense, for Latin America in particular, where the empirical basis of this section is strongest, such a requirement would represent a decisive shift. Ideally, this would mean moving from a model in which human rights protection depends on *ad hoc* departments created by individual clubs — Racing, River Plate, Platense and a few others, none equivalent to a UNGP-compliant policy — toward a systematic, confederation-wide framework aligned with international standards.

To achieve this, it would be necessary to establish the bodies needed to guarantee the confederations' commitment to the UNGPs and their implementation at the regional level. Likewise, incorporating HRDD as a FIFA governance requirement for CONMEBOL and its peer confederations would not impose a new burden on football governance, on the contrary, it would close the most significant gap currently separating FIFA's declared commitment to the UN Guiding Principles from its actual capacity to prevent — rather than merely sanction — human rights abuses in global football.

V. Discussion

The preceding sections show that the international framework governing business and human rights in football has matured considerably since 2011, yet its practical effectiveness remains uneven across the three levels examined in this article — the architecture of the UNGPs themselves, FIFA's internal machinery, and the governance of its confederations. At the normative level, the UNGPs' chief strength — their status as a voluntary, universally endorsed “common reference point” — is also their principal limitation. Since Principle 16 carries no enforcement mechanism of its own, its translation into practice depends on each addressee's institutional will, a pattern visible in the gap between FIFA's own uptake of HRDD and confederations' continued reliance on disciplinary sanctions imposed *post factum*.

Scholars have described FIFA's practice of defining its own human rights obligations through its Statutes and Policy, rather than through an external and judicially enforceable framework, as a form of “self-constitutionalisation” that leaves FIFA in ultimate control over both

the content and the pace of implementation of its own commitments (Bützler and Schöddert, 2020, p. 53). The disbandment of the Human Rights Advisory Board in 2021 illustrates this dynamic: an external, independent body that had issued nearly 90 recommendations over four years was allowed to lapse precisely when, as discussed above, it had proposed embedding human rights oversight more deeply into FIFA's own governance structures.

At the operational level, FIFA's 2017 Human Rights Policy and its 2024 Sustainability and Human Rights Framework represent a genuine advance over the purely reactive, disciplinary model that is still typical of most of the confederations, as it was demonstrated in Section IV. Yet even FIFA's own instruments were, at their origin, designed primarily around the bidding and hosting requirements for individual tournaments rather than as a standing governance obligation binding on member bodies (Heerdt, 2018, pp. 170–185), which may help to explain why their extension to CONMEBOL and other confederations has remained, as shown above, largely declaratory rather than binding.

Taken together, these findings suggest that the central obstacle to more effective human rights protection in football is not a lack of normative content — the UNGPs, FIFA's Human Rights Policy and its 2024 Strategy each set out detailed, internationally aligned standards, but a persistent accountability gap between the standards adopted and the institutional mechanisms available to enforce them once a body such as the FIFA Human Rights Advisory Board ceased to operate. This is consistent with the broader academic call for closer, sustained engagement between the sport-and-human-rights scholarship and the practice of sports governing bodies (Rook et al., 2023, pp. 1–11). Addressing this gap requires reactivating independent oversight within FIFA and extending an equivalent governance obligation to its confederations, rather than relying solely on further declarations of principle.

VI. Conclusion

The experience of the International Olympic Committee, which leads the Olympic Movement, offers a reference model in the realm of

HRDD. FIFA, which has also consistently enshrined human rights standards in its regulations and, more recently, in the agreements with the host countries on organizing the 2026 World Cup, other international sports federations as well as their sponsors and business partners, may find it useful in developing their own human rights due diligence processes.

Given that different sports face different risk profiles, resources and governance structures, transposing FIFA's approach mechanically is neither self-evident nor necessarily desirable; a comparative assessment of the risks to human rights and institutional capacities across different sports is beyond the scope of this article. However, we consider it a valuable avenue for future research. What the UNGPs do require, irrespective of these differences, is that all international sport organizations, insofar as their commercial activities bring them within the scope of the corporate responsibility to respect human rights, should undertake their own risk-appropriate due diligence. Insofar as international sports federations and their commercial partners generate the scale of economic activity and human rights impact documented throughout this article, they fall, as private actors, within the scope of the corporate responsibility to respect commitments articulated by the UNGPs — a responsibility that exists independently of, and in addition to, the human rights duties that international law imposes on States.

The next step after the development of the relevant regulatory documents should be the creation of an institutional framework for ensuring human rights in each international sports federation administering the development of Olympic sports. More specifically, representatives of the academic community continue to call on FIFA to revive the Human Rights Advisory Board and allow it to operate on a permanent and proactive basis to ensure the necessary transparency in managing human rights risks.

Just like the International Olympic Committee who pledged to assist its members — international federations and national Olympic committees — to address their own human rights responsibilities within their remit and to elaborate policies and approaches on shared human rights-related challenges (Objective 9 of the IOC Strategic Framework

on Human Rights),⁵² FIFA should urge six of its regional confederations and national football associations to include commitments to respect human rights in their statutory documents. This requirement goes back to Recommendations 1.3 and 4.5 formulated by Professor Ruggie back in 2016.⁵³ Following the normative consolidation of these provisions, the next step should be the establishment of appropriate human rights structures within six FIFA's regional confederations — UEFA, CONMEBOL, CONCACAF, CAF, AFC, OFC — managing the development of football at the regional level. The time has come to shift from a reactive crisis-management stance to a proactive approach anchored in international human rights standards.

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⁵² IOC Strategic Framework on Human Rights, objective 9, p. 37. Available at: <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Strategic-Framework-on-Human-Rights.pdf> [Accessed 10.08.2026].

⁵³ Ruggie, J.G., (2016). *For the Game. For the World*. Pp. 29, 33.

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Dismantling Jurisdictional Barriers: Empowering Direct Access to the African Court on Human and Peoples' Rights

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Abstract: Although the African Court on Human and Peoples' Rights marks a formal legal milestone, the regional human rights framework remains deeply constrained because Art. 34(6) of its Protocol narrowly limits direct individual access. The voluntary nature of the direct access declaration compounded by State pushback, selective withdrawals, and institutional inertia within the African Commission's referral framework generates structural jurisdictional obstacles that effectively exclude individual litigants and non-governmental organizations from accessing legal remedies. The paper critically analyze how jurisdictional limitations under Art. 5 and Art. 34(6) stifle public interest litigation. The paper employs a doctrinal legal methodology, conducting a rigorous exegesis through the systematic analysis of primary and secondary sources. Consequently, the core questions are: what specific State ratification patterns and Art. 34(6) declarations currently impedes individual and non-governmental organizations access to the African Court on Human and Peoples' Rights? How can institutional frameworks be redesigned to protect applicants and local actors from State retaliation after filing a case? What structural lessons can the African Court learn from the European Court of Human Rights and the Inter-American Court of Human Rights regarding standing and direct petitions? What precise

legal amendments to the protocol establishing the Court are required to make direct individual access universal and mandatory for all State parties? These core questions serve as the foundational axis of this paper, dictating the trajectory of the analysis. The paper finds that Art. 34(6) create a bottleneck, leading to severe under-utilization with only a handful of ratifying States and subsequent strategic State withdrawals. It concludes that optional direct access under Art. 34(6) of the African Court Protocol severely fragments regional justice, requiring mandatory institutional referral rules and universal State ratification to transition from a symbolic tribunal to an effective human rights remedy.

Keywords: Dismantling Jurisdictional Barriers; Empowering Direct Access; AfCHPR; Public Interest Litigation; Article 34(6) Declarations

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I. Introduction

Over the years, the persistent increase in human rights violations in the African region prompted the emergence of African Court on Human and Peoples' Rights (AfCHPR).¹ Through instrumentalities of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol), AfCHPR emerged as Continental Court (Yakaré-Oulé et al., 2019). It was endowed with the powers to complement the protective human rights mandate, roles and functions of the African Charter on Human and Peoples' Rights.² It is the African Charter on Human and Peoples' Rights (African Charter), which is regarded as a core global human rights body, empowers to protect and promotes human rights in Africa that gave rise to the establishments of the African Commission. It has statutory powers to address quasi-judicial rulings arising from communications brought before it. In a comparative analysis between African Commission and African Court, the results shows that the later makes binding judicial judgments on issues of human rights nature, while the former is noted as a mere quasi-judicial in function.

Article 16 of the Protocol on the Statute of the African Court of Justice and Human Rights provides that the Court shall have two sections: the General Affairs Section and the Human Rights Section, along with Sections on Human Rights (Naldi and White, 2010, pp. 324–343). As the name suggests, the latter hears issues bordering on Human and Peoples' rights, while the former assumes jurisdictions on other related matters. In light of this development, Rule 34(1) of the Rules of Court of the African Court on Human and Peoples' Rights (the Court's Rules of Procedure) provides that an application must specify, among other matters, the alleged violation and the evidence supporting the application. The two sections are obliged to make referrals to the joint sessions of

¹ Organization of African Unity (OAU), Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights dated 10 June 1998, adopted by the Assembly of Heads of States and Government of OAU in Ouagadougou, Burkina Faso. Upon the deposit of the 15th instrument of ratification in 2003, the Protocol entered into force on 25 January 2004.

² African Year Book, 2020.

the African Court.³ Being identical in functions and roles, their merging as one session does not create any difficulty in operation.

Procedurally, issues surrounding the African Court are wide and varied in respect to source of power, structure, roles and functions, and operational modus. The findings of the paper shows that one of the intriguing procedural characteristics of the African Court is access to justice especially as it relates to persons and non-governmental organizations (NGOs). Based on this, Article 5 of the Protocol sets out the rules governing access to the African Court. The paper further observed that, under Art. 5(1) of the Protocol, certain bodies have the right to bring actions before the Court, notably the African Commission, Member States, and African intergovernmental agencies and organizations. Under Art. 5(3) of the Protocol, individuals and NGOs with observer status before the African Commission may institute proceedings before the African Court, subject to the requirements of Art. 34(6) of the Protocol (Murray, 2019, p. 970).

Nevertheless, Article 34(6) in this sense mandates Member States to make or request Declarations on acceptance of the competences and powers of the African Court in receiving cases or matters vide Art. 5(3) of the Protocol. In practice, these provisions have been criticized as circumferential and limitative as only eight African States are in compliance with the above declaration assenting to African Court's jurisdictions. This limited acceptance has contributed to the low number of cases before the Court and may indicate States' dissatisfaction with aspects of the Court's operational framework.⁴ More concerningly, four

³ *Ekollo Moundi Alexandre v. Federal Republic of Nigeria Republic of Cameroon*, 23 September 2011, African Court on Human and Peoples' Rights, Para. 21–22. Available at: <https://www.african-court.org/cpmt/details-case/0082011> [Accessed 29.02.2025]. Note that an opinion was raised that referrals must be occasioned by reasonable criteria.

⁴ Burkina Faso ratified the African Charter on 14 July 1999 and deposited their declaration on 28 July 1998; Malawi ratified on 9 September 2008 and deposited their declaration on 9 October 2008; Ghana ratified on 9 February 2011 and deposited declaration on 10 March 2011; Tunisia ratified declaration on 2 June 2017; Gambia ratified on 23 October 2021 and deposited declaration on 3 February, 2020; Niger ratified on 28 October 2021 and deposited declaration on 7 April 2022, Guinea Bissau ratified it on 14 October 2021 and deposited declaration on 2 November 2021.

States have withdrawn their previously deposited declarations accepting the African Court's jurisdiction.⁵

The limited access created by these provisions means that, under the prevailing circumstances, only eight of the fifty-four States that are parties to the Protocol have accepted the Court's jurisdiction over cases brought by individuals and NGOs. As jurisdiction is the lifeblood of any matter before a court, this prevailing circumstance constitutes a significant obstacle to the effective delivery of justice. In this sense, it may be argued that a continental court of human rights should not face barriers that hinder access to justice, as justice must be accessible to all. Therefore, the paper's assessment of these statutory impediments considers the full implications of Art. 34(6) of the Protocol for the establishment and operation of the African Court, particularly its restrictive access framework, its limited effectiveness, and its apparent inconsistency with the enforcement of human rights across the region. This justification appears viable, yet precipitates critical questions, specifically: what specific State ratification patterns and Art. 34(6) declarations currently impede individual and non-governmental organizations access to the African Court on Human and Peoples' Rights? How can institutional frameworks be redesigned to protect applicants and local actors from State retaliation after filing a case? What structural lessons can the African Court learn from the European Court on Human Rights and the Inter-American Court of Human Rights regarding standing and direct petitions? What precise legal amendments to the protocol establishing the Court are required to make direct individual access universal and mandatory for all State parties? Resolving these fundamental questions operationalizes the primary framework of this paper.

⁵ Rwanda ratified the African Charter on 22 January 2013, deposited declaration on 6 February 2013 and withdrew on 23 February 2016; Tanzania ratified the Charter on 9 March 2021, deposited declaration on 29 March 2010, and withdrew on 14 November 2019; Cote d'Ivoire ratified the Charter on 19 June 2013, deposited declaration on 23 July 2013 and withdrew on 20 April 2020; Benin Ratified on 22 May 2014, deposited declaration on 8 February 2016 and withdrew on 24 March 2020.

II. *Locus Standi* of NGO's and Individuals on Direct Access to African Court

The powers and jurisdiction of African Court complements with the protectiveness of human rights mandates as contained in the African Commission. This assertion implies that the former reinforces, validates, and builds upon the objectives of the Charter. To this end, their complimentary status coexists independently, but on a mutual relationship (Hopkins, 2002). Under Art. 7 of the Protocol, the paper finds that the African Court is empowered to interpret and apply the provisions of the African Charter, as well as any other relevant international human rights instruments ratified by the Member States concerned. Explicating the foregoing, the African Court has double jurisdictional powers: an advisory and contentious ones.⁶

The former provides legal opinions on the interpretative or implementation status of human rights obligations. The opinions could be requested by an African Union (AU) Signatory Members, their Agencies, or Regional Agencies having institutional recognitions. It must be emphasized that the contentious jurisdictions of the regional Court touch all matters and violations of human rights as contained in the African Charter or any matter related to human rights instruments approved by Signatory Members. The Court's contentious jurisdiction is subject to two requirements: first, the State concerned must have ratified the Protocol; second, under Art. 34(6), it must have deposited a special declaration accepting the Court's jurisdiction.

On the above ratification, the Protocol states:

During the period of approval of the Protocol or some other time prescribed, an intending contracting party is obliged to declare its intentions to accept the Court's competencies to receive cases provided in Art. 5(3) of the Protocol. In this case, Court shall decline acceptance of petitions contained in Art. 5(3) that involves member States that have not made such a Declaration⁷ (Sceats, 2009; Rachovista, 2018).

⁶ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), Art. 3-4.

⁷ African Court Protocol, Art. 34(6).

Under these provisions, the Protocol empowers the African Court to hear cases brought by the Commission, State Parties, and African intergovernmental organizations, among others. Member States may also enable individuals and NGOs with observer status before the Commission to bring alleged human rights violations directly before the African Court. This may be done by depositing the declaration at the time of ratifying the Protocol or at any later date. At present, out of the 55 African nations, 54 countries have signed the African Court Protocol thereby consenting to its jurisdiction (Del Rivero Del Rivero and Sánchez Calcáneo, 2024). Thus, 12 Member States have made the declarations in line with Art. 34(6) of the Protocol (Adjobohoun, 2020). Unfortunately, four States — Tanzania, Rwanda, Cote d'Ivoire, and Benin — have withdrawn their declarations.⁸ This has reduced the number of States to eight who still allow individuals and NGOs to bring matters before the African Court. In recent years, fewer States have deposited declarations than have withdrawn them. Consequently, these withdrawals have weakened the human rights protection framework of the African Court system.

Compared with other regional human rights courts, such as the Inter-American Court of Human Rights⁹ and European Court of Human Rights,¹⁰ the African Court has a more restrictive framework of access to justice. The Organization of American States established the Inter-American Court of Human Rights similar to the African Court. The Inter-American Court of Human Rights is the judicial organ of the Inter-American Human Rights System. The Inter-American Commission of Human Rights is established under Art. 106 of the Charter of the Organization of American States. The African Court has a broader substantive mandate than the Inter-American Court of Human Rights, which may hear cases only against Organization of American States (OAS) Member States that have accepted its contentious jurisdiction.

⁸ This creates an unhealthy situation as many African States have ratified the African Court Protocol, while only eight countries NGOs and individuals are able to have direct access to it.

⁹ Inter-American Court of Human Rights website. Available at: <https://www.corteidh.or.cr/index.cfm?lang=en> [20.02.2025].

¹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and 14, European Treaty Series — No. 5, Rome, 4XL 1950, Art. 19.

Such cases must ordinarily be submitted to the Court through the Inter-American Commission on Human Rights. Accordingly, Member States and the Commission are entitled to refer contentious cases to the Court for adjudication. On the contrary, the restrictive clause in Art. 34(6) of the Protocol does not exist in the Inter-American Court of Human Rights.

Likewise, the European Court of Human Rights was established under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court is mandated to ensure the observance of the engagement carried out by the High Contracting Parties of the Convention and the Protocol.¹¹ Its jurisdiction concerns all issues relating to the interpretation and application of the Protocol and Convention. The European Convention gives power to any High Contracting Party to refer to the Court any infraction of the provisions of the Convention and any infraction of the provisions of the Convention and Protocol by any High Contracting Parties.¹² In line with international practice, the Convention provides that the Court may deal with the cases after all domestic remedies have been exhausted. However, unlike the African Court, it does not require Contracting States to deposit a separate declaration accepting the Court's jurisdiction. In order not to hinder access to justice, the European Court provides that High Contracting Parties must undertake not to hinder effective exercise of the rights of individuals and NGOs direct access to the Court.¹³ To this end, the jurisprudence of the Inter-American Court of Human Rights and European Court of Human Rights have speedier and unhindered access to justice than the African Court.

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms. Art. 33.

¹² Convention for the Protection of Human Rights and Fundamental Freedoms. Art. 34.

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms. Article 34 specifically provides that the Court may receive applications from any person, Non-Governmental Organization or group of individuals claiming to be the victim of a violation by one Contracting Party of the rights set forth in the Convention or Protocol thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

III. The Impact of Deposit of Declaration before the African Court

According to the African Commission, a declaration constitutes a State Party's express consent to the African Court's jurisdiction over applications brought by individuals and NGOs with observer status before the Commission. Depositing a declaration entails formally submitting it to the appropriate authority. This optional mechanism applies specifically to such applications under Art. 34(6) of the Protocol. Although a State may withdraw its declaration, the legal effect and timing of any withdrawal are governed by the applicable rules and the Court's jurisprudence.¹⁴ The provision clearly states that a declaration may be made at the time of ratifying the Protocol or at any later date. However, it is compulsory on the Court to refuse the hearing of cases without such declarations. On the other hand, the Protocol provides that "The Court may entitle relevant Non-governmental Organization (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Art. 34(6) of this Protocol."¹⁵

Thus, the parties cannot appear before the Court without the fulfillment or compliance with Art. 34(6) of the Protocol. To this end, the countries that have ratified the Protocol are fifty-four in number out of the fifty-five Member States of the African Charter. However, only twenty-four have ratified the Protocol. Furthermore, out of the twelve countries that have made declarations acceding to the jurisdiction of the African Court, four had withdrawn their declarations (African Court Coalition Discussions, 2002). Many countries gave their declaration in non-English Language.¹⁶ States, including those that subsequently withdrew their declarations, expressly accepted the African

¹⁴ African Court Protocol, Art. 34(6). See Gino J. Nadia and Konstantin's D. Magliveras, *The African Court of Justice and Human Rights. A Judicial Curate's Egg* [2012] (9) *International Organization Law Review* 406. Compare, Nsongurua Udombana, *An African Human Rights Court and an African Union Court! A Needful Quality or a Needless Duplication?* [2002–2003](28) (3) *Brooklyn Journal of International Law* 811–870.

¹⁵ African Court Protocol, Art. 5(3).

¹⁶ Countries such as Burkina Faso, Guinea Bissau, Tunisia, Niger, Mali, Cote d'Ivoire, and Ethiopia.

Court's jurisdiction through declarations issued in their respective national languages.¹⁷ It is therefore important to examine some of these declarations.

Gambia made a declaration of the recognition in conformity with Art. 34(6) of the Protocol establishing African Court:

WHEREAS, the Government of the Republic of Gambia did sign the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on the 9 June 1998.

AND WHEREAS, the National Assembly of the Republic of the Gambia by Resolution dated 30 June 1999 ratified the said Protocol.

NOW THEREFORE, the Government of the Republic of Gambia makes the declaration pursuant to Art. 34(6) of the Protocol accepting the competence of the Court to receive cases under Art. 5(3) of the said Protocol.¹⁸

The above declaration is succinct. It traced the country's signatory to the Protocol to the African Charter and its ratification in 1999. Though, the declaration was made in 2018, the date of its taking effect is left to the African Court to decide. The heading did not bear the country's letter head or logo, but the wordings explained the source which is Gambia and was signed by the Minister for Foreign Affairs.

Similar to Gambia's declaration, Ghana's declaration stated that the country had ratified the Protocol establishing the African Court and the Protocol to the African Charter. Ghana accepted the competence of the African Court in 2011, seven years earlier than Gambia. Unlike Gambia's declaration, Ghana's declaration was signed by the Minister of Foreign Affairs and Regional Integration. The date on which it would take effect was left to the discretion of the African Court. Several other States have made similar declarations. Malawi's instrument was not expressly titled *a declaration* and did not bear the national logo; instead, it was styled as an "Instrument of Ratification." Although it did not specify the year in which Malawi ratified the Protocol establishing

¹⁷ See the Declarations to the Protocol to the African Charter establishing the African Court made by Rwanda, Tanzania, Cote d'Ivoire and Benin.

¹⁸ It was dated 23 October 2018 and signed by the President H.E. Mr. Adama Barrow.

the African Court, it was signed by the President in 2008.¹⁹ Rwanda accepted the Court's jurisdiction in 2013 but withdrew its declaration three years later.²⁰

Article 34(6) of the Protocol establishing the African Court enables individuals and NGOs with observer status before the African Commission to bring cases directly before the Court, provided that the respondent State has deposited the required declaration accepting that jurisdiction. To achieve the foregoing, Member States must first file or deposit the required declaration accepting the jurisdiction of the Court. When not done, no NGO or individuals can bring a matter directly before the Court. They become null and void due to lack of jurisdiction.²¹ Jurisdiction is the ground norm of a case and when lacking, the Court has no option than to strike out the matter. Under Art. 34(6) of the Protocol, it is compulsory to recognize the jurisdiction of the African Court. It is imperative to note that the Member States reserves the right to withdraw the declaration at any time. Accordingly, depositing a declaration signifies a State's consent to, and acceptance of, the Court's jurisdiction. The minimal number of declarations by Member States in Africa is a pointer to the phobia of the Court's overwhelming judicial powers on the Sovereign States. Moreover, the prevalence of human rights violations across Africa may help explain why some Member States are reluctant to deposit declarations accepting the Court's jurisdiction.

Nevertheless, Article 34(6) of the Protocol establishing the African Court may hinder the development of human rights protection through judicial processes in Africa, as it restricts rather than expands direct access to the Court. An African country that has violated the rights of

¹⁹ The Declaration is two paged, dated 9 September 2008 and signed by Dr. Bingu Mutharika, the President. It is one of the oldest declarations deposited in the African Continent.

²⁰ Rwanda's declaration, though was later withdrawn, was one of the best drafted in Africa. It was dated 24 February 2016 and signed by the Minister, Louise Mushikowabo.

²¹ In case *Femi Falana v. African Commission on Human and Peoples' Rights* (on Jurisdiction) (2015) 1 AfCHPR for Nigeria to comply with Article 34(6) of the African Court Protocol to deposit declaration was upheld. Hence, the Court lacks jurisdiction. See *Michelot Yogogombaye v. The Republic of Senegal*, Application No. 001/2008.

its citizen may not be inclined to give a declaration to be tried. The fact that only eight States have deposited declarations accepting the African Court's jurisdiction over cases brought by individuals and NGOs supports this conclusion.

IV. Implication of the Withdrawal of Declaration Made in line with Article 34(6) of the Protocol to the African Charter

The withdrawals of four countries, Tanzania, Benin, Cote d'Ivoire and Rwanda of their already deposited declarations to the African Court signals a continental dissatisfaction with the workings of the Human Rights Court. The minimal number of States that have assented to the optional contentious jurisdiction of the African Court and the swift withdrawals of Art. 34(6) declarations are interpretative of the above assertion. The implication is rife and negative. The four countries that made withdrawals are examined hereunder.

A. Rwanda

The first withdrawal of declaration deposit before the African Court was made by Rwanda in 2016. Three years after submission to the jurisdiction of the African Court, it revoke the declaration recognizing the Court's powers to entertain matters brought by individuals and NGOs in line with Art. 34(6) of the Protocol (Kwibuki, 2017).²² The withdrawal was thought to be politically motivated as it was done three days before the Court's hearing in *Ingabire Victoria Umuhuza v. Rwanda*.²³ In this

²² Rwanda's Withdrawal of its Special Declaration to the African Court: Setback for the Protection of Human Rights. Available at: <https://www.fidh.org/en/regions/Africa/rwanda/joint-civil-statement-on-rwanda-s-withdrawal-of-its-articles> accessed; Rwanda Withdraws Access to African Court for Individuals and NGOs' International Justice Resource Centre Available at: <https://ijrcenter.org/2016/03/14/rwanda-withdrawal-access-to-african-court-for-individual-and-ngos/> [Accessed 24.06.2020]; See *Unmuhoza v. Rwanda* (003/2014 (2018) AfCHPR 21; Human Rights Watch. Rwanda: Events of 2017 (2018). Available at: <https://www.hrw.org/world-report/2018/country-chapter> [Accessed 14.03.2025].

²³ *Ingabire Victoria Umuhuza v. Republic of Rwanda*, Application No. 003/2014, Judgment on Merits of 24 November 2017, [2017] AfCHPR 21.

case, the applicant, a Rwandan political opposition figure, alleged that her right to a fair trial and freedom of expression had been severely violated during domestic criminal proceedings that led to her long-term imprisonment for political speech and state security offenses. Historically, Ingabire was a political juggernaut exiled for years until her return in 2010 to run for the Presidential office. Her activities did not go well with the Government who identified her ethically biased, regionally sentimental, divisive and pro genocide propagandist. Her open political lectures through her opposition group at the Genocide Memorial Center in Kigali triggered her trial, which led to her being sentenced to eight years imprisonment by the Rwandan High Court. On appeal, the Supreme Court of Rwanda increased the term to addition of seven years since this appeal subsequently met with prosecution's appeal as well.

Though the Ministry of Justice of Rwanda refuted the position that the country's withdrawal from the optional jurisdiction of the African Court has no nexus to the Ingabire's case, which they alleged was a coincidence, the stance of the Rwandan's Minister of Foreign Affairs in the withdrawal letter links both as connected.²⁴ The stand that convict gaining audience in a guise of human rights defence before the African Court against her country was odious asserts the linkage.

Although no conclusion can be certainly asserted here, the timing of the withdrawal created a correlation to the political motivated ill wind against Individuals' audiences before the African Court. In this case, the African Court ruled on its first withdrawal of the deposited

²⁴ The withdrawal dated 24 February 2016 is worded thus:

Considering that a Genocide convict is a fugitive from justice has, pursuant to the above-mentioned Declaration, secured a right to be heard by the Honourable Court, ultimately gaining a platform for-re-invention and sanitization, in the guise of defending the human rights of the Rwanda Citizens.

Considering that the Republic of Rwanda. In making the 22 January 2013 Declaration never envisaged that the kind of person described above would ever seek and be granted a platform on the basis of the said Declaration.

Considering that Rwanda has set up strong legal and judicial institutions entrusted with and capable of resolving any injustice and human rights issues.

Now therefore, the Republic of Rwanda, in exercise of its sovereign prerogative, withdraws the Declaration it made on the 22 January 2013 accepting the jurisdiction of the African Court on Human and Peoples' Rights to receive cases under Art. 5(3) of the Protocol and shall make it afresh after a comprehensive review.

declaration as provided under the Art. 34(6) of the Protocol. It is trite that Rwandan withdrawal optional declaration to the contentious jurisdiction of the African Court obviously impedes individuals and NGOs of their rights to prosecute matters against the country. That notwithstanding, the Protocol's stand is that the withdrawal must not be immediate but with due adequate and reasonable notice given. This triggered the finding in Ingabire's case that the said withdrawal failing the requirement of twelve months' notice does not affect validity of pending cases.

B. Tanzania

On 21 November 2019, Tanzania served notice of withdrawal of the declaration made under Art. 34(6) of the Protocol establishing African Court. This decision was muted during the administration of the late President John Magufuli who died in 2021. The African Union was notified by letter dated 21 November 2019. Before the withdrawal, Tanzania had close ties with the Union being host to the Courts Headquarters and have submitted several cases to it. Unlike Rwanda's withdrawal notice, which expressly stated its concerns regarding the African Court, Tanzania's notice provided only vague reasons for the withdrawal. It reads as follows: "The Government of the United Republic of Tanzania has decided to withdraw the declaration it made on the 9 March 2010, under Art. 34(6) of the Protocol on the Establishment of an African Court on Human and Peoples' Rights for review."

This decision has been reached after the Declaration has been implemented contrary to the reservations submitted by the United Republic of Tanzania when making its Declaration. Therefore, this serves as an official Notice of withdrawal by the United Republic of Tanzania.²⁵

²⁵ The withdrawal was signed by Prof. Palamagamba J.A.M. Kabudi, Minister for Foreign Affairs and East African Cooperation on 14 November 2019. The copy to African Union Commission is worded thus:

Ref: No. CHARD 133/738/01/2.

The permanent Mission of the United Republic of Tanzania to the African Union presents its compliments to the African Union Commission, Office of the Secretary General, and wishes to forward herein enclosed the United Republic of Tanzania's Notice of Withdrawal of the Declaration made under Art. 34(6) of the Protocol of the

The foregoing did not directly disclose affinity with the legion of decided cases. The meaning of contrary implementation of the reservations are not clear by the above withdrawal.

C. Benin Republic

Benin, a West African Country, is a signatory of the African Court Protocol signed in August 2014 and made its Declaration to the jurisdiction of the African Court on 8 February 2016.²⁶ Unlike Tanzania, Benin's notice of intention of withdrawal from Art. 34(6) Declaration was signed by the Minister of Justice and Legislation dated 28 April 2020. It was specific in the reasons adduced for the action. Apart from references made to the country's acronym with the African Courts rulings in Rwandan and Tanzania's cases, it made mention of its country's litany cases. It made references to African Court ruling in such cases it lacked jurisdiction to adjudicate upon. In this regard, the paper finds that the African Court's ruling in *Sébastien Germain Marie Aïkou Ajavon v. Republic of Benin*,²⁷ which directed Benin to suspend its 2020 electoral process, may have contributed to Benin's decision to withdraw its declaration. The application was brought by Ajavon, a political opponent of the then President who had previously lived in exile. In this case, the applicant, an exiled Beninese businessman and political figure, petitioned the Court following domestic criminal convictions asset seizures. The Court intervened by issuing an order requiring Benin to stay

African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, signed by H.E. Prof. Palamagamba J.A.M. Kabudi, Minister for Foreign Affairs and East African Cooperation on 14 November, 2019.

The Permanent Mission of the United Republic of Tanzania to the African Union avails this opportunity to renew to the African Union Commission, office of the Secretary General the assurances of its highest consideration.

²⁶ It was signed on 8 February 2016 by the Minister of Foreign Affairs, Aurelien A. Agbenonci. See Government de la Republique du Benin (2020), *Retrait du Benin de la CADHP — Declaration du ministre de le justice et de la Legislation*, <https://www.gouv.bi/635/retrait-benin-cadhp---declaration-ministre.Justice-legislation> [Accessed 01.03.2025].

²⁷ *Sebastian Germain Marie Eikou Ajavon v. Republic of Benin*, Application No. 013/2017, Order of Provisional Measures of 17 April 2020, AfCHPR.

its national constitutional municipal actions and postpone its scheduled 2020 local elections, a move the government viewed as a direct violation of its state sovereignty.

D. Cote D'Ivoire

The decision of withdrawal from the Declaration made as contained in Art. 34(6) of the African Court Protocol came the same day Benin announced theirs on 28 April 2020. The Country ratified the African Court Protocol in March 2005 and made its withdrawal of the already deposited declaration assenting to the jurisdiction of the African Court in July 2013. A combination of dissatisfactions with the African Court's decisions in *Actions Pour La Protection des Droits de L'Homme v. Cote d'Ivoire*²⁸ where civil groups successfully argued that the state's independent electoral commission was structurally imbalanced and unconstitutional, leading the Court to order the government to reform its electoral statutes and *Guillaume Kigbafori Suro and Others v. Cote d'Ivoire*²⁹ where the Court ordered the state to halt an international arrest warrant and domestic prosecution against a former Prime Minister and junta leader. In the former, the African Court ordered Cote d'Ivoire to amend its electoral laws, while in the latter the State was ordered to stay execution on the arrest and detention procedures against Guillaume. The withdrawal occurred one week after the Court issued the above order in favor of the applicant, a former junta leader who had been convicted in absentia and sentenced to 20 years' imprisonment. Cote d'Ivoire's reason for the withdrawal centers on the African Court's judgment that impeded and erode its sovereignty and national judicial process.

It is important to note that, under Art. 34(6) of the Protocol, the deposit of a declaration constitutes a State's acceptance of the Court's jurisdiction over applications brought by individuals and NGOs with observer status before the African Commission. Although the declara-

²⁸ *Actions Pour la Protection des Droits de L'Homme (APDH) v. Republic of Cote d'Ivoire*, Application No. 001/2014, Judgment of 18 November 2016, AfCHPR.

²⁹ *Guillaume Kigbafori Soro and Others v. Republic of Cote d'Ivoire*, Application No. 012/2020, Order of Provisional Measures of 22 May 2020, AfCHPR.

tion is optional for States, it is a mandatory prerequisite for such direct access to the Court. The Protocol also prescribes the categories of cases within the Court's jurisdiction. The declaration of acceptance of the Court is facultative unilateral engagements (Daly and Wubush, 2018).³⁰ Thus, it creates an obligation upon the States making same also to renege or withdraw. Strictly speaking, it cannot be revoked arbitrary as the terms therein are binding. Hence, adequate and reasonable notice are required to do so. Moreover, the reason for such withdrawal must be stated.

It has been ruled by the International Court of Justice that the withdrawal of such declarations requires reasonable time for it to take effect.³¹ It is trite to note that withdrawal of optional declaration as evidenced by the Protocol establishing the African Court does not contemplate the denunciation of the African Charter itself.³² The African Charter does not contemplate denunciation clause. Hence, the withdrawal is not a denunciation of the Protocol in its entirety. To this end, the withdrawal makes the membership of States stand as a mere formality in compliance with the ratification of the Protocol to the African Charter with no intention of allowing the Court to have jurisdiction on direct access. To this end, Tanzania, Rwanda, Cote d'Ivoire and Benin have refuted the court's direct jurisdiction to its sovereign territory by submitting withdrawal of declarations. The worst is Tanzania that hosts the Headquarters of the African Court.

³⁰ The Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), jurisdiction and admissibility, judgment dated 26 November 1984, ICJ Collection 1984, 418, Para. 59; Fisheries Jurisdiction cases (Spain v. Canada) Jurisdiction of the Court, Judgment of 4 December 1998, ICJ Collection 1998. 456, Para. 54.

³¹ Compare Vienna Convention, Art. 56(2) which prescribed 12 months duration.

³² Three Conventions adopted by African States in the Field of Human Rights that contain denunciation clauses are: the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 (Art. 13), the African Union Convention on Preventing and Combating Corruption of July 2013 (Art. 26) and the Convention for Protection and Assistance of Internally Displaced Persons in Africa of 23 October 2009 (Art. 19). In contrast, the African Charter on the Rights and Welfare of the Child of 1 July 1990, the Protocol to the African Charter on the Rights of Woman in Africa of 1 July 2003, and the Africa Charter on Democracy, Elections and Governance of 30 January 2007 did not have such clauses.

A grave implication of the withdrawals of Member States declarations as contained in Art. 34(6) of the Protocol is that it is a gear to the famishing functional powers of African Court. The Court is to complement with the role along with the powers of African Commission in the protection of fundamental rights across the continent. The effectiveness and efficiency of the Court is eroded with such denials of individuals and NGOs direct access to the African Court due to withdrawals of declarations already deposited.

V. Challenges to the Applications of Article 34(6) of the Protocol to the African Charter on Direct Access to the African Court

Unarguably, African Court are faced with several challenges amongst the International Human Rights Courts. Among other regional Tribunals, it has the largest conglomeration of countries and population within its jurisdiction. However, the long history of violations of human rights stands as a clog to the operation of the Court. This is because Art. 34(6) of the Protocol creating the Court enjoined State parties to deposit declaration of submission to its jurisdiction as it relates to direct access by NGOs and individuals. This provision vis a vis its practicability in gun shot on the legs of human rights development, as it is broad light negation of access to justice. Some African countries withdrew the declarations they had previously made due to their apprehension about the foregoing procedure and their irritation at the Court's rulings, which they claimed violated state sovereignty. This requirement may make States cautious about accepting the Court's jurisdiction. The resulting challenges are discussed below:

V.1. Challenges of the Locus Standing of NGOs and Persons Direct Access to African Court

Notwithstanding the overwhelming contributions of NGOs and aggrieved individuals in the success stories of human rights enforcement of the African Commission in recent years, their lack of direct access to the African Court has been a bitter experience. For NGOs with ob-

server status with African Commission and individuals to have direct access with the Court under Art. 5(3) of the Protocol, State Parties are enjoined mandatorily make a declaration consenting to the jurisdiction of the Court in line with Art. 34(6) of the Protocol. Regrettably, African States that are full of human rights breaches, may not want to accent to such declaration that would allow individuals sue them directly.³³ The provision is restrictive in nature as it stifles public interest litigation and promotions of issues of human rights violations. The effect of this is that in case no declaration was deposited by a Member State, NGOs and individuals are left with the options of submitting their complaints first to the African Commission. To this end, Art. 34(6) cripples the growth of the volume of matters that come to the court or likely to come in future.

In July 2024, the African Court received up to 316 cases from individuals which failed due to lack of jurisdiction. The importance of direct access to the African Court through individuals could be explained by checking the data of cases brought before the court. Hence, it could be concluded that lack of direct access to the African Court cripples the regional human rights system, since the statistics of the cases before the African Court shows that there are more cases of direct access of individuals.³⁴ It is on record that out of 342 contentious matters handled by the African Court, 316 came from individuals, 22 from NGOs and 3 from the African Commission, and one from a State Party.³⁵ Thus, it is clear that direct access of individuals and NGOs to African Court is requisite for the effective and good applications of human rights system in the continent. The denial of the above strangulates the court's mission and functionality.

³³ *Matter of Ingabire Victarie Umuhoza v. Republic of Rwanda*, AfCHPR, Application 003/2014, and Individual Opinion of Judge Fatsah Ouguergouz at p. 10, Para. 35.

³⁴ For the analysis, see <https://www.african-court.org/cpmt/statistics> [Accessed 02.03.2025]. See Apollin Kougue Zouapet, From "Puzzling" to Comprehensible and Efficient Reform Proposals to the African Human Rights Framework Through a "System" Lens [2023] (23) *African Human Rights Journal*, 1–5.

³⁵ Note that on 18 July 2024, only *Democratic Republic of the Congo v. Republic of Rwanda*, AfCHPR, App. 007/2023, has been received by the Court from a State Party.

V.2. Lack of Political Will of African Governments in support of the African Court

After many years of coming into force by the African Court Protocol, questions are rife on whether the African leaders are truly inclined to give approval and submit to the jurisdiction of the court. Many Member States have not deposited the compulsory declaration to allow their nationals and NGOs quick access to the Court to scintillate their rights. More concerning is the increasing number of Member States withdrawing declarations that they had previously deposited with the Court. This action pushes the functionality of the Court to bleak. To this end, the direct access to the court as well as withdrawals of declarations could be looked as pointers to denial of the human rights of the people. It obviously threatens court's inherent powers to maintain people's human rights. On this note, failed States vis-a-vis bad leadership and governance dread the powers of the African Court.

V.3. Withdrawal of Declarations Made to the African Court by Member States

Some African States have expressed concern that direct access to the African Court for individuals and NGOs may encroach on their sovereignty. Many State Parties have exercised their rights to withdraw declarations giving individuals and NGOs quick accessibility to institute actions against them, the reason being that such declarations are optional and can be withdrawn at any time with effect from 12 months duration. However, it must not be politically motivated. This is evident in the Rwandan withdrawal reason and motive in 2013 that is alleged to have been triggered by the decision of the African Court in *Ingabire Victoire Umuhoza v. Republic of Rwanda* (Viljoen, 2012). Rwanda was indicted by the Court on the imprisonment of the applicant for genocide which the later contested to be unfairly carried out. Worst is the withdrawal of Tanzania that hosts the Court's headquarters. The withdrawal of the country's declaration was attributed to the many judgments against the State it termed unjust. The same is attributable to Rwanda and Cote d'Ivoire's withdrawals of their declaration to the Af-

rican Court. Strictly speaking, since the creation of the Court in 2006, the direct access to the Court remains a good source to the Court's procedural jurisdiction. It has adverse effects, as it has left only eight declarations by Member States.

On case-by-case analysis, Tanzania through the case of *Ghati Mwita v. Tanzania*³⁶ in 2020, the African Court ruled that the withdrawal of declaration was valid. In this case, an individual applicant sued Tanzania over arbitrary deprivation of property and lack of fair domestic judicial remedy. The Court used this opportunity to reaffirm its procedural jurisprudence, holding that while Tanzania's withdrawal of its Art. 34(6) declaration was fully valid, it could not apply retroactively to strip the Court of jurisdiction over cases already filed before the official notice took effect. Benin's ruling came through the interim measure ruling in *Houngue Eric Noudehouenou v. Benin*,³⁷ where an applicant sought emergency provisional orders to protect political assembly rights. The Court reiterated that pending processes remain protected despite an active declaration withdrawal phase, while Cote d'Ivoire was through the ruling in *Sur Bi Gohore Emile and Others v. Cote d'Ivoire*³⁸ in 2020.

The African Court has developed a consistent body of jurisprudence on the withdrawal of Art. 34(6) declarations, beginning with its decision in *Ingabire v. Rwanda*. The Court ruled in Para. 59 of the case that Rwanda's revocation under the African Charter and International Law is legal and valid. The same is applicable to other cases of notice of withdrawals. A perusal at the reasons for the withdrawals portend dissatisfaction with the rulings or judgments of the Court as it concerns the sovereignty of the State. For example, Rwanda's withdrawal notice expressed concern that the Court had heard an application brought by an individual whom it described as a fugitive and a genocide suspect. Such withdrawals may undermine the Court's effectiveness in enforcing human rights, particularly by restricting access to its jurisdiction.

³⁶ *Ghati Mwita v. United Republic of Tanzania*, Application No. 012/2019, Judgment on Jurisdiction of 2020, AfCHPR.

³⁷ *Houngue Eric Noudehouenou v. Republic of Benin*, Application No. 003/2020, Order on Provisional Measures of 5 May 2020, AfCHPR, Para. 4–5.

³⁸ *Suy Bi Gohore Emile and Others v. Republic of Cote d'Ivoire*, Application No. 044/2019, Judgment of 15 July 2020, AfCHPR, Para. 66–67.

V.4. African Court Commission's Weak Referrals to the African Court

African Court was established as a judicial body with binding decisions to complement the roles and functions of African Commission on Human Rights. The poor deposit of declarations and the withdrawals of some countries of such declarations made to assent the direct jurisdiction of the African Court, is injurious to human rights promotion in Africa. Moreover, although indirect access through the African Commission may serve as an alternative, it can be a less direct and potentially less effective route to justice. More concerning, the Commission lacks prosecutorial powers and has made relatively few referrals of human rights cases to the African Court, further limiting access to justice (Kah and Mbom, 2024) due to the fact that the decisions of the African Commission lack enforceability and most of its quasi-judicial rulings are neglected by Member States. Moreover, the Commission's limited resources to monitor and follow up on its decisions are evident. These constraints significantly hinder the effective development of the African human rights system.

V.5. Negative Implications to Victims of Human Rights Infractions

Courts that lack accessibility can no longer represent the last resort for victims of human rights intimidation. The withdrawal of declarations frustrates the opportunities of NGOs and individuals to table their human rights grievances before African Human Rights Court on a direct means. The above destroys the jurisdiction of such cases before the Court. Taking the hint that withdrawals of declarations take effect from one year, its concomitant signal to other Nations with deposit of declaration is regressive to human rights fights of the African Court.³⁹ Thus, other indirect and long bearing processes of Court filings exist. Such process of going through the African Commission is requisite. The four countries that withdrew their declarations are still parties to

³⁹ Note that mis-governance in leadership propels withdrawals of declaration to Art. 34(6) of the African Court Protocol.

the African Court Protocol, as such withdrawals are not denunciations. Matters can still be filed against them in other Tribunals. To this end, the African Commission can handle matters relating to them in respect of violations of human rights. However, countries where poverty holds way, such judicial bodies may be too far from the victim's country and cost effective high.

VI. Conclusion

An exhaustive analysis of "Dismantling Jurisdictional Barriers: Empowering Direct Access to the African Court on Human and Peoples' Rights" crystalizes into key strategic findings. Most notably, the paper reveals that indirect access via the African Commission on Human and Peoples' Rights fails because the Commission rarely exercises its power to refer individual communications to court. It is evident that Art. 34(6) declarations create a bottleneck, leading to severe under-utilization with only a handful of ratifying States and subsequent strategic State withdrawals. The analysis reveals that minimal number of Signatory States that have made such declarations is clear indication of the non-challancy of African leaders to the submission to the jurisdiction of the Court on a direct access. While some argued that there is an alternative of going through the African Commission's referral, but the fact remains that such alternative procedures are herculean and difficult as it is an indirect means of access. The paper further highlights that practice have shown that this procedure is under-utilized due to its long process and procedure. The findings also reveal that the negative trend of the withdrawals by four countries portends disinterestedness to abide by the provisions of the Protocol especially when such judgment affects State sovereignty. Also, the study shows that withdrawal of States from the Protocol on Direct Access to the African Court amounts to several restrictions to the Court's ability to address cases of human rights violations as well as limiting its general workloads. Further findings of the paper reveal that indirect access could serve as a better alternative procedures as direct access appears unfriendly following several withdrawals by State Parties. In conclusion, the paper contributes significantly to the discourse on dismantling jurisdictional barriers to

direct access to the African Court on Human and Peoples' Rights, and maintained that optional direct access under Art. 34(6) of the African Court Protocol severely fragments regional justice, requiring mandatory institutional referral rules and universal State ratification to transition from a symbolic tribunal to an effective human rights remedy. The paper urges policy makers and stakeholders to cooperatively dismantle jurisdictional obstacles and establish sustainable, direct access to the African Court on Human and Peoples' Rights.

Recommendations

1. African Nations should brace up to promote and respect regional institutions and their procedures.
2. The deposit or withdrawal of Art. 34(6) of the Protocol should not be propelled by political motives by African member states.
3. The direct access to the African Court should be made open by deleting Art. 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
4. In alternative, though the Declaration as contained in Art. 34(6) of the African Court Protocol is optional, rigorous process on the practice of withdrawal should be put in place as a condition to the African States.
5. More advocacy and sensitization are needed to enhance the efficiency of the African Court in order to cushion the low turnout of cases.

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Legal Regulation of Diagnostic Technologies in the Sphere of Human Reproduction: the Balance of Ethics and Law

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Abstract: The article analyzes the legal regulation of diagnostic technologies in human reproduction, focusing on non-invasive prenatal testing (NIPT). It examines the ethical and legal dilemmas arising from the introduction of this technology, including the balance between reproductive autonomy and non-directive counseling, the problem of “wrongful birth” and “wrongful life,” and the risks of eugenic selection and discrimination against persons with disabilities. Through a comparative legal analysis of the regulatory frameworks in the Russian Federation and some foreign countries, the study identifies distinct national models for balancing ethical principles and legal imperatives. The article highlights the progressive steps taken by the Russian Federation in providing accessible reproductive care, such as the inclusion of NIPT in state guarantees. The purpose of this article is to systematically evaluate the ethical-legal nexus of diagnostic reproductive technologies and to substantiate doctrinally sound pathways for enhancing national regulatory frameworks without compromising sovereign constitutional values.

Keywords: human rights; legal ethics; legal regulation; human reproduction; legal engineering; diagnostic technologies; non-invasive prenatal testing (NIPT); invasive prenatal testing (IPT); preimplantation genetic diagnosis (PGD); diagnostic reproductive technologies (DRT); comparative bioethics; constitutional values

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I. Introduction

The availability and rapid advancement of diagnostic technologies in human reproduction has fundamentally transformed traditional approaches to the diagnosis, prevention, and treatment of numerous hereditary human diseases. Concurrently, the medical application of genetic testing raises a number of ethical, legal, and social issues that require consideration and the development of approaches to address them in order to maximize the benefits of these new healthcare methods. The evolution of diagnostic reproductive technologies (DRT) — ranging from fundamental prenatal ultrasound screening to preimplantation genetic testing (PGT) and non-invasive fetal DNA analysis — has created unprecedented opportunities for assessing reproductive health and preventing hereditary diseases. However, the implementation of these technologies is associated with a complex set of legal and ethical issues that require a systematic approach. Non-invasive prenatal testing (NIPT), also known as cell-free fetal DNA screening, is a rapidly advancing technology that continuously expands its capabilities and offers new approaches to fetal medicine. According to some authors, NIPT

is at the “forefront of genomic medicine.” Since 2011, NIPT has been commercially available in more than 60 countries (Allyse et al., 2015). DRT have advanced rapidly over the past three decades, evolving from screening for single-gene disorders to complex polygenic risk assessment, non-invasive prenatal testing, and the integration of artificial intelligence into embryology laboratories (Frolova et al., 2012; Lebina et al., 2025; Simon and Rubio, 2017). Humanitarian ethics and law are the two primary regulators of the use of reproductive technologies for human reproduction.

NIPT offers several advantages over the traditional combined first-trimester screening, which includes ultrasound examination and serum markers. It can be performed earlier in pregnancy (from 9–10 weeks), it is considered more accurate in detecting common chromosomal aneuploidies, it has a lower false-positive rate and reduces the number of invasive tests that carry a small risk of miscarriage (Gil et al., 2015; Taylor-Phillips et al., 2016). Regulatory frameworks cannot ignore the ethical norms; humanitarian ethics and jurisprudence serve as the two primary, synergistic regulators of reproductive technologies. Ethical norms ensure a universal standard of judgment regarding the acceptability of medical interventions, mitigating risks associated with potential discrimination or eugenic selection. The goals and means of applying modern technological solutions in human reproduction encompass not only legal regulation, but also inevitably touch upon ethical parameters, which can be challenging to resolve. Universal ethical guidelines for the application of diagnostic technologies in human reproduction are essential as a factor embodying equal judgment in understanding what is acceptable and unacceptable, what is right and what is wrong. The central hypothesis of this study posits that a critical examination of the current legal and ethical frameworks governing NIPT reveals significant disparities between technological capabilities, societal expectations, and regulatory responsiveness. The purpose of this article is to systematically evaluate the ethical-legal nexus of DRT and to substantiate doctrinally sound pathways for enhancing national regulatory frameworks without compromising sovereign constitutional values.

II. Methodology

This study employs a comparative legal method and a systematic review of empirical literature to analyze regulatory frameworks and their impact on patient autonomy. The formal-legal method is applied to systematically interpret the normative framework of the Russian Federation governing DRT. This involved a detailed analysis of the Federal Law No. 323-FZ “On the Fundamentals of Health Protection of Citizens in the Russian Federation,” dated 21 November 2011 (as amended), subordinate acts of the Ministry of Health of Russia, and Decree of the Government of the Russian Federation No. 2188, dated 29 December 2025, which incorporated NIPT into the Programme of state guarantees of free medical care for the years 2026–2028. The comparative-legal method is employed to analyze the regulatory approaches to diagnostic reproductive technologies in Germany, the United Kingdom, France, the Netherlands, Belgium, and Japan. These jurisdictions illustrate contrasting ways of balancing reproductive autonomy, embryo protection, and the prevention of eugenic practices. The case-law analysis method is used to assess the practical application of legal norms and to illustrate liability for deficiencies in prenatal diagnostics. The interdisciplinary approach integrates insights from bioethics, medical sociology, and disability studies to provide a comprehensive understanding of the ethical and social dimensions of NIPT regulation.

III. Regulatory Framework for Prenatal Diagnostics in the Russian Federation

The rapid development of diagnostic technologies in human reproduction has raised fundamentally new questions for the legal system and bioethics. The Russian Federation has established a comprehensive legal framework for diagnostic reproductive technologies, grounded in the Constitution of the Russian Federation and Federal Law No. 323-FZ “On the Fundamentals of Health Protection of Citizens in the Russian Federation,” dated 11 November 2011. Current legislation defines the organization of medical care, licensing requirements, and the rights of

patients, creating a stable basis for the implementation of new technologies.

Diagnostic testing of pregnant women as well as the prevention and treatment of diseases and conditions, is considered medical care, requiring the use of specialized methods and complex medical technologies. Due to the Order No. 185n of the Ministry of Health of the Russian Federation, dated 11 April 2025, specialized medical care, including high-tech care, may be provided in medical and other organizations within the state, municipal (in the cases that state authorities of constituent entities of the Russian Federation transfer the authority to organize the provision of specialized medical care to local self-governments), and private healthcare systems. A medical organization should have a license to carry out medical activities, obtained in accordance with the legislation of the Russian Federation on licensing certain types of activities.

Diagnostic testing in the form of screening is a comprehensive examination of a specific category of pregnant women aimed at identifying specific pathologies. Screening is only the first step in assessing pregnant women, who, if positive, require further testing to establish a definitive diagnosis or rule it out. Screening is especially important in the first trimester of pregnancy, as it allows for the identification of women who require more targeted testing — this will help rule out or promptly detect serious pathologies.

By an appellate ruling of the Stavropol Krai Court No. 33-8852/2018, dated 20 November 2018, the non-governmental healthcare institution “Office Clinical Hospital at Mineralnye Vody Station of Joint Stock Company “Russian Railways” was awarded moral damages in the amount of 300,000 rubles (increased from 200,000 rubles awarded by the decision of the Mineralnye Vody City Court of Stavropol Krai). This was based on the fact that the medical organization limited itself to conducting a first-trimester ultrasound screening and did not refer the pregnant woman for additional testing. According to the plaintiff, these deficiencies in the provision of medical care to the pregnant woman led to the fact that congenital anomalies in the fetus were not detected on time, which is why she was deprived of the opportunity to terminate the pregnancy before 20 weeks. The birth of a child with severe develop-

mental disabilities (the child is considered disabled from birth and for life), as well as the difficult struggle for their life, causes severe emotional suffering for both the child and their entire family. Furthermore, the child's rehabilitation program requires significant financial investments from the family (for example, transportation costs to medical interventions, etc.), which are not reimbursed. During the trial, it was also established that the ultrasound screening was performed by a doctor who did not have the appropriate qualifications.

In accordance with the current legal regulation of diagnostic researches for pregnant women are carried out in the form of screening — prenatal (antenatal) screening. Due to the Order of the Ministry of Health of Russia No. 747n "On the Procedure for the Provision of Medical Care in the Profile of "Obstetrics and Gynecology," dated 19 December 2025 prenatal (antenatal) screening is carried out for all women in the following gestational periods: in the 1st trimester — 11 weeks 0 days — 13 weeks 6 days; in the 2nd one — 18 weeks 0 days — 20 weeks 6 days; in the 3rd one — 34 weeks 0 days — 35 weeks 6 days, an assessment of the antenatal development of the fetus is carried out (Clause 27).

The 1st-trimester screening evaluates fetal antenatal development to detect various fetal pathologies, including congenital and/or hereditary diseases, fetal malformations, and signs of genetic disorders. The physician also assesses the risk of chromosomal abnormalities, premature birth, preeclampsia, and fetal growth restriction. Ultrasound screening during 11–14 weeks of pregnancy assesses fetal antenatal development to identify chromosomal abnormalities, malformations, the risk of fetal growth restriction, premature birth, and preeclampsia (preeclampsia in multiple pregnancies). The results of the screening study are reflected in the screening ultrasound protocol.

At the same time, the physician conducts a study of plasma protein A (PAPP-A) in the blood serum and the level of human chorionic gonadotropin (free beta subunit) in the blood serum (free HCG) (hereinafter referred to as serum markers). At this stage, the plasma protein A (PAPP-A) in the blood serum of the pregnant woman and the level of human chorionic gonadotropin (free beta-subunit) in the blood serum (free — HCG) (serum markers) are also tested. Based on the re-

sults of this test, the woman can be assigned to one of three risk groups: 1) a high-risk group for giving birth to a child with chromosomal abnormalities of 1:100 and above; 2) an average-risk group — 1:101-1:1000; 3) a low-risk group — 1:1001 and below. Pregnant women from the 1st group — average-risk and the 2nd one — high-risk (except in cases where signs of a fetal malformation are detected based on the results of a 1st-trimester screening ultrasound) are recommended to undergo a non-invasive prenatal test — NIPT (determination of cell-free fetal DNA from the mother's blood).

NIPT has become widely used in clinical practice in Russia. However, scholars and experts raise ethical concerns regarding the use of NIPT based on the values of free choice, autonomy, and voluntary informed consent of women, avoidance of harm, as well as equality, justice, and inclusivity. On the one hand, NIPT can promote reproductive autonomy by giving women (parents) the opportunity to prepare for the birth of a child with a genetic disorder or to decide on an early termination of pregnancy. On the other hand, it can violate autonomy and freedom of choice if accurate and balanced information about the test and the conditions being tested for is unavailable, and they are unable to assess the risks of potential pathologies for the unborn child (Baranova et al., 2024, pp. 15–16). Experts point out that many women refuse to undergo screening tests due to lack of awareness, lack of knowledge, inability to assess the consequences, and also due to the high cost of the procedure (Zhuchenko et al., 2017, p. 12). Foreign experts see a certain risk in the reliability of test results, which can contribute to excessive anxiety in the expectant mother (parents) and the unnecessary use of invasive procedures (Gekas et al., 2016, p. 16; O'Keeffe and Doyle, 2025, p. 492).

NIPT is of particular importance for pregnant women, it has become widely used in clinical practice in Russia to diagnose chromosomal abnormalities of fetuses (Gnetetskaya et al., 2018). NIPT can detect an increased risk of the most common chromosomal abnormalities, primarily Down syndrome, as well as Edwards and Patau syndromes. More advanced versions of the test evaluate more complex anomalies, and NIPT can also determine the fetus's sex and, in some cases, the Rh factor.

Although, until 2026, it was provided on a paid basis and was not included in the state system of free medical care guarantees. Some regions of the Russian Federation financed this type of screening for pregnant women from their regional budgets. The Programme of state guarantees for the free provision of medical care to citizens for 2026 and for the planning period of 2027 and 2028, approved by Decree of the Government of the Russian Federation No. 2188, dated 29 December 2025, provides for the implementation of NIPT on a free basis. We believe that this legislative approach will facilitate the early detection of fetal abnormalities, which is clearly aimed at ensuring public health, consistent with the constitutional right of everyone to health protection and access to medical care, and consistent with the principles of health protection, primarily the observance of citizens' rights in the area of health protection and the provision of state guarantees associated with these rights, and the principle of access to high-quality medical care.

To ensure the quality of medical care, the order establishes qualification requirements for the physician and the organization performing this procedure. The assessment of antenatal fetal development during the first two diagnostic researches (at gestational ages of 11 weeks 0 days to 13 weeks 6 days and 18 weeks to 20 weeks 6 days) is performed by ultrasound specialists who have completed advanced training in ultrasound diagnostics in the sphere of ultrasound diagnostics of fetal development (prenatal screening). For the third diagnostic research, the pregnant woman is referred to a medical organization that monitors the pregnancy and is licensed to perform medical activities, including ultrasound diagnostic work (services). If the medical organization where the pregnancy is monitored does not have a license to carry out medical activities that include ultrasound diagnostic work (services), the pregnant woman is referred to the antenatal fetal care office (department) for prenatal screening in the third trimester.

Based on the results of the 1st-trimester screening, a geneticist and obstetrician-gynecologist may recommend additional research — invasive prenatal testing (IPT) for a pregnant woman in the following cases: 1) if signs of fetal malformations are detected; 2) if a high risk of giving birth to an infant with chromosomal abnormalities is established, 3) the risk of giving birth to an infant with chromosomal abnormalities

based on the results of a NIPT, as well as an increased risk of monogenic and/or chromosomal abnormalities in the fetus (based on the anamnesis), regardless of whether the 1st screening was performed. IPT is performed by using the following methods: chorionic villus sampling, placental biopsy; amniocentesis; cordocentesis.

Due to the result of IPT, if a severe somatic disease is detected that is included in the List of medical indications for artificial termination of pregnancy, approved by Order No. 736 of the Ministry of Health and Social Development of the Russian Federation, dated 3 December 2007, the woman is referred for the appropriate operation. In such a situation, it is important for the woman (parents) to understand the possible risks of developing a somatic disease, which influences her decision to terminate the pregnancy that is ensured by the explanatory activity of the physician (council of specialists) who are responsible for the health of the unborn child and mother. Due to the Order of the Ministry of Health No. 742n if chromosomal abnormalities, congenital and/or hereditary diseases, genetic disorders or developmental defects of the fetus are detected, the further tactics of monitoring the course of pregnancy are determined by a perinatal concilium.

Russian researchers note the fragmentation of legal regulation and the lack of a systematic approach to diagnostic reproductive technologies (Lapaeva, 2021; Nekoteneva et al., 2024). This fragmentation is particularly evident in the absence of a unified federal law specifically governing DRT, with crucial aspects scattered across various departmental acts and orders of the Ministry of Health. For instance, there is currently no federal law-defined basis or explicit list of cases in which a treating physician should refer a pregnant woman for screening tests; these relationships are predominantly regulated by sub-legislative acts. This creates ambiguity and potential inconsistencies in practice. We suppose that it would be appropriate to include provisions on the need to conduct screening tests for pregnant women, indicating the gestational period (in weeks and days) and a list of grounds for their appointment in Chapter 6 “Health Protection of Mother and Child, Family and Reproductive Health Issues” of the special Federal Law No. 323-FZ “On the Fundamentals of Health Protection of Citizens in the Russian Federation,” dated 21 November 2011.

An important ethical and legal aspect of screening is the legal nature of informed patient consent. According to Federal Law No. 323-FZ, a prerequisite for screening is the patient's signature of informed voluntary consent to medical intervention based on information provided by a healthcare professional. This information must be presented in an accessible form. An important characteristic of the information provided is its completeness and accuracy, including information about the consequences and risks of refusing screening. Information must be presented in an accessible form. An important characteristic of the information provided is its completeness and accuracy, including information on the consequences and risks of refusing screening tests.

According to the legal position formulated by the Constitutional Court of the Russian Federation in Resolution No. 1-P, dated 13 January 2020, the right to privacy also entails a state-guaranteed right to control one's own information and prevent the disclosure of personal, intimate information, including health information. Legislators are obligated to ensure that all third parties respect an individual's will in matters relating to their private life.

By giving consent, the patient does not expect a guaranteed therapeutic effect, but rather delegates to the healthcare organization the right to intervene in the sphere of bodily autonomy in order to obtain probabilistic data about their health. At the same time, the patient may not have a full understanding of the consequences of refusing to undergo the necessary diagnostic procedures, the capabilities of a particular type of diagnostics, the severity of their condition, etc.

The complexity of informed consent in the context of diagnostic testing stems from several factors: 1) *cognitive complexity of the information* — patients should understand the probabilistic nature of genetic testing results, distinguish between diagnostics and screening, and recognize the limitations of each method; 2) *emotional burden* — decisions about diagnostic testing and the interpretation of its results are made under time pressure and high emotional involvement; 3) *long-term consequences* — diagnostic results can influence decisions about continuing the pregnancy or choosing embryos for transfer, which has lifelong consequences for the unborn child.

The fundamental principle of legal regulation of diagnostic tests in human reproduction requires consideration of their intended purpose — ensuring the health of the unborn child and eliminating developmental pathologies and hereditary genetic diseases. Diagnostic methods for reproductive health care used for screening must be convenient, affordable, and sensitive enough to detect early stages when the patient is asymptomatic, without leading to overdiagnosis. Regulatory frameworks should ensure the accessibility of this type of screening for prospective parents, either by including it in the state's mandatory health insurance program or by reducing its cost.

IV. Regulatory Models for Prenatal Diagnostics and Embryo Status

The foundational issue determining the legal framework governing diagnostic reproductive technologies, particularly preimplantation genetic diagnosis, is the legal status attributed to the human embryo. As V.V. Lapaeva emphasizes, “it is necessary to develop a legal regime for in vitro embryo manipulation that ensures the necessary legal protection of the embryo by recognizing its special ontological status as a constitutional value for the common good” (Lapaeva, 2023, p. 4). According to the researcher, the status of the embryo can be considered from different positions — ontological, moral and legal, and approaches to understanding its moral and legal status are formed depending on the definition of the ontological status of the embryo. In this case, we do not have in view so-called embryonic models created for research purposes. This proposition reflects a broader doctrinal challenge: the legal system must simultaneously accommodate the embryo's biological potential, its moral significance, and the practical realities of biomedical innovation. Consequently, the legal status of the embryo cannot be reduced to a binary classification (subject v. object), but rather requires a differentiated and context-sensitive regulatory approach.

The legal status of the human embryo remains one of the most contested issues in biomedical law, reflecting divergent cultural, religious, and ethical traditions across nations. Across jurisdictions, the regulation of diagnostic reproductive technologies reveals not merely diversity

in legislative techniques, but the existence of distinct normative paradigms that structure the relationship between reproductive autonomy, human dignity, and the protection of potential life. These paradigms may be analytically understood as coherent regulatory models, each grounded in specific constitutional, ethical, and socio-cultural premises.

The German model represents a paradigmatic example of a dignity-centered regulatory framework. The legal status of the embryo in Germany is shaped by the Embryo Protection Act (*Embryonenschutzgesetz*, 1990), the Stem Cell Act (*Stammzellgesetz*, 2002), and the constitutional jurisprudence of the German Federal Constitutional Court (*Bundesverfassungsgericht*) interpreting the Basic Law (*Grundgesetz*). The Embryo Protection Act fundamentally prohibits any use of a human embryo that does not serve its preservation. Under the Act, it is a criminal offense to fertilize a human egg for any purpose other than initiating a pregnancy in the woman who produced the egg. This provision effectively prohibits the creation of embryos for research purposes and the use of embryos for scientific investigation.

Complementing this strict embryo governance, the German model for non-invasive prenatal testing (NIPT) is characterized by a cautious approach that balances reproductive autonomy with the constitutional principle of human dignity, enshrined in Art. 1 of the Basic Law. Since 2021, NIPT has been covered by public health insurance for pregnancies with an increased likelihood of trisomies 21, 18, and 13, without defining a numerical risk threshold; reimbursement is case-by-case, based on potential serious harm to the pregnant woman's mental health (Perrot and Horn, 2022). Publicly funded NIPT for T13, T18, and T21 is suggested, with a focus on individualized decision-making and increasing usage since its introduction. The German system does not define a numerical risk threshold. Instead, reimbursement is determined on a case-by-case basis, requiring a particular situation where the pregnancy and its consequences present a burden that could lead to serious harm to the pregnant woman's mental health (Perrot and Horn, 2022). The German debate emphasizes the woman's right not to know and her right to decline available tests, as well as the importance of providing balanced information that includes the perspectives of families raising

children with disabilities. A key feature of the German approach is the conceptualization of a potential conflict between the dignity of the unborn child and the dignity of the pregnant woman as an autonomous individual, a framing that reflects Kantian philosophical influences and post-war constitutional sensitivities (Perrot and Horn, 2022).

In contrast, the United Kingdom embodies an autonomy-oriented regulatory model, characterized by institutionalized flexibility and regulatory pragmatism. The Human Fertilisation and Embryology Act 1990 (as revised in 2008) and the oversight of the Human Fertilisation and Embryology Authority (HFEA) construct the embryo as a special legal entity subject to controlled use rather than absolute protection. This framework constructs the embryo as a special entity — neither a person nor a piece of property — subject to permitted uses under licensing oversight. UK legislation avoids conferring full personhood on embryos while prohibiting their treatment as mere property. The 1990 Act establishes that embryos may be used for licensed research purposes, but prohibits their use for unauthorized purposes, including reproductive cloning and sex selection except for medical necessity.

Regarding prenatal diagnostics, NIPT was introduced as a second-tier test within the NHS Fetal Anomaly Screening Programme, with access granted to women those combined first-trimester screening indicates a risk threshold of 1:150 or higher for trisomies 21, 18, and 13 (Perrot and Horn, 2022). NIPT was proposed for T13, T18, T21 screening in 2015 and officially implemented from 2018, available free for women with high-risk pregnancies, with a strong emphasis on accurate information and informed choice. The British debate places a strong emphasis on informed consent and non-directive counseling, reflecting an autonomy-focused approach. A 2017 report by the Nuffield Council on Bioethics highlighted concerns that the less invasive nature of NIPT could lead to routinization, potentially undermining informed decision-making (Perrot and Horn, 2022). Public discourse in England tends to favor the benefits of NIPT, while critical voices, including those from disability advocacy groups, have raised concerns about the devaluation of people with Down syndrome. However, these concerns have not substantively altered policy, as the value accorded to women's autonomous choice remains predominant (Perrot and Horn, 2022). From a

theoretical legal perspective, this approach aligns with the concept of contextual legal idealism where the law discerns principles that explain and justify existing legislative rules. The principle that best explains and justifies the approach in the UK legislation to the developing human is adherence to the proportional status position. The law grants increasing protection to the developing human according to legally relevant thresholds, such as preimplantation, implantation to 24 weeks, post-24 weeks, and birth. This principle is a direct implication of the Principle of Generic Consistency (PGC), which requires agents to act in accord with the generic rights possessed by all agents. Since the PGC is categorical and it is not strictly possible to know whether another is an agent, all others must be treated according to strict moral precaution. It follows that those others who display sufficient characteristics and behavior to be meaningfully treated as agents must be treated as possessing generic rights, while those who display only some of the characteristics and behavior expected of agents, such as a fetus, must be treated as possessing interest-rights to the generic needs. Where there is a conflict of duties, agent-behavers have full moral status and partial agent-behavers have lower moral status. This lower moral status is proportionate to the closeness to being an agent-behaver.

In the Japanese regulatory framework for human embryos is notable for its absence of comprehensive statutory law governing embryo research. Instead, governance operates through administrative guidelines and professional self-regulation, reflecting a cultural preference for flexible, consensus-based policy development rather than rigid legislative mandates. The Act on Special Provisions of the Civil Code (Act No. 76 of 2020) addresses parent-child relationships in assisted reproduction, but does not establish a substantive legal status for the embryo itself. Importantly, the Japanese jurisdiction lacks a unified “embryo protection law.” The definition of an embryo is contained in the Act on Regulation of Human Cloning Techniques (Act No. 146 of 2000) and defines it as cells that have the potential to develop into a human being. The embryo occupies an intermediate conceptual space — neither fully personified nor reduced to ordinary property — requiring respectful treatment without conferring rights equivalent to born persons. Recent scholarship highlights Japan’s proactive stance in developing

regulatory frameworks for stem cell-based embryo models (SCBEMs) (Sawai et al., 2025) in EMBO Reports document Japan's efforts to "take the lead in developing ethical and innovative guidelines" for SCBEM research, distinguishing these models from fertilized embryos while maintaining ethical oversight. Regarding NIPT, it was introduced in Japan in 2013, with uptake increasing since then. However, there is no comprehensive policy, and it is primarily offered out-of-pocket, making it expensive and mainly recommended for high-risk pregnant women.

Further differentiation emerges within European jurisdictions that have integrated NIPT into publicly funded healthcare systems, notably France, the Netherlands, and Belgium. Although these systems formally endorse reproductive autonomy, their practical implementation reveals significant variation shaped by institutional design and socio-cultural context.

In France, NIPT has been reimbursed since 2019 as a second-tier test for pregnancies with a trisomy 21 risk probability between 1:51 and 1:1000 following first-trimester screening (Perrot and Horn, 2022). NIPT was initially implemented for T21 and occasionally T13/T18 with public insurance support and expanded in 2020 to cover rarer aneuploidies via private labs, being free for high-risk pregnancies. The French regulatory framework explicitly states that "the woman is at the center of the system and makes all decisions regarding her pregnancy," emphasizing respect for autonomy. However, in practice, the French approach is characterized by a more protective stance, with greater emphasis on the content of information provided to women rather than on non-directiveness *per se*. The National Ethics Committee (CCNE) has expressed concerns about the commercial exploitation of genetic tests and the risk of leaving couples "alone and helpless" when confronted with non-validated tests (Perrot and Horn, 2022). Empirical studies confirm a degree of paternalism among French healthcare professionals regarding prenatal testing decisions. Criticisms of NIPT in France are notably framed in the language of "eugenics," "elimination," and "social eradication," with both religious and secular voices warning against the risk of widespread fetal selection. These critiques, while vociferous, have not prevented the integration of NIPT into public healthcare, but they reflect a societal unease with the potential normalization of ge-

netic selection that is less pronounced in the English context (Perrot and Horn, 2022).

Comparative empirical research on pregnant women's decision-making in the Netherlands and Belgium — both early adopters of NIPT as a first-tier screening test — further illuminates how country-specific contexts influence informed choice (Lannoo et al., 2023, p. 301). The Netherlands implemented NIPT as a publicly funded screening program in 2014 for high-risk pregnancies, and expanded it to all pregnant women in 2017, leading to high uptake rates and a decline in combined first-trimester tests. Despite geographical proximity and similar healthcare system structures, significant differences emerged. In the Netherlands, 83 % of women opting for NIPT made an informed choice (defined as a decision based on sufficient knowledge, value-consistency, and adequate deliberation), compared to only 59 % in Belgium (Lannoo et al., 2023, p. 299). Dutch women demonstrated higher knowledge scores (94 % v. 82 %), higher deliberation scores (87 % v. 70 %), and were more likely to report that they did not feel societal pressure to accept screening (88 % v. 77 %). Conversely, Belgian women were more likely to perceive those parents are judged by society for having a child with trisomy 21 (42 % v. 16 %) and were less positive about the quality of care and support available for children with trisomy 21 (23 % v. 62 %) (Lannoo et al., 2023, p. 299). These differences likely reflect variations in counseling modalities — the Netherlands mandates a standardized 30-minute counseling session with a certified provider, while counseling in Belgium is less structured — as well as divergent cultural attitudes toward disability and reproductive choice. Belgium was the first country to publicly reimburse NIPT as a first-tier screening test for all pregnant women, leading to a 52 % decrease in invasive procedures. The Belgian cohort also demonstrated a higher intention to terminate pregnancy in case of confirmed trisomy 21 (62 % v. 51 %), but a lower intention for trisomy 18 or 13 (73 % v. 80 %), suggesting potential gaps in understanding the severity of these conditions (Lannoo et al., 2023, p. 300).

Other European countries also present diverse regulatory landscapes. Denmark, for instance, saw NIPT become available as a screening option in 2013, with guidelines revised in 2017 to include it as a standard screening test for high-risk pregnancies. In Italy, NIPT was

incorporated into clinical use for T13, T18, T21 screening in high-risk pregnancies after a pilot study in 2016, though it is largely used in the private sector. Switzerland has seen increased NIPT use since 2012, with public funding since 2019 for limited medical reasons, while Slovenia offers NIPT only when invasive procedures are contraindicated, with public funding for such cases. Romania, notably, provides NIPT as a self-financed commercial option.

In the Russian legal system, the regulation of diagnostic reproductive technologies reflects an evolving and multi-layered approach grounded in constitutional principles and sectoral legislation. Researchers note that “an embryo *in-vitro* lacks viability and is therefore different from a fetus in the womb; however, it has the potential to develop life, which also distinguishes it from an object” (Lapaeva, 2021, p. 184). In this regard, scientists are reiterating the need for legislative recognition of the distinction between the status of an *in vivo* and *in-vitro* embryo, which meets the requirements of legal certainty (Dovnar, 2025; Frolovskaya and Bondarenko, 2025; Muravyova and Eliseeva, 2023; Plotnikova, 2022; etc.). The lack of a unified approach to determining the legal status of an embryo creates difficulties in regulating diagnostic procedures related to embryo biopsy for preimplantation genetic testing, cryopreservation and use of embryos for research purposes, and determining the fate of “excess embryos.” A new direction — bioethical constitutionalism has emerged in Russian legal doctrine, examining the impact of new biotechnologies on their implementation of human rights and the transformation of the concept of human rights itself (Kravets et al., 2023; Kravets, 2023; 2025).

Taken together, comparative analysis demonstrates that contemporary legal systems do not converge toward a single model of regulation. Instead, they articulate different configurations of fundamental principles — human dignity, autonomy, solidarity, and the protection of a potential life — each of which is institutionalized through specific legal mechanisms. At the same time, a degree of convergence can be observed at the level of general trends: the rejection of treating the embryo as a mere object, the recognition of the centrality of informed consent, and the increasing role of procedural safeguards in legitimizing reproductive choices. These shared elements suggest the gradual formation of a

transnational normative framework, within which national systems retain their distinct identities while responding to common technological and ethical challenges.

V. Ethical and Legal Dilemmas in Reproductive Diagnostics: Harmonization and Future Directions

The rapid integration of NIPT into contemporary healthcare systems necessitates a re-evaluation of the normative foundations underpinning legal regulation in the field of reproductive diagnostics. The complexity of this regulatory domain does not merely rest on the technological sophistication of diagnostic tools, but on the multidimensional nature of the values at stake, including reproductive autonomy, human dignity, the protection of potential life, and the principle of non-discrimination.

A central issue emerging across jurisdictions concerns the structural tension between reproductive autonomy and the requirement of non-directive counselling. While NIPT significantly expands the informational horizon available to prospective parents, thereby strengthening their capacity for autonomous decision-making, this expansion simultaneously generates risks of routinization. When screening becomes embedded in standard medical protocols, the voluntariness of consent may become formal rather than substantive. Consequently, the legal concept of informed consent must be interpreted not as a procedural formality, but as a substantive communicative process, requiring that patients are equipped to understand the probabilistic nature of genetic information, the limitations of testing, and the ethical implications of potential outcomes.

This leads to the recognition that autonomy in the context of reproductive diagnostics is inherently relational rather than purely individualistic. Decision-making is shaped not only by medical data, but also by social narratives surrounding disability, cultural expectations, and the perceived responsibilities of parenthood. Therefore, legal frameworks must ensure that counselling practices remain genuinely non-directive while also sufficiently informative, enabling a form of autonomy that is both informed and reflective.

A second major doctrinal challenge concerns liability for deficiencies in prenatal diagnostics, commonly articulated through the concepts of “wrongful birth” and “wrongful life.” The comparative analysis demonstrates that legal systems adopt differentiated approaches to these claims, reflecting deeper philosophical divergences regarding the valuation of life with disability. While claims for wrongful birth are increasingly recognized as a mechanism for protecting parental autonomy and compensating informational harm, the recognition of wrongful life claims remains far more contested due to the inherent difficulty of comparing existence with non-existence within a legal framework. This tension illustrates the limits of traditional tort law when applied to the domain of reproductive technologies and suggests the need for a more nuanced doctrinal approach that distinguishes between informational harm, reproductive choice, and the intrinsic value of human life.

A third area of concern relates to the potential for implicit forms of eugenic selection arising from the widespread use of highly sensitive screening technologies. Importantly, contemporary regulatory systems do not endorse eugenics in its classical, coercive form. However, the combination of technological capability, social expectations, and systemic incentives may produce conditions under which certain reproductive choices become indirectly normalized. The ethical discussion surrounding NIPT also involves the problem of societal pressure that pregnant women may experience. As the scholars note, even before the advent of NIPT, parents of children with Down syndrome faced questions about whether it “could have been avoided” (Liehr, 2024, p. 893). The widespread use of NIPT and high societal expectations regarding its reliability amplify this pressure, compelling women to undergo testing and, in the event of a positive result, to consider terminating the pregnancy. This societal dimension, alongside the inequality in NIPT accessibility due to its high cost and lack of universal public funding in many countries, underscores the necessity of developing legal and ethical frameworks that protect a reproductive choice from hidden forms of coercion and ensure equitable access to services (Liehr, 2024, p. 893). This phenomenon underscores the importance of embedding the principle of non-discrimination, particularly with regard to persons with disabilities, within the regulatory framework governing diagnostic tech-

nologies. The objective is not to restrict a reproductive choice, but to ensure that such a choice is exercised within a normative environment that affirms the equal value of all human lives.

In light of these challenges, comparative analysis reveals the emergence of distinct regulatory models that may be conceptualized along a spectrum. At one end lies an autonomy-oriented model, which prioritizes an individual choice and emphasizes non-directive counselling as the primary safeguard. At the other end lies a dignity-oriented model, which places greater weight on the protection of the unborn and seeks to prevent practices that may undermine the moral status of human life. Between these poles, hybrid models attempt to reconcile competing values through procedural safeguards, public funding structures, and differentiated access to testing based on medical indications.

The evolution of regulatory approaches suggests that no single principle can serve as an exclusive foundation for legal governance in this domain. Instead, an integrated normative framework is required — one that simultaneously accommodates autonomy, dignity, solidarity, and justice. Within such a framework, the role of law is not limited to permissive or prohibitive regulation, but extends to the structuring of conditions under which ethically responsible decision-making can occur. From this perspective, the development of diagnostic reproductive technologies should be understood as a catalyst for the refinement of legal doctrine rather than a challenge to its coherence. The task of the legislator and the legal scholar is to ensure that the normative architecture of regulation evolves in parallel with technological innovation, preserving the balance between individual rights and collective ethical commitments.

The introduction of NIPT and other diagnostic reproductive technologies gives rise to several profound ethical and legal dilemmas. First, there is a need to balance reproductive autonomy with the requirement of non-directive counselling. While NIPT can enhance autonomous decision-making by providing timely information that allows parents to prepare for the birth of a child with a genetic condition or to consider termination of pregnancy, inadequate or unbalanced information may undermine genuine autonomy (Baranova et al., 2024; Perrot and Horn, 2022).

Second, the problem of “wrongful birth” and “wrongful life” arises. Russian judicial practice, as illustrated by the Stavropol case, recognizes the right of parents to compensation for moral harm when inadequate diagnostics deprive them of the opportunity to decide on pregnancy termination in cases of severe fetal abnormalities. However, claims brought by the child (“wrongful life”) have not yet been recognized in Russian law, in contrast to certain European jurisdictions.

Third, there exist risks of eugenic selection and discrimination against persons with disabilities. Experts highlight concerns that the widespread use of NIPT, grounded in values of a free choice and informed consent, may nevertheless contribute to societal devaluation of lives with disabilities if counselling fails to adequately address issues of equality, justice, and inclusivity (Bowman-Smart et al., 2023).

Furthermore, the prevalence of false positives and negatives in NIPT necessitates careful interpretation and a robust follow-up. The global experience highlights the critical need for well-trained healthcare professionals and comprehensive, unbiased counseling to ensure informed decision-making. Cultural, religious, and socioeconomic factors significantly impact the acceptance and accessibility of NIPT, demanding tailored approaches to policy and funding.

VI. Conclusion

The development of diagnostic reproductive technologies, particularly NIPT, presents a dynamic landscape that continually challenges existing legal and ethical systems. Striking a thoughtful balance among reproductive autonomy, the prevention of hereditary diseases, and the protection of the rights of persons with disabilities is paramount. Comparative analysis reveals diverse approaches across legal systems, each reflecting their unique underlying values and priorities in navigating this complex terrain. The Russian legal framework is actively evolving, and to further strengthen its comprehensive approach and alignment with best international practices, several key areas offer significant opportunities for enhancement.

A crucial pathway for advancement lies in the development of a unified federal law dedicated to diagnostic reproductive technologies.

Consolidating existing regulations, currently found across various departmental acts and orders, into a single, comprehensive legislative instrument would provide greater clarity, consistency, and a more systematic framework for the field. Furthermore, clarifying the legal status of the embryo through explicit legislative recognition of the distinct considerations for *in vivo* and *in vitro* embryos is essential. This would move beyond binary classifications to provide a nuanced approach to regulating procedures such as preimplantation genetic testing, cryopreservation, and addressing the disposition of “excess embryos.” The standardization of genetic counseling practices is another vital step. Establishing mandatory, high-quality, and non-directive pre- and post-test genetic counseling standards would ensure that individuals receive comprehensive and accurate information. This includes detailed explanations of NIPT variants, the significance of fetal fraction, a clear interpretation of Positive Predictive Value (PPV), and the potential for false positives and negatives, all delivered by independent, qualified specialists. Building upon the existing foundation of including NIPT in state guarantees, enhanced accessibility and integration of NIPT into public health programs are crucial. This involves clearly defining which population groups and medical indications are covered by the state funding, thereby ensuring broad and equitable access to these valuable diagnostic tools. Finally, while directly addressing concepts like “wrongful life” may remain a subject of ongoing debate, exploring robust legal mechanisms to provide fair compensation for informational harm in cases of medical negligence is imperative. Such measures would uphold principles of accountability for healthcare providers and protect parental autonomy, reinforcing trust within the medical system.

By proactively addressing these areas, Russia can further advance its reproductive diagnostics landscape, ensuring responsible progress. This comprehensive regulatory paradigm should continue to balance individual autonomy with collective ethical commitments, ensuring equitable access and an informed choice within a framework that upholds human dignity and actively prevents discrimination against persons with disabilities. The ongoing development of a coherent and comprehensive regulatory approach, informed by comparative experience and

grounded in bioethical principles, is essential for ensuring both legal certainty and the enduring protection of human dignity in the context of rapidly advancing reproductive technologies.

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Legal Regimes Governing the Use of Prompts (Prompt Engineering) in the Training and Deployment of Large Language Models

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Abstract: The paper examines the legal regimes governing the use of prompts in the training and deployment of large language models (LLMs) and generative artificial intelligence systems (AI systems). It analyzes risks, including prompt injection that may result in unauthorized access to information; intellectual property rights infringements, and AI systems manipulation. The paper further addresses the protection of prompts as objects of intellectual property, including protection under copyright law and trade secret regimes. Particular attention is devoted to jurisprudence in various jurisdictions, including China and the United States, where courts are developing approaches to determining the extent of human creative contribution in works generated with the assistance of AI. The study emphasizes the need for regulatory and technical measures to ensure security, oversight, and the allocation of responsibility in the use of generative AI systems.

Keywords: prompt engineering; large language models; prompt injection; artificial intelligence; intellectual property; copyright; trade secrets; AI safety; jurisprudence; liability

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I. Introduction

In the modern world, the use of emerging information technologies in various spheres of human life has become an evident and indispensable element of the development of social relations. The acceleration, optimization, and increased efficiency of numerous processes, including cross-border interactions, have become possible through artificial intelligence systems (AI systems) capable of adaptively responding to a wide range of requests and tasks, processing and analyzing Big data, proposing effective solutions, and continuously learning, thereby improving information processing, feedback mechanisms, and responsiveness to users' needs.

Various states have adopted legal and regulatory instruments of differing legal force that, in one way or another, define policies and general principles governing the use and development of AI systems. Examples include the Decree of the President of the Russian Federation No. 490 dated 10 October 2019 (as amended on 15 February 2024) formally titled “On the Development of Artificial Intelligence in the Russian Federation” and approving the National Strategy for the De-

velopment of Artificial Intelligence through 2030;¹ on 8 July 2026, the State Duma of the Russian Federation adopted the Federal Law “On Supporting the Development of Artificial Intelligence Technologies in the Russian Federation” that permits the use of copyrighted works and related-rights-protected subject matter for the purpose of training national and sovereign large language models based on artificial intelligence (developed by Russian legal entities) without the consent of right holders and without payment of remuneration to them;² the Interim Measures for the Management of Generative AI Services of the People’s Republic of China (2023); the Executive Order of the President of the United States on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (2023);³ Regulation (EU) 2024/1689 on Artificial Intelligence (the EU Artificial Intelligence Act),⁴ etc.

Such regulatory activity of States at the national level demonstrates both the growing significance of AI systems and the risks associated with their use. At the same time, specific approaches to regulating particular aspects of AI technologies — including the legal status of prompts and prompt engineering as an intentional process of interacting with AI systems — have yet to be fully developed or clarified through legislation, judicial decisions, and administrative practice.

II. Literature Review and Methodology

Contemporary challenges arising from the use of prompts in training and deployment of large language models (LLMs), together with advances in artificial intelligence (AI) and the proliferation of AI-generated content, necessitate a forward-looking analysis and, in some re-

¹ Available at: <http://publication.pravo.gov.ru/Document/View/0001201910110003>. (In Russ.). [Accessed 11.07.2026].

² Draft Federal Law No. 1271570-8 “On Supporting the Development of Artificial Intelligence Technologies in the Russian Federation.” Available at: <https://sozd.duma.gov.ru/bill/1271570-8> [Accessed 13.07.2026].

³ Executive Order 14110 — Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. 30 Oct. 2023. Available at: <https://www.presidency.ucsb.edu/documents/executive-order-14110-safe-secure-and-trustworthy-development-and-use-artificial> [Accessed 11.07.2026].

⁴ Available at: <https://artificialintelligenceact.eu/> [Accessed 11.07.2026].

spects, a reassessment of earlier approaches, particularly approaches applied to protect intellectual outputs created with the assistance of such technologies. These developments also require the formulation of novel legal regimes governing the creation and use of intellectual outputs in the context of prompt engineering.

Given that prompt engineering in intellectual property area functions as an auxiliary instrument for the creation of intellectual outputs and, under current conditions of intellectual property regulation, should be harmoniously integrated into the relevant legal systems, this study employs general research methods including deduction and synthesis. In light of the heightened risks of infringement of intellectual property rights and circumvention of existing protection mechanisms associated with the use of prompts, the study also applies a comparative analytical method to assess prompt engineering in relation to existing legal regimes applied for the intellectual property protection.

Due to the legal character of this study, the author employs a formal legal method. Moreover, in light of the evolving nature of the relationships under examination and the emergence of divergent approaches in international practice, the study also adopts a comparative law methodology, analyzing the experiences of the Russian Federation, the People's Republic of China, and the United States.

Given the high degree of relevance and novelty of the legal relationships under consideration, as well as the lack of substantial judicial and administrative practice in this area, a considerable body of scholarly literature has already emerged addressing issues of prompt engineering and the protection of intellectual property rights in the use and training of LLMs. However, the scope and depth of research vary significantly across jurisdictions, which remains particularly important in light of the continuing application of territorial principle governing the protection of intellectual property rights. The majority of existing studies focus on issues of the protection and infringement of intellectual property rights in connection with the use of LLMs (Murray, 2024; Lee et al., 2022; Vyas et al., 2023; Aliyev, 2026; Ahuja, 2023).

Scholarly literature has already noted that recent cases in the United States and China underscore the significance of human involvement in the creation of AI-generated content, with courts closely examining

prompts, among other factors, in order to determine the extent of human contribution throughout the creative process (Lim, 2024). Scholars have also raised concerns regarding the risks associated with the reproduction of copyrighted materials in the context of generating individual works through prompts, particularly images (Reissinger et al., 2025). Specific risks arise from the use of AI diffusion models for image generation (Geiping et al., 2023), as well as from the development of AI-based solutions for the creation and operation of information services in the field of intellectual property (Lee, 2025). Collectively, these risks contribute to users' reluctance to make full use of the latest AI models (Reissinger et al., 2025).

Contemporary scholarship also devotes particular attention to issues of ownership arising from the use of artificial intelligence (Gaffar and Albarashdi, 2024; Jain and Verma, 2025). Comparative studies addressing the protection of intellectual property rights in AI-generated works have likewise been conducted (Burylo, 2022). Within the context of the present study, broader scholarship concerning the development of artificial intelligence is also of relevance. Such works highlight, in particular, that advances in artificial intelligence enable robots to learn and perform a wide range of practical tasks, which is expected to result in their widespread integration into contemporary society and interaction with the public, rather than solely within strictly controlled environments (Karnouskos, 2022). Particular attention should also be paid to studies examining the use of artificial intelligence, including the application of optimized prompts, for the detection and prevention of intellectual property rights infringements (Pokrovskaya, 2025).

III. Regulatory Background and Development of Approaches to Governing AI and Prompt Engineering

The potential interrelationship among different intellectual creations, as well as issues concerning the priority of exclusive rights, constitute significant challenges in the context of AI systems, since both insufficiently developed prompts and a high degree of AI autonomy — for example, where neural networks generate new intellectual property objects — may create risks of infringing the intellectual property rights

of third parties. Such infringements may occur not only with AI content generation, but also at earlier stages, namely, during large language models training, as well as through interaction with the AI system by altering instructions intended, among other things, to facilitate subsequent unlawful conduct.

III.1. Security Governance of LLM Deployment: Prompt Injection as a Regulatory Policy Driver

Prompt injection, namely, the insertion of malicious instructions into AI system inputs (Prompt Injection), constitutes one of the most pressing challenges facing contemporary generative artificial intelligence (GenAI) systems and large language models. This type of attack occurs when a person — or another AI system — induces a large language model to disregard or override its system instructions. The danger lies in the fact that such intentional actions may alter the functioning of informational and even physical infrastructure, while also infringing the rights and lawful interests of third parties.

The United Kingdom's National Cyber Security Centre has identified prompt injection as a critical risk, while the United States' National Institute of Standards and Technology has characterized this issue as the most significant security weakness of generative artificial intelligence (Sutton and Ruck, 2024). In the Open Worldwide Application Security Project statement, prompt injection occurs “when an attacker manipulates a large language model (LLM) through crafted inputs, causing the LLM to unknowingly execute the attacker's intentions.” Such attacks may result in the system's decision-making processes manipulation, dissemination of disinformation to users, confidential information disclosure, organization of sophisticated phishing attacks, and the malicious code execution.

The vulnerability associated with prompt injection arises when an attacker manipulates an LLM during prompting, that is, during the formulation of inputs or instructions for an AI system, through specially crafted input data that causes the model to unwittingly pursue the attacker's objectives.⁵

⁵ The OWASP Gen AI Security Project Official Website. LLM01: Prompt Injection. Available at: <https://genai.owasp.org/llmrisk2023-24/llm01-24-prompt-injection/> [Accessed 27.12.2025].

This may be accomplished either directly, through the “override” or compromise of system prompts, or indirectly, through manipulation of external input data, potentially resulting in data leakage, social engineering (including psychological manipulation of human behavior), and other harmful consequences.

A *direct injection* during prompting, also referred to as a “jail-break,” occurs when an attacker overrides or discloses the underlying system configuration, prompt, or instruction set. Such attacks may enable exploitation of vulnerabilities in backend systems by interacting with insecure functions and data repositories accessible through LLMs.

Indirect prompt injection is performed when an LLM accepts input from external sources that may be controlled by an attacker, such as websites or files. An attacker may embed malicious prompts into external content, thereby hijacking the conversation. This may undermine the stability and reliability of the model’s output control mechanisms, enabling the attacker either to manipulate the user or to compromise additional systems to which the LLM has access. Moreover, indirect prompts need not necessarily be visible or readable to humans; it is sufficient that the text be processed by the large language model itself.

It is important to recognize that the consequences of a successful direct injection attack may vary significantly, ranging from the confidential information disclosure to interference with critical decision-making processes disguised as ordinary system behavior.

As a result, the analytical, creative, project-management, and administrative functions of AI systems may lose their essential characteristics, namely, controllability and comprehensive moderation or administration by the user. Given the degree of trust users often place in outputs generated by LLMs, the user’s genuine expression of intent may effectively be compromised, thereby jeopardizing the potential benefits associated with the use of artificial intelligence.

Among the most common and illustrative vulnerabilities in generative AI systems are attacks in which a malicious actor employs a direct prompt injection instructing the LLM to disregard the developer’s system instructions and instead execute an unauthorized prompt intended to disclose confidential, dangerous, or otherwise undesirable information.

A user may also activate a plugin connected to an electronic marketplace. A malicious instruction embedded within a visited website may exploit such a plugin, resulting in unauthorized purchases, actions, or transactions. This problem has become widespread in part due to insufficient legal regulation in many jurisdictions concerning the allocation of liability in commercial activities carried out through online marketplaces.

Although no reliable protection against prompt injection into data streams currently exists for LLMs, a number of measures are already being implemented to counter such abuses and attacks and to mitigate their consequences. For example, when privileged operations are involved, e.g., sending or deleting emails, applications may be configured to require prior user confirmation before executing the action. This reduces the likelihood of unauthorized actions being carried out without the user's knowledge or consent through indirect prompt injection.

Another important safeguard involves establishing clear trust boundaries among the model, external data sources, and extended functionalities such as plugins or downstream functions. In this context, the large language model itself may be treated as an untrusted actor, while ultimate control over decision-making processes remains with the human operator or system administrator, including through the visual identification and labeling of potentially unreliable responses for end users.

The risks associated with generative AI systems may also arise through the insertion of malicious scripts into LLM-based support chatbots, including commands such as “ignore all previous instructions,” which may subsequently result in remote code execution, unauthorized access, and privilege escalation.

It is also important to consider the possibility of manipulation not only through information obtained from open Internet sources, emails, or messages, but also through documents that play a critical role in providing contextual information for RAG+LLM systems,⁶ particularly within large organizations. The use of documents in conjunction with

⁶ Retrieval-Augmented Generation systems that supplement user queries with information from external data sources.

LLMs creates a broad range of opportunities for prompt injection attacks, since such documents often contain substantially more information than ordinary emails and are frequently shared among groups of users through cloud-based document repositories such as *SharePoint* and *Google Drive* (Sutton and Ruck, 2024).

Attempts to manipulate AI systems, particularly LLMs, may and should be addressed within an appropriate legal framework. Where unlawful conduct carried out through prompting or prompt engineering infringes protected rights or interests, appropriate forms of responsibility should apply, ranging from civil liability to administrative and criminal sanctions.

III.2. Liability Models: From Policy Principles to Enforcement Concepts

A legal framework governing unlawful conduct involving AI systems should be based on two principles: technological traceability of the prompt manipulator, i.e., the offender who uses prompting techniques in connection with LLMs, and the inevitability of liability the determination and enforcement of which must account for the specific characteristics and capabilities of information technologies. In other words, the development of technologies, information systems, or generative AI systems within which it is impossible to identify or trace the offender and the offender's actions should be regarded as impermissible and unlawful. Accordingly, appropriate oversight and corresponding responsibility on the part of all relevant actors — from developers and administrators to users and consumers of AI-generated content — must be incorporated at every stage of the development and operation of AI systems.

The introduction of a presumption of culpable conduct on the part of the user of an AI system once an offense committed using large language models has been detected can constitute one more possible mechanism for balancing competing interests in this area.

Technical and informational measures aimed at preventing potential offenses in this sphere represent an important direction in the development of AI systems. Their implementation may operate within

both ethical and legal frameworks. Ethical guidelines, in particular, may and should play a distinct role in establishing principles governing the use of AI systems, serving as an initial regulatory mechanism.

For example, in order to reduce the risk of indirect prompt injection and related malicious activity, organizations should maintain appropriate data hygiene practices, assess systems prior to deployment, provide user training, and implement technical safeguards. Each of these strategies plays an important role in ensuring the security and resilience of generative artificial intelligence tools (Sutton and Ruck, 2024).

Before deploying a particular AI-based service, it is advisable to conduct a compliance assessment involving an analysis of internal and external information processes and information security risks, which is critically important for the subsequent scaling and integration of the relevant system. Such compliance procedures may themselves be automated. These activities may form part of a broader information security policy that takes into account the vulnerabilities of AI systems and the ongoing attempts undertaken by malicious actors to exploit malicious code and prompt injection techniques.

For the purposes of such compliance assessments, organizations should utilize continuously updated databases of indirect prompt injection strategies involving various document formats (including, for example, .doc, .pdf, and .png files), concealment techniques (such as hidden text in Word documents or white text on a white background), and attack vectors (including externally sourced email communications and direct access to document repositories in insider-threat scenarios).

At the same time, technical tools designed to counter such attacks, as well as automated compliance procedures, appear to require human oversight and expert moderation of automated compliance systems, given the rapidly evolving nature of threats in this field. With respect to the legal regulation of the relationships under consideration, these issues remain the subject of ongoing debate across multiple jurisdictions. In the United States, a comprehensive policy framework governing artificial intelligence remains limited, while data governance continues to depend largely on private industry and judicial litigation (Furqan et al., 2026). For example, most cybercrimes at the federal level are governed

by 18 U.S.C. § 1030, the Computer Fraud and Abuse Act (CFAA), which, inter alia, criminalizes unauthorized access to a computer or access exceeding authorization, i.e., the unlawful intrusion into an information system (Kilovaty, 2024).

Under 18 U.S.C. § 1030(a)(2), any person who “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains... information from any protected computer” commits a criminal offense. Despite longstanding criticism of the CFAA, including concerns regarding its vagueness, overly broad scope, and outdated approach to computer intrusion, it has been argued that the AI systems manipulation may constitute unauthorized access and, accordingly, give rise to criminal liability.

This approach is based on the premise that circumventing a coded restriction through prompt injection constitutes a form of unauthorized access. In *Van Buren v. United States*,⁷ the U.S. Supreme Court articulated a criterion distinguishing authorized accesses from unauthorized access within an information system. According to the Court, the decisive criterion is the existence of a technological barrier preventing a user from accessing a particular part of a computer system. The Court referred to this approach as the “gates-up-or-down inquiry.” Although this analogy is not without limitations, its reasoning is grounded in a code-based conception of authorization. In essence, the relevant inquiry is whether technological code or a technical restriction that prevents a user from performing a specific action or accessing certain data exists,

Indeed, the circumvention of technical barriers, limits, or permissible boundaries governing the use of AI systems should reasonably be characterized as unlawful conduct where the rights of third parties are infringed, which is the case in most instances involving intentional acts.

III.3. Intellectual Property Governance in the Prompt — Model — Output Chain

Another significant issue associated with the use of GenAI systems concerns the protection of intellectual property rights in AI-related relationships.

⁷ *Van Buren v. United States*, 593 US 374 (2021). Available at: <https://www.oyez.org/cases/2020/19-783> [Accessed 11.07.2026].

This issue is not new to legal doctrine. Legal systems have generally addressed, both through legislation and judicial practice, the protection of intellectual property created either with the assistance of or autonomously by AI systems. Such approaches are typically grounded in the principle that only a human being may qualify as an author and copyright holder, while also recognizing, in many cases that AI-assisted outputs may constitute protectable intellectual creations where the applicable criteria for copyrightability or other forms of legal protection are satisfied and appropriately interpreted.

At the same time, it is necessary to distinguish the separate issue of the legal characterization and protection of prompts used for the effective operation of LLMs, including whether such prompts may qualify as copyrightable works or as know-how or trade secrets. Globally, there has been a growing practice of creating and systematizing prompts for use with particular generative AI applications, including the development of so-called “prompt libraries,” that, in certain circumstances, may themselves be eligible for copyright protection..

A prompt, as an instruction or query directed to an LLM, differs fundamentally from an ordinary search query. It may constitute an original creative input containing a role, contextual framework, task description, references to sources, and specifications regarding the format of the desired output. In essence, the creation and refinement of a prompt shapes and determines the resulting output.

It has been observed that the increasing frequency and intensity with which companies worldwide employ AI in their internal operations and commercial products has led them to rely more heavily on carefully designed instructions and effective prompts in order to improve the performance and outputs of AI systems.⁸ Such instructions may constitute valuable intellectual property and may be protected either under trade secret regimes or as copyrightable works. Businesses should treat them accordingly, taking into account both their commercial value and their creative character. This concerns the desirability of securing rights in prompts both within commercial operations and more broadly

⁸ Intellectual property protection for AI prompts. Intellectual Property, IP Agreements. *ShiftLaw*, 18 November 2025. Available at: <https://shiftlaw.ca/intellectual-property-protection-for-ai-prompts/> [Accessed 30.12.2025].

where a creative approach is employed in utilizing the capabilities of a particular AI system.

The operation of LLMs is impossible without prompts. A prompt may be simple or highly sophisticated. Not all prompts are necessarily eligible for copyright protection. However, as the desired result becomes more complex, the instructions required to achieve it likewise become more sophisticated. The development of effective prompts capable of optimizing AI performance may require substantial intellectual effort, numerous refinements and iterations, and extensive analytical reasoning. For example, marketers may use carefully engineered prompts to create unique content-generation instructions describing the characteristics of a particular brand; software developers may design prompts capable of generating optimized code fragments; and designers may employ prompts to produce distinctive visual styles.

Trade secret and confidential information law provides one of the most practical forms of protection for prompts. A trade secret is generally understood as information that derives economic value from not being generally known and with respect to which reasonable measures have been taken to preserve secrecy. This concept may logically encompass sophisticated instructions for generative AI systems or collections of such instructions, including AI prompt libraries developed internally by a company and used to improve internal processes or client services.

Prompts used for effective interaction with AI systems may qualify as copyright-protected literary “works” where they are treated as the result of the author’s creative effort and their creation required purposeful intellectual and analytical activity aimed at obtaining a particular result, including through multiple iterations of interaction with an AI system. It is important to recognize, however, that the content of a prompt cannot be determined solely by the desired outcome. In this respect, the situation is analogous to computer software source code that may be denied copyright protection where it constitutes the only possible means of achieving a particular function. Therefore, a copyrightable prompt differs from a simple search query intended merely to retrieve particular information.

This also raises issues concerning employee-created intellectual property. Where an employee uses generative AI systems and achieves

a unique result through the use of a unique prompt, copyright in the prompt itself may arise and may belong either to the employer or to the employee, depending on the applicable legal regime and on factors such as whether the prompt was created within the scope of the employee's duties or outside those duties.

The distinctive feature of copyright protection for AI prompts lies in the fact that copyright protects the form of expression of ideas rather than the ideas themselves. Consequently, infringement of copyright in a sophisticated AI prompt may potentially be avoided simply by expressing the underlying idea in different words. Where the idea itself possesses independent value, copyright may therefore not constitute an adequate mechanism of protection. In such cases, protection may instead be pursued through confidentiality regimes, trade secret law, or the protection of proprietary know-how, depending on the requirements of the legal system of the relevant jurisdiction.

Accordingly, for purposes of protecting prompts — particularly in commercial settings — companies using sophisticated AI prompts in analytical, creative, or other professional activities should develop and implement internal IP and AI policies, while also revising contractual arrangements with counterparties to ensure that unique AI prompts are treated as protected intellectual property assets and safeguarded against unfair competition. Recommended measures include maintaining the confidentiality of valuable AI prompts through access-control mechanisms and non-disclosure agreements (NDAs); documenting the economic value of proprietary prompts through independent valuation; clearly defining ownership of exclusive rights in prompts in agreements with independent contractors, vendors, and service providers; incorporating intellectual property provisions into terms of service governing AI tools; and registering or depositing copyrights in AI prompts with collective rights management organizations where applicable.

At the same time, organizations actively integrating AI-driven processes should consider how prompts and related materials fit within the company's broader intellectual property strategy.

Indeed, as the complexity of tasks assigned to artificial intelligence systems increases, or where greater specificity of output is required, prompts themselves must become more precise and sophisticated. As

a result, organizations increasingly rely on prompt engineers or even specialized prompt libraries or repositories, demonstrating the growing economic value attributed to these unique methods of task formulation and the steadily increasing market demand for them (Arnaiz Medina, 2024).

The protection of works under intellectual property law requires the existence of a literary, artistic, or scientific work that is original in the sense that it constitutes the author's own intellectual creation and represents an objective expression of the author's creative efforts. In this context, it is important to recognize that it is difficult to substantiate claims regarding the creative character or even the originality of a simple command where the command itself is not unique in its form, which is relatively uncommon. It may even be argued that a prompt closely resembles a description of an idea or a listing of elements sought in the final output rather than the work itself.

Nevertheless, there are areas of law — most notably computer software — in which these requirements have been interpreted more broadly. In the 1990s, as the commercial value of software became increasingly evident, copyright protection was extended to source code, including at the international level through the provisions of the 1994 TRIPS Agreement.

This development required a significant conceptual shift, namely the recognition that, in exceptional circumstances, works characterized less by artistic or creative value than by their utility or functionality may nevertheless qualify for copyright protection. The same logic may also be applied to prompts (Arnaiz Medina, 2024).

At the same time, prompts used to simplify interfaces and facilitate user interaction with AI systems frequently employ textual structures containing specific elements such as role, context, objectives, sources, and output format. The use of textual expression in prompts, where accompanied by creative effort and intellectual contribution on the part of the author, brings them conceptually closer to literary works, a category that, for purposes of legal protection, also encompasses computer software. Nevertheless, it is difficult to deny that the effectiveness, functionality, completeness, relevance, and uniqueness of the outputs generated through a given prompt constitute core characteristics of the

prompt itself and should be taken into account when assessing its eligibility for copyright protection.

In this context, it is also relevant to recall the distinctive nature of copyright protection afforded to databases, which were incorporated into the category of protected works based on criteria extending beyond originality alone, including the economic and human effort invested in their creation. Against this background, it cannot be excluded that certain sophisticated prompts may receive a degree of copyright protection, potentially including forms of limited, derivative, or *sui generis* protection.

Another important aspect of prompt protection concerns rights in content generated using prompts in generative AI systems. In such cases, the prompt itself may embody the creative character of the resulting work, and in that sense may constitute an integral component of the creative process protected by copyright law.

IV. Law Enforcement

Judicial practice worldwide is increasingly evolving toward the recognition of authorship in AI-assisted works where sufficient human creativity is demonstrated through the creation and refinement of prompts.

For example, in November 2023, the Beijing Internet Court in *Li v. Liu*⁹ held that the user was the author of an AI-generated image entitled “Spring Breeze Brings Tenderness” produced through the user’s moderation and prompting activities. In that case, the Court established that the author had entered approximately 30 prompts and more than 120 instructions in order to shape the generated image. The Court held that the image possessed the requisite originality, deriving this finding from the degree of contribution and effort demonstrated by the prompt author.

At the same time, international judicial and administrative practice reflects alternative approaches to the protection of works generated with the assistance of artificial intelligence. One example is the deci-

⁹ Beijing Internet Court Civil Judgment (2023) Jing 0491 Min Chu No. 11279. Available at: <https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivil-Judgment112792023.pdf> [Accessed 11.07.2026].

sion of the United States Copyright Office (USCO) — the government authority within the Library of Congress responsible for copyright registration and recordation in the United States — in the matter of *Zarya of the Dawn*.¹⁰ In that decision, the USCO acknowledged that prompts might influence the generated image, but do not directly and unequivocally determine a specific result, which remains inherently unpredictable. Particularly significant was the Office's conclusion that because the same prompt may produce different results on different occasions, the process necessarily involves an element of randomness in the operation of the AI system, making it impossible to conclude that the resulting work was created solely by the user.

In this regard, the direct causal relationship between the actions of the AI system user — expressed through the drafting and refinement of a particular prompt — and the resulting work, whose copyrightability must ultimately be assessed, appears to constitute one of the key factors in determining the existence of sufficient human creative contribution in the production of a work through technological means.

The USCO has previously denied copyright protection for several works generated using generative AI systems on the ground that they lacked sufficient “human creativity,” that is, sufficient creative contribution by a human author. However, by 2025 the Office appeared to adopt a more nuanced position when it granted registration for an AI-assisted work entitled “A Single Piece of American Cheese” created by graphic artist Kent Keirse. ¹¹ Although Keirse used *InvokeAI* in the creation process, the USCO concluded that the requisite human creativity was present through the author's selection, coordination, and arrangement of AI-generated content (Stephens, 2025).

Thus, traditional approaches to assessing the copyrightability of protected works, determining the author's creative contribution, and evaluating the resulting intellectual creation may also be applied to works generated with the assistance of artificial intelligence. At the

¹⁰ U.S. Copyright Office. *Zarya of the Dawn* (Registration # VAU001480196) (2023). Available at: <https://copyright.gov/docs/zarya-of-the-dawn.pdf> [Accessed 11.07.2026].

¹¹ Public Records System. VAU001543942 / 2024-08-05. Available at: <https://publicrecords.copyright.gov/detailed-record/37990563> [Accessed 11.07.2026].

same time, AI-assisted creation presents distinctive features, particularly in light of the high degree of autonomy characteristic of such technologies and the unique outputs generated by neural networks. In this context, it is critically important to determine the role of the individual involved in the creation of the work, the nature and extent of that person's creative contribution, and the degree of randomness in the resulting output and its relevance to the user's query.

Within this framework, particular significance attaches to the assessment of the prompt itself, including both its substantive dimension, i.e., its external textual form of expression, and its technical and functional characteristics, considered together with the operational logic of the specific AI system involved and the establishment of a direct relationship between the prompt and the resulting output.

At the same time, many aspects of these legal relationships remain unsettled at the current stage of AI development and deployment. Although China has recently been at the forefront of an approach recognizing that human control over AI tools used in content creation may justify copyright protection, a more recent case has introduced a degree of uncertainty into this position. In 2025, a court in Jiangsu Province dismissed a copyright infringement claim brought by a designer against a company that had manufactured children's plastic chairs without authorization based on designs created by the designer with the assistance of artificial intelligence (Stephens, 2025).

Designer Feng Runjuan created three chair designs using the AI service *Midjourney* and posted them on social media together with the prompt she had used. Her prompt read: "A children's chair with a jelly-like texture, shaped like a cute pink butterfly with a glass texture, against a light background." A chair manufacturing company approached Feng to license her designs, but the parties were unable to reach an agreement. Nevertheless, without authorization, the company proceeded to manufacture chairs bearing a resemblance to Feng's original designs by using her original prompt with certain modifications. Feng subsequently filed a lawsuit.

There was little doubt that the manufacturer had relied upon Feng's prompts in creating the chair design. However, the central legal issue

was whether the AI-generated designs could be regarded as original works eligible for copyright protection.

Feng was unable to reproduce the original images using the same prompts because of the stochastic and non-deterministic nature of the AI system. This circumstance led the court to conclude that the relevant design decisions had been made by the AI program rather than by the human who formulated the prompts. According to the court, the user was required to demonstrate a verifiable creative process involving the adjustment, selection, and refinement of generated images through additional instructions and parameter modifications, as well as deliberate and individualized choices reflecting substantial intellectual contribution to such visual elements as layout, proportions, perspective, arrangement, color, and lines composition.

The Court dismissed the case arguing that the disputed images did not satisfy the criteria for original works and therefore were not entitled to copyright protection.

Accordingly, depending on the specific factual circumstances of a case, courts — even within the same jurisdiction — may reach different conclusions. This reflects the continuing development of judicial approaches to intellectual property disputes involving AI-assisted creation and underscores the need to consider the technical and factual circumstances surrounding the generation of the intellectual output, including the role and extent of human participation in the creation of the work. Assessment of these factors is further complicated by the autonomous operation of AI systems and the potential infringement of third-party rights during content generation, circumstances that may not always be readily identifiable.

Indeed, the distinction between the Chinese cases discussed above largely rests on differing assessments of the degree of human involvement in the creation of both the prompts and the final outputs, although in Feng's chair-design case the court attached particular significance to the fact that the original images could not be reproduced using the same prompt.

As is well established, identical prompts frequently generate different outputs because of the operational characteristics of autonomous AI systems, which, in itself, does not indicate bad faith on the part of

the user. Nevertheless, the degree of human control and participation in the creation of the work remains a decisive factor, as demonstrated by decisions of courts and administrative authorities in both China and the United States — jurisdictions possessing some of the world’s most advanced AI ecosystems. With respect to the differing Chinese decisions discussed above, both may reasonably be regarded as carefully reasoned and well-founded, helping to establish criteria for distinguishing between works merely assisted by AI and works generated predominantly or entirely through autonomous AI processes.

Another important issue arising in connection with prompt engineering concerns liability for the infringement of third-party intellectual property rights. In China, for example, the so-called “Ultraman” case involved a judgment of the Guangzhou Internet Court, later affirmed on appeal by the Hangzhou Intermediate People’s Court, imposing liability for copyright infringement on a company that provided AI-powered text and image generation services through its website.¹²

The claimant was the Chinese licensee of a Japanese company holding rights to the well-known fictional character “Ultraman.” When users prompted the defendant’s AI image-generation system to create Ultraman-related content, the system generated images substantially similar to the copyrighted character covered by the claimant’s license agreement. The Court was required to determine whether the defendant had infringed the claimant’s rights of reproduction and adaptation and, if so, what remedies should apply.

Significantly, the Court held that although the defendant had not directly infringed the licensee’s rights, its failure to exercise reasonable care to prevent infringement — such as by warning users or implementing adequate filtering and blocking mechanisms — rendered it liable for contributory copyright infringement. The Court ordered the defendant to pay damages for 10,000 yuan, substantially lower than the 300,000 yuan sought by the claimant.

¹² Second Instance Civil Judgment in the Copyright Infringement and Unfair Competition Dispute between Shanghai Xinmou Cultural Development Co., Ltd. and Hangzhou Shuimou Intelligent Technology Co., Ltd. Available at: <https://www.ip-house.cn/casotypical/detail/1qdgw5827okrj334wgvj39ex4zvpnm.html> (In Chinese) [Accessed 11.07.2026].

The decision may be characterized as both sophisticated and well-reasoned, and it represents one of the earliest judicial decisions worldwide recognizing the potential liability of an AI platform for contributory copyright infringement (Stephens, 2025).

V. Conclusion

Legal relationships arising from the use of artificial intelligence in the creation of intellectual property objects may be characterized as complex, multi-layered, and technologically sophisticated. Their effective regulation requires careful determination of the role, degree of creative contribution, and level of control exercised over the technology, as well as the allocation of responsibility among individuals and other legal actors involved in the creation of intellectual outputs. The degree of creative contribution, the nature of human control, and both the direct and implied relationships among the actions of the human author, the developer of the AI system, and the user of the technology should form the basis for the parameterization of legal relationships concerning the protection and enforcement of intellectual property rights. These factors should serve as foundational criteria in identifying infringing parties and determining the nature and scope of violations of third-party rights arising from the use of artificial intelligence systems.

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Dynamics amid Choosing Rehabilitation and Liquidation for Insolvent Businesses in India — A Comparative Study

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Abstract: The Insolvency and Bankruptcy Code 2016 (IBC) is vital in shaping the Corporate Insolvency Resolution Process (CIRP) for Indian businesses and companies. The research explores the critical legal subtleties to analyse the key paths provided with the IBC 2016 and choosing the appropriate process of “rehabilitation and liquidation of insolvent businesses in India beginning with the country’s insolvency restructurings and rapid economic progress.” The choice of the resolution procedures aims to interpret rehabilitation as a practical and viable approach with quantifiable consequences as compared to liquidation and analyses major aspects such as maximizing economic worth for stakeholders, delaying the resolution process herein, liquidation or insolvency, creditors looking for incentives, a viable restructuring process, sustainability of the businesses, and improper institutional capacity of restructuring as referred to the doctrinal provisions of the code. The study employs a mixed-methods approach employing real statistical data that uses doctrinal legal analysis of empirical research with institutional data from the Insolvency and Bankruptcy Board of India as well as qualitative research with statutory provisions, National Company Law Tribunal judgments, judicial precedents, case reviews, and legal reports pertaining to the procedure under the CIRP, IBC, and other related laws. A comparative study with insolvency resolution practices in the United Kingdom, the United States of America, and the European Union for exe-

cutting the rehabilitation approach along with landmark cases from all of these in the past as well as those of recent times is integrated effectively. The outcomes depict the rise in implementation of rehabilitation techniques over liquidation by as much as 30 % on an average as compared to the latter. Employing the appropriate methods gives the readers, legal experts, counsels, academicians, and further research enthusiasts the predilection to choose rehabilitation as a better procedure of resolution in India's insolvent businesses, as it conserves employment, capitalizes the economic worth, sustains businesses, achieves stakeholder gratification, and provides long-term economic benefits, further explaining the prospective need to progress research into viable options, taking into account the pros and cons of this process over liquidation as well as the factors that influence creditor composition and bidder interests.

Keywords: Insolvency and Bankruptcy Code; rehabilitation; liquidation; economic worth; stakeholders; insolvent businesses in India; the UK; the USA; EU

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I. Introduction

The foremost aspect for India, as a developing economy in terms of financial growth, is that companies, organizations, and institutions need to evaluate robust credit flows along with a stable generation of investments or capital. Insolvency for a company is not a sudden event; it happens over a series of financial and operational accountabilities leading to distress and the caution of its collapse. Adopting the resolution processes facilitated and implemented globally (Kattadiyil and Mehboob, 2020) by financially stable countries such as the United States of America, the United Kingdom, and the European Union is necessary to tackle insolvency issues. The paper briefs on the impediments and resolution timelines in the provisions of the Insolvency and Bankruptcy Code 2016 (IBC), which need to be looked into with the procedure stating rehabilitation as a better option, while noting that liquidation is often pursued in practice, laying down the pros and cons of choosing the former procedure in the Indian insolvency system. Amidst an ineffective legal framework with inadequacies in the IBC for a viable and functional restructuring process, the insolvency and bankruptcy practices in India have seen a drastic momentum towards transformative practices with the codified implementation of IBC 2016 (Sameera, 2025).

The Insolvency and Bankruptcy Code 2016 was integrated as a unified enactment, taking in several fragmented old provisions to present an effective means of restructuring for the debtor as well as enhance the rights of creditors. A creditor-driven model was introduced, prioritizing the revival through the Corporate Insolvency Resolution Process (CIRP), making restructuring viable for businesses (Singh, 2021). In this scenario, it can be an accomplishment, but the dynamics between

rehabilitation and liquidation under the IBC reveals critical challenges that threaten the Code's foundational objective of value maximization and business revival.

The research identifies several key gaps in the current understanding and application of insolvency law in India. The foremost-identified gap is the lack of a comprehensive comparative analysis between India's insolvency framework and the legal regimes of the United States, the United Kingdom, and the European Union, particularly in relation to restructuring and resolution processes and the differences among them. Secondly, while the IBC mandates the maximization of asset value, there is insufficient legal and institutional support for early-stage restructuring and preventive measures, which has been a robust aspect of the pre-pack mechanisms in the UK insolvency regime. Thirdly, there has been limited momentum with the role of Insolvency Professionals (IPs), with challenges in expertise and practicing a time-bound approach resulting in ineffective revival mechanisms for the insolvent businesses.

I.1. Objectives and Purpose of the Research

Critically examine the dynamics of rehabilitation and liquidation of insolvent entities in India under the Insolvency and Bankruptcy Code, 2016, through a comparative analysis of the legal frameworks and selected case studies from the United States, the United Kingdom, and the European Union (Kattadiyil and Mehboob, 2020). This research also aims to identify the factors that influence the decision whether to rehabilitate or liquidate a company or enterprise experiencing financial distress. The jurisdictional and organizational structure in a legal framework to promote the rehabilitation of insolvent businesses and revive them with effective legal designs adapted globally is significant for this study. Evaluation of the role of other players including authorities, government, policy makers, insolvency professionals, mainly the debtor, in shaping the outcome of insolvency proceedings is an important part of the study. It includes, primarily, analysis of legislative and procedural frameworks with a comparative study for the same in the US, the UK, the EU, with that of India, highlighting the framework for

these two resolution processes (Patil, 2023). It further enhances the viability of insolvent businesses to choose the best option and an advantage of revival (Koshcheeva and Minnullina, 2021). Finally, the emphasis on how the 30 percent advantage of rehabilitation works compared to other resolution process with appropriate and relevant data for the same (Cook et al., 2001). In doing so, the research contributes to the broader discourse on global insolvency law reform and supports India's aspirations to become a better player in the global markets, with India being a mixed economy and considering the current IBC frameworks for restructuring insolvent businesses.

I.2. Problem Statement

Reorganization of a distressed business with reference to insolvency acts has been undergoing several changes in the countries mentioned herein, with the key player being the US following a *Debtor-in-Possession (DIP)* model slowly inclining towards a creditor-friendly model with political momentum in the economic reforms. The EU has adapted to the recently implemented *EU Directive 2026/799* with an inclination towards harmonization across its States (Bláhová, 2026). Globalization and cross-border insolvency are gaining rapid momentum in the recent past, emphasizing restructuring of organizations into rehabilitation rather than liquidation (Van Hoof, 2026). Sections 234 and 235 of the IBC 2016 reflect inconsistency in implementing a functional agenda as a legal structure in cross-border resolution processes primarily reliant on ineffective measures available (Chawda, 2024). This clearly states the absence of a codified legal framework, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law. The result of such a lacuna results in judicial disintegration proceedings on a global basis, hence leading to deferred and discriminatory conclusions. A comparative analysis of the legal regimes in the US, the UK, and the EU may help identify universally applicable principles for ensuring an effective rehabilitation process and a viable, globally recognized liquidation framework. The system practiced in India challenges creditor assurance, hindering a robust resolution process for insolvencies within the county as well as for cross-border entities.

II. The Advent of the IBC 2016 — Enhancements and Impediments

The IBC 2016 comprehensively defined insolvency as a condition wherein the debtors are unable to pay the dues and debts giving rise to the legal procedure under insolvency (Aparna, 2015). Prior to the IBC 2016, Section 6 of the Provincial Insolvency Act 1920 (the 1920 Act) defined insolvency as a series of actions, such as intentionally absconding to delay creditors' dues, transferring property to escape the creditors, selling the property under litigation, or non-execution of a court decree that clearly states the default by the debtors that account for legal procedures (Sahoo and Guru, 2020).

The 1920 Act was more stringent, particularly in its time-bound approach and protection of debtors; however, it contained flaws that could shield fraudulent insolvents. By contrast, the IBC 2016, enacted with regard to international standards and the needs of corporate debtors, emerged after significant and sometimes conflicting judicial decisions as a more structured framework. It provides a streamlined resolution process, aligns with contemporary insolvency strategies, and benefits both small and large businesses (Shekhar, 2025).

The IBC 2016 draws on the UNCITRAL Model Law, cross-border insolvency practices, and effective legal approaches developed by global financial giants, including the US, the UK, and EU. The Code has established Insolvency and Bankruptcy Board of India (IBBI) for the regulation process and has empowered the National Company Law Tribunal (NCLT) to decide insolvency cases based on corporate standards (Shekhar, 2025). The Code has altered major hindrances for debtors, accentuating resolution, positioning investor enticements, and a waterfall mechanism (Shah, 2025). Section 53 of the IBC 2016 delves into the scope of this mechanism, prioritizing the hierarchy of creditors during the process of liquidation and sale of assets (Shah, 2025). In this view, the Code is perceived as being a creditor-friendly model rather than a revival of debtors. Although the Code has emerged as a better operative compared to the previous acts and laws for insolvency, it is still a creditor-beneficial process not giving much opportunity to the debtors and a proper restructuring solution through a legal path for the insol-

vent business (Gupta and Kumar, 2025). The following study further elaborates on different forms of insolvency explained in Indian context and other jurisdictions such as the USA, the UK, and the EU. In India, there are several ways when insolvency may arise in relation to corporate entities, partnerships, individuals, sole proprietors, and groups or institutions (Kokorin, 2021).

The IBC 2016 has laid down the Corporate Insolvency Resolution Process (CIRP) as a procedure that facilitates a legal approach to look into the financial distress of Indian companies. This framework was introduced to rehabilitate viable businesses while protecting creditors' interests. The procedure under resolution in the IBC is to provide restructuring through rehabilitation and liquidation as another option. The major intent of the CIRP is to optimize stakeholders' value, preserve employment and enhance business endurance through appropriate rehabilitation (Gupta and Kumar, 2025). This process has been designed to reflect the IBC policy structure. The CIRP majorly strives to keep the entity as a going concern and help the companies survive distress that arises financially increasing liability (Singhvi and Tiwari, 2021). The policy has laid down a timeline of 330-day-frame-work which helps resolution through viable restructuring and then, if it does not work out, it carries out liquidation as another resolution process (Singh, 2021). Prior to the 2019 amendment, there was a 180-day period with an extension up to 270 days, and with this change, it provides better structure and efficiency.¹

A recent IBBI study,² along with supported research from IIM Ahmedabad, indicates that aspects pertaining to sales, expenditure for the working group in such businesses, capital expense, valuation, and market position have rapidly improved, highlighting the possible prospects of rehabilitation as a resolution process.³ Scholars note that reha-

¹ Model Timeline for the Corporate Insolvency Resolution Process. Available at: <https://elplaw.in/wp-content/uploads/2023/12/CIRP-Model-Timeline.pdf>.

² Transforming Insolvency Resolution in India 2025 Report. Published by the Insolvency and Bankruptcy Board of India (IBBI). Available at: <https://ibbi.gov.in/uploads/whatsnew/9f9dc60d2f3d49b5ab5aed5dfad2ba1a.pdf> [Accessed 29.01.2026].

³ Effectiveness of the Resolution Process: Firm Outcomes in the Post IBC Period. IIM Ahmedabad (IBBI 2026) IBBI/PR/2026/4. Available at: <https://ibbi.gov.in/uploads/press/0a6d94ca4b89c24e09a459c11c60b2bd.pdf> [Accessed 29.01.2026].

bilitation is seldom used in practice, despite being frequently discussed as a potential solution (Shekar and Guru, 2020). Moreover, the absence of a well-defined pre-packaged insolvency mechanism, common in such jurisdictions (Kumar, 2022) as the UK and the US, limits the speed and efficiency of restructuring, pushing viable entities toward liquidation.

The primary objective of the IBC 2016 is to revive and restructure insolvent businesses through rehabilitation, thereby enabling distressed companies to recover. By preserving the going-concern principle, the Code seeks to maintain economic value, protect employment continuity, and promote entrepreneurship. In developing a robust insolvency framework and effective resolution processes, restructuring regimes may draw on best practices from major jurisdictions, including the United States' Bankruptcy Code (Title 11 of the U.S. Code), the United Kingdom's Insolvency Act 1986, and the EU Insolvency Regulation (Regulation (EU) 2015/848). Chapter 11 of Title 11 of the US Code states a robust approach and restructuring procedure majorly extending protection to the debtor along with a corroboration of the judicial system. Taking the regime of the UK, with its Corporate Insolvency and Governance Act (CIGA) 2020, the law clearly introduced a hybrid model with the pre-pack mechanised model to speed up sale of assets and safeguard employment in turn upholding the continuity of businesses (Iheme and Nanda, 2025). India clearly lacks the above two integrated mechanisms for effective resolution under its insolvency code (Sengupta and Sharma, 2016). Consequently, the process may be delayed due to the absence of a formal pre-pack mechanism, judicial backlogs, extended timelines, and poor coordination among stakeholders.

The Indian law defines bankruptcy as a *“legal declaration of an individual or entity's inability to meet the financial obligations granted by a judicial authority to provide relief from the obligation to repay certain debts, subject to the liquidation of assets”* (Shekar and Guru, 2020). There may be a condition of financial distress for a company that it cannot be revived. In such a case, the law enables organizations to either discharge debts or streamline through a court appropriate plan (McCormack, 2025). Bankruptcy can be the last resort in case the other restructuring plans are not viable for rehabilitation or liquidation. Sec-

tions 79(3) and 126 of the IBC 2016 define the terms “bankruptcy” and “bankrupt” as the state when a debtor is declared incapable to fulfil financial requirements, which applies both to individuals and firms.⁴ Bankruptcy is aligned with a legal approach and declared as bankrupt under law. The relevant Indian legislation includes the IBC 2016, the Companies Act 2013, and other related statutes with insolvency provisions being consolidated under the Code.

The Indian insolvency and bankruptcy legal process has undergone a transformative evolution, culminating in the enactment of the IBC 2016 that represents a paradigm shift from fragmented and inefficient pre-IBC laws to a modern, market-driven, and time-bound framework. This reform was necessitated by the inadequacies of earlier legislation such as the Companies Act 1956, which dealt only with liquidation, and the Sick Industrial Companies (Special Provisions) Act 1985 (SICA), where a debtor-in-possession regime was limited in scope and plagued by delays, resulting in low recovery rates and ineffective incentives for timely reorganization. The IBC marked a decisive move toward a creditor-centric, efficient, and outcome-oriented system, aligning India with global best practices in insolvency resolution. The IBC framework and mechanism have both advantages and disadvantages, although its intent is to revive distressed companies and encourage rehabilitation where the statutory intent and the practical applicability seem parallel (Mittal, 2025). The Code puts forth both the liquidation and rehabilitation processes under resolution similar for both business organizations and individuals (Mittal, 2025). Several mechanisms have improved the process from the debtor’s perspective, including early detection of financial distress. This facilitates timely rehabilitation, helps prevent complete business failure, and supports the revival of the business. It was not so in the old regimes of insolvency laws that rather drove companies and individuals into bankruptcy with little chance for revival (Sushmita, 2025).

⁴ Part-III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms. [2018]. IBC Laws. Available at: <https://ibclaw.in/section-79-definitions-of-part-iii/>.

III. CIRP Triggers and the Concerned Sections

Section 5(6) of the IBC 2016 defines default by a company to repay a debt as the primary trigger for insolvency resolution process. In the present scenario, the CIRP operates on certain triggers primarily stating the default and the failure to make a repayment within 30 days when the debt is due (Sharma and Arora, 2025). Under Section 7 of the IBC, 2016, the insolvency resolution process may be initiated by financial creditors, including banks, financial institutions, and other lenders that have extended credit through loans, bonds, or similar financial arrangements (Chhabra, 2020). Operational creditors — including government authorities, employees — may initiate proceedings under Section 9 of the IBC 2016, claiming from goods and services. Section 10 of the IBC encourages the corporate debtor to initiate the process so as to aid in rehabilitation through revival rather than to resort to liquidation method (Ravi and Gupte, 2025). The IBC 2016 originally permitted the initiation of the corporate insolvency resolution process upon a default of at least ₹100,000. In March 2020, the Central Government increased this threshold to ₹10 million (₹1 crore), then approximately US\$ 130,000. Unlike the earlier regime, which largely focused on the classification of non-performing assets (NPAs), the IBC treats default as the trigger for insolvency proceedings and seeks to facilitate timely resolution and business revival for eligible debtors. This has been provided with an intent of revival for the corporate debtor and not just recovery.

The triggers for commencing the CIRP were clarified in *Innovative Industries Ltd. v. ICICI Bank*, which established that a “default,” as defined under Section 3(12), is the key basis for initiating proceedings under Section 7 of the IBC 2016. The Supreme Court opined that the “Creditor-in-Control model has been the emphasis of the ruling by the Supreme Court with a time bound resolution process prioritized in this case.” In *Kotak Mahindra Bank v. A. Balakrishnan (2022)*, the Supreme Court held that a certificate of recovery under the RDDBFI Act generates a new cause of action even if the default of payment was prior to this. The ruling clearly marked the interchange between the pre-IBC and post-IBC mechanisms of debt retrieval. In *Vidharba Industries Power Ltd. V. Axis Bank (2023)* the *Innovative Industries* case ruling

was looked into, where the Supreme Court stated the limited discretion for NCLT under Section 7(5) to reject an initiation only under “rare and exceptional circumstances.”

An analysis of landmark insolvency decisions will be included in the study to illustrate the operation and impact of the IBC 2016 to enhance the paper’s comparative study of insolvency regimes.

In *National Sewing Thread Co. Ltd. v. DCIT* (Delhi High Court, 2024), the company failed to respond to the assessment order issued by the Deputy Commissioner on 22 May 2024. A resolution plan had already been approved under the IBC. This converses the Tax Department from making further claims. According to the Delhi High Court, the Revenue and Tax Authorities could not pursue claims that were covered by the scope of an already approved resolution plan. *Omkara Assets Reconstruction Pvt. Ltd.* concerns a situation in which a lender’s loan account becomes a non-performing asset (NPA) and the lender assigns the debt to Omkara, an asset reconstruction company. As assignee, Omkara may initiate recovery proceedings under the SARFAESI Act. Such proceedings may be challenged by the borrower or other parties on grounds including the validity of the assignment, compliance with statutory procedure, jurisdiction, and the effect of any concurrent proceedings under the IBC.

There are two aspects to be considered in this regard while studying the decision of the court/tribunal. The first aspect concerns the status of the ARC after transfer/purchase and the voidness of assignment/transfer when SARFAESI proceedings are challenged. In such cases, the proper statutory process must be followed, whereby the borrower approaches the appropriate forum (SARFAESI DRT/DRAT) and does not file for writ jurisdiction.

The second aspect concerns the impact of the IBC moratorium on such actions. Once corporate insolvency resolution process (CIRP) is initiated under the IBC, the statutory moratorium automatically prohibits any parallel recovery proceedings, including SARFAESI actions. Consequently, all such processes and the admission of claims fall within the exclusive scope of the insolvency proceedings, and any pending enforcement action must be stayed.

In *Srei (an NBFC/financier)*⁵ that gave credit/loan facilities to M/s Navinchandra Steels, the insolvency proceedings were initiated under the IBC 2016 on the borrower's account becoming a non-performing asset and challenges were raised by the debtor on the insolvency process, primarily on whether the proceedings/claims can be sustained and how the IBC process should proceed in the particular circumstances. The Supreme Court held the maintainability/scope of the IBC process in the context of the dispute. The decision underlined that once the statutory conditions for invoking/continuing CIRP are satisfied, the insolvency mechanism under the IBC is to be followed in the manner contemplated by the law, and challenges not falling within the permissible contours of the process would not go against it.

In the third scenario here, *Jindal Steel (NCLAT 2020)*,⁶ it was questioned whether a financial/operational creditor filed an application for insolvency proceedings against Jindal Steel under the IBC 2016 and whether the application was admitted by the NCLT and further initiated the CIRP. Furthermore, the dispute extended to issues arising between the parties during or after the CIRP, such as the admission and maintainability of claims (including the existence of debt or default), compliance with IBC timelines and procedures, and whether certain actions taken by the resolution applicant or the committee could be sustained.

In another case, namely *Kalyani Transco v. Bhushan Steel*,⁷ the issues of "debt" and "default" were questioned (specifically, whether the party's claim is admissible in the CIRP), along with whether the dispute is essentially contractual or recovery-based (and should therefore be pursued through the IBC claim process rather than in parallel proceedings). Furthermore, the court examined the effect of the moratorium on enforcement actions and whether the NCLT/NCLAT rightly exercised its jurisdiction in admitting or continuing the CIRP.

⁵ *A Navinchandra Steels Pvt Ltd vs Srei Equipment Finance Limited* (Supreme Court of India).

⁶ *Arun Kumar Jagatramka vs Jindal Steel And Power Ltd* (Supreme Court of India).

⁷ *Kalyani Transco v. Bhushan Power and Steel Limited and Others* (Supreme Court of India).

III.1. United States — Bankruptcy Code

Chapter 7 governs the liquidation of the debtor's assets to satisfy creditors' claims (Newton and Liquerian, 2012). This Chapter establishes a federal legal procedure for individuals and businesses in financial distress. It permits debtors to retain exempt property, while non-exempt assets may be liquidated to satisfy creditors' claims, and eligible debts may be discharged. It helps individuals and small business survive as well as revive post the insolvency process and continue the businesses. Chapter 11 deals with reorganization of the business while continuing operations. The debtor-in-possession (DIP) model allows the company's management to retain control during restructuring (Vrontis et al., 2019). Under Chapter 13 individuals, earning a regular income are allotted the revival process enabling a simple mode of repayment of debts and liabilities; individuals with regular income may reorganize debts and repay them over time.

III.2. United States — The Debtor-in-Possession Model (DIP)

Insolvency laws in the U.S. have always been a boon to sick companies seeking for restructuring, as they emphasise a system that supports the *debtor-in-possession* (Druin and Allgrunn, 2014). Under Chapter 11, as discussed above, DIP retains the control with the debtor to be in charge of his daily operational tasks even during the legal proceedings for bankruptcy (Vrontis et al., 2019). The U.S. has adopted this model to reinforce confidence in the incumbent management. Given their comprehensive understanding of the business, they are uniquely positioned to design an effective, operational resolution plan to restructure the distressed entity. Additionally, the DIP is allotted an exclusive period for filing the restructuring plan. Creditors are also given their right to vote in order to keep up the survival of the business by exercising with a majority of two-thirds from each class category with acceptance to the plan. The bankruptcy court then confirms the plan pursuant to statutory criteria to ensure a *fair and equitable* process, thereby fostering cooperation between management and the court while ensuring efficient operations to reorganize the distressed entity.

In *Re Rehabilitation of Scottish Re (U.S.), Inc. (Delaware, 2022)*, the Court of Chancery held that, in seeking approval of the company's rehabilitation plan, the Delaware Insurance Commissioner was not required to demonstrate that the plan satisfied the "liquidation standard" discussed in the Opinion.⁸ The Commissioner proposed a rehabilitation plan, but the parties could not agree on the standard that the court would apply when determining whether to approve the rehabilitation plan.

The issue was whether the Commissioner had to establish that the rehabilitation plan validly determined that each claimant would receive at least as much as they would in the Company's liquidation — a requirement referred to as the "liquidation standard" — and whether the court should impose compliance with that standard as a matter of common law. The Court of Chancery held (1) the statutory scheme does not require compliance with the liquidation standard; and (2) common law does not require compliance with the liquidation standard.

In *Harrington v. Purdue Pharma L.P.* (U.S. Supreme Court, 2024), the Court contested that the plan for bankruptcy had an inclusion of a third-party coverage for the Sackler family who were not a debtor to the case, but could be treated like this from civil claims arising from the settlement. The issues were whether the court would permit non-debtors a release without consent as per the plan under the Title 11 of the U.S. Bankruptcy Code. It also involved a proposed global settlement under which the Sackler family would make a substantial financial contribution in exchange for protection from opioid-related claims. The code did not approve of claims for non-debtors under Chapter 11 reviewed by the Supreme Court, although the lower courts permitted the release.

Thus, under the statutory provisions, the Supreme Court did not enhance the claims and plan for non-debtors as per provisions under the law and there was a clear rejection for the claim by the third party in the case under consideration.

⁸ *In the Matter of The Rehabilitation of Scottish RE (US), Inc* [2022] Chancery of the State of Delaware C.A. No. 2019-0175-JTL.

III.3. United Kingdom — The Insolvency Act 1986

The UK in its insolvency regime arranges an agreement with the creditors to the company and the entity as a whole to provide a re-organizing solution in order to restructure the existing debt (McCormack, 2025). Additionally, *administration* is a court-supervised process where an administrator takes control of the company to rescue it as a going concern or realize assets for creditors. Apart from company rescue mechanisms, the UK insolvency system also provides for a structured liquidation process to dissolve the company, realise its assets, and satisfy creditors' claims in an efficient and expeditious manner. Specifically, CIGA 2020 enables directors to retain control of the company by introducing a debtor-in-possession moratorium, alongside a viable restructuring plan.

III.4. European Union — EU Insolvency Regulation (2015)

Recognition and acceptance of legal policies mutually encourage harmony and recognition with neighbouring Member States. The EU operates within a coordinated framework, aligning administration and restructuring procedures for global enterprises, despite the absence of a unified insolvency regime across the European Union.

III.5. The UK, EU and US — A Synchronized Administration of Resolution Process

The Insolvency Administration for Restructuring in the UK applies the Insolvency Act 1986. This enactment features a similar spirit to the CIRP practiced in India under the IBC 2016. The court, in its jurisdiction enables the appointment of an administrator and an insolvency practitioner along with a floating charge holder and the directors to the company.

An administrator, an independent insolvency practitioner, is appointed by the court, along with a floating charge holder, or the company's directors. The primary role of the administrator upon taking control is to facilitate the corporate rescue process, enabling the enterprise

to continue its operations. If the administrator at any point of restructuring finds it unattainable, a plan for liquidation with an enhanced outcome must be operated in view of the creditors.

An analysis of the EU insolvency framework reveals that Member States operate in coordination during insolvency proceedings, enabling group-wide recovery and efficient administration. This encourages clear jurisdictional interests and recognizing the member countries with applicability of its insolvency laws during such proceedings. The EU has a similar structure in comparison to India and UK, prioritizing the safeguard of its creditors involved.

With respect to its insolvency framework, the United States emphasizes the Debtor-in-Possession (DIP) model over liquidation. This reflects a core policy aimed at preserving the organization and its assets — both tangible and intangible — in order to maximize economic value through continued employment and revenue generation. This principle has led to the United States being a global leader in maintaining efficiency in its insolvency resolution processes inclining toward a debtor friendly model proving across jurisdictions the significance of revival rather than ruin.

IV. India — The Creditor in Possession Model

India's IBC operates with creditor-in-possession model (CIP model), although the debtor can also initiate the insolvency resolution process. In a creditor-in-possession mode following the initiation of CIRP, control of the corporate debtor is transferred from the Board of Directors to a Resolution Professional (RP). The Committee of Creditors (CoC), composed of financial creditors, are the major players in determining and carrying out the decision for the resolution. The National Company Law Tribunal (NCLT) is designated under the IBC 2016 to oversee the judicial process and approve the resolution plan approved by the CoC with a 66 % voting share. In India, the CIRP can be initiated either by the debtor or the creditors and significantly emphasises the maximization of assets with a feasible revival plan adapted from Chapter 11 of the US Insolvency Framework to let the continuity of the

business concern, preserving entrepreneurship (Shekhar, 2025). This framework looks ideal in the Act, yet its options face limited practical applicability, which is significantly influenced by the UK model regarding the role of Insolvency Professionals.

Unlike the US, UK, and EU frameworks analysed herein, India's Insolvency and Bankruptcy Code (IBC 2016) does not expressly provide for a legislative cross-class cramdown in pre-insolvency reorganisations. Nevertheless, the IBC 2016 integrally distinguishes a method of cramdown through the Corporate Insolvency Resolution Process (CIRP). Establishing the Committee of Creditors (CoC), under the IBC 2016 exclusively with financial creditors, thereby excluding operational creditors from voting rights is practised here (Sehrawat, 2024). This operational strategy permits the CoC to support a resolution plan despite the dissent from operational creditors, effectually empowering a *de facto* cramdown across this class of creditors. In the landmark case of *Swiss Ribbons Pvt Ltd & Anr v. Union of India*, the Supreme Court upheld this principle, emphasizing that operational creditors must receive equitable treatment despite lacking voting rights. Nonetheless, pre-insolvency restructuring mechanisms in India — including schemes of arrangement under Sections 230–232 of the Companies Act 2013 — necessitate class-wise consent, which effectively precludes the implementation of a cross-class cramdown mechanism in corporate restructuring.⁹

Similarly, the RBI's Prudential Framework for Non-Performing Assets highlights¹⁰ the paucity of effective cramdown mechanisms, thereby restraining the efficacy of multifaceted reorganisations. Eminent insolvency experts and restructuring professionals have argued that the implementation of this revival mechanism exerts a profound influence on restructuring proceedings. In contrast to the limitations inherent in the CIRP, this approach effectively minimizes time and maximizes economic value.

⁹ Section 232 in The Companies Act, 2013.

¹⁰ Ministry of Finance. Government and RBI Implement Comprehensive Framework to Recover and Reduce NPAs (Reserve Bank of India 2025) Press Release. Available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146819®=48&lang=2> [Accessed 19.09.2026].

Case Laws & Examples

Tata Steel BSL Limited (formerly Bhushan Steel) Case (Pandey and Anshul, 2024). This is one of the most successful examples of rehabilitation under the IBC 2016. Tata Steel acquired the distressed entity, and the resolution plan was approved by the NCLT. This ensured the company continued as a going concern, saving thousands of jobs and ensuring a better recovery for creditors than if the company was forced into liquidation.

Noida Special Economic Zone Authority v. Manish Agarwal and Ors (2024). The Supreme Court clarified that the resolution plan's focus is to maximize asset value and that claims not covered in the approved plan stand extinguished, promoting the rehabilitation of the corporate debtor without the burden of past liabilities.

According to the Revamping India's Insolvency Framework Report (2024) by ELP, 40 % of successfully resolved cases were previously considered defunct or nearing liquidation, underscoring that the statutory rehabilitation framework functions as a critical turnaround mechanism.

V. The Cramdown Mechanism in Insolvency: A Comparative Perspective

The cramdown mechanism is a vital legal tool within the contemporary global insolvency framework. It enables the rehabilitation of a business by allowing a resolution plan to be approved regardless of the majority vote or dissent of a particular class of creditors, thereby preserving the enterprise's economic value and operational continuity (Mahajan and Sharma, 2025). This system was adopted from the US Bankruptcy Code and was looked upon as a crucial segment in the revival of a company heading out a resolution plan. In this mechanism, the tool is enabled to equip support when one class of creditors object and hence uphold the restructuring.¹¹

The United States have implemented the cross-class cramdown mechanism for a long time and it has been recognized globally as a ro-

¹¹ Legal Clarity Team. The Cram down Process in Bankruptcy Explained (2025). *Business and Financial Law*. Available at: <https://legalclarity.org/the-cram-down-process-in-bankruptcy-explained/> [Accessed 19.09.2026].

bust legal approach in insolvency laws featuring a strong drive toward rescue orientation. The primary purpose of this mechanism is to overcome creditor dissent regarding restructuring plans that would otherwise hinder the revival of distressed entities. Examining the strategy behind creditor behaviour laid the foundation for the cross-class cram-down mechanism. The mechanism was implemented by the UK to unfold traditional enactments in insolvency laws hindering business continuity for financial distressed companies.

Innovations in the UK's restructuring mechanisms are designed to streamline complex revival plans involving numerous classes of creditors (Mokal, 2025).

The EU's Restructuring Directive from the 2019/1023 applied similar approaches as its cross-class cram down system for effective revival and rescue of insolvent businesses (Munoz, 2022). The mandates are similar to UK and EU except in the voting threshold for some member countries, and differs to some extent in its priority interest. The intent is equivalent for US, UK and EU when it relates to creditor interests and effects as well as the rescue approach. A comparative analysis of the cramdown mechanism practiced by the different countries can be explained with regard to the characteristics and other aspects that include creditors' role, voting rights, effect of the mechanism, test of interest, priority, and the discretion of the court.

The statutory provisions for the US framework are derived from Section 1129(b) of Chapter 11 of the U.S. Bankruptcy Code, which governs the cross-class cramdown mechanism. This provision requires the resolution plan to be approved by at least one impaired class of creditors, thereby ensuring that dissenting classes cannot block the implementation of the plan at any stage. The test adopted by the U.S. Bankruptcy Code in a restructuring process is the "best interest of creditors" in order to provide determined value which has been proved better for the impaired class compared to the disadvantage with an immediate liquidation. This test mainly emphasizes the valuation of the assets of the debtor, putting an effort into the rule of "Nothing-to-Lose," explains the "test of interest" so as to maintain an equitable and fair method that clearly states its approach of the absolute priority rule while the discretion of the courts is limited.

The statutory provisions for the UK have been enacted under the Section 26A of the Companies Act 2006, along with Sections 901F and 901G. The voting and creditors' role for a restructuring plan for the UK cramdown system requires the approval by one class with an economic interest. Similar to that of the US, the effect has been "cross-class cram down" since the year 2020. The test of interest applied here is the "No worse off" under the restructure plan proposed as a "relevant alternative" to liquidation. This test aims to protect creditors regarding asset valuation and recovery assessment, while effectively binding the creditors to the process.

A comparative analysis of the jurisdictions studied herein reveals that the cross-class cramdown mechanism applied in the US, UK, and EU utilizes the best interests test to evaluate the resolution plan against alternative outcomes, specifically hypothetical liquidation. The U.S. has brought out one of the most flexible methods for restructuring which is probable, debtor supportive, creditor concerned and is robust in its legal domain. The U.K. has flexibility in its mechanism, although reliable on courts and its discretion bringing in an innovative process for restructure. Although the E.U. has only recently mandated this framework, it has been effectively implemented across Member States, differing primarily in the specific voting thresholds required for plan approval. The comparative analysis of the cramdown mechanisms applied in the U.S., U.K., and E.U. demonstrates an increasing recognition of cross-border insolvency regimes, driving a global momentum toward corporate rescue that prioritizes restructuring as a means to revive distressed entities and enhance economic value through business continuity.

United States — In the case of Re: MPM Silicones "Momart"

The decision upheld the "unquestionable equivalence approach" when appealed by three classes of creditors. It emphasized that genuine valuations, which align with current market rates and reflect inherent risks, are essential for facilitating successful restructuring plans.¹²

¹² *In the Matter of: MPM Silicones, LLC* [2017] United States Court of Appeals, Second Circuit 874 F.3d 787 (2017).

The advantage obtained through the CCCM applied in this case study is the “established flexibility” in the determination of the cramdown interest rate.

UK — Re: Petrofac limited (2025)

The “relevant alternative” test was applied in this case, which involved a \$ 350 million restructuring plan for outstanding debt. While the decision upheld the validity of the mechanism, it ultimately reversed the sanctioning of the plan, questioning the sufficiency of robust evidence.¹³ The primary advantage demonstrated in this case is that creditor dissent does not preclude cross-border restructurings, provided that the plan incorporates fair and equitable standards.

EU — Royal IHC (Netherlands, 2024)

In *WHOA restructuring of Royal IHC* case,¹⁴ the Dutch Court approved amendments to undrawn bank guarantees and inter-creditor agreements to alter creditor rankings, while granting judicial pre-approval for minor asset sales. In order to ensure operational continuity, the decision upheld the legal enforceability of the mechanism and its capability to bind all affected creditors. The key advantage demonstrated by this case law is that it represents a pivotal utilization of the WHOA to cram down a consortium of creditors.

VI. The Concept of 30 % Rehabilitation Advantage

Statistical data on the insolvency resolution process under the IBC 2016 demonstrate that rehabilitation allows creditors to recover an average of 32 % of their claims. This represents a significantly higher recovery rate compared to the outright liquidation of the company (Thekethil, 2018). This method prioritizes reorganization and revival of a

¹³ *In re Petrofac Ltd* (in the High Court of Justice Business and Property Courts of England and Wales Insolvency and Companies List (ChD)).

¹⁴ *The Dutch Supreme Court judgment on the WHOA restructuring of Royal IHC* (District Court of Rotterdam).

financially distressed business rather wind up the company and hence maintain continuity of the present employment, possessions, and value. The concept echoes the intention of “revive rather than ruin.” Key aspects of the rehabilitation/resolution process focus on a going concern wherein the IBC2016 promotes saving the company as a functioning entity, avoiding the massive value erosion that occurs during liquidation. Time-Bound Process proves a crucial aspect as the Corporate Insolvency Resolution Process (CIRP) mandates strict timelines to prevent further degradation of assets. Rehabilitation maximizes value realization by attracting new investors through resolution plans, the IBC ensures higher pay-outs compared to liquidation.

As mentioned earlier, statistics indicate that Financial Creditors (FCs) recover an average of 32 % of their claims through successful resolution plans, whereas in liquidation cases, the recovery rate drops drastically, often to around 6–9 % for certain asset categories.¹⁵ Operational Creditor (OCs) have also shown to be beneficiaries of successful resolutions, with recovery rates around 25 %. A key advantage that should also be noted is business continuity, which allows the corporate debtor to continue operations, thereby preserving employment and supply chains.¹⁶

According to statistical data, out of 8,175 CIRP cases admitted, 1,119 have been completed through the implementation and approval of resolution plans, while 2,707 have been ordered to be liquidated. Additionally, 1,236 have been disposed of through settlement and appeals, and 1,130 have been withdrawn due to Section 12A. The recovery data reveal that, overall, creditors have realized 31.4 % of their admitted claims through successful resolutions. Specifically, Financial Creditors (FCs) achieved a 31.4 % recovery rate, whereas Operational Creditors (OCs) recovered 25.4 %.¹⁷

¹⁵ IBC Laws. Recovery Rate through the IBC, 2016 and SARFAESI in Financial Year 2025. Performance of the Insolvency Code (IBC Laws 2026) Survey. Economic Survey 2025-26. Available at: <https://ibclaw.in/recovery-rate-through-the-ibc-2016-and-sarfaesi-in-financial-year-2025-performance-of-the-insolvency-code/> [Accessed 19.09.2026].

¹⁶ IBC Laws (No. 38).

¹⁷ IBC Laws. Analysis of Insolvency Cases under IBC as on 31.12.2024. CIRP Initiation, Closures, Recovery and Yield from Resolution Plan and Liquidation (19 March 2025).

Resolution plans have realized 162.8 % of the liquidation value, thus making rehabilitation more advantageous from an economic standpoint. The case studies considered include Jet Airways (India),¹⁸ Lehman Brothers (US) (Gilson et al., 2019), Thomas Cook (UK).¹⁹ The insolvency case of the Videocon Group has also been examined, as the court introduced a judicial innovation by consolidating 15 entities under a single resolution process, despite the absence of explicit statutory provisions.

VII. Pre-Packaged Insolvency Resolution (PPIRP) and Rehabilitation Advantage

Analysing the Micro, Small, and Medium Enterprises (MSMEs), the Pre-Packaged Insolvency Resolution Process (PPIRP) (Kumar and Jain, 2022) offers a similar advantage, allowing the existing management to run the company while a rehabilitation plan is prepared. Utilizing the “debtor-in-possession” rather than the creditor-in-control model, this process is faster and more cost-effective, thereby providing a higher chance of rehabilitation.

Additionally, rehab in place of liquidation provides a range of economic, social, as well as system-related benefits. The main goal of modern insolvency rules now is not only a redistribution of assets; rather, it is the maximization of enterprise value through enterprise survival. Moreover, evidence from enterprise cases consistently confirms that rehab outcomes provide better recoveries for creditors in comparison to liquidation results.

As mentioned, the resolution plans in India, as per the IBC 2016, resulted in recoveries of 162.8 % of the liquidation value, thus proving that rehab is more beneficial from a financial viewpoint.²⁰ One of the major benefits of rehabilitation as opposed to liquidation is that employment opportunities are maintained. Liquidation leads to huge loss-

¹⁸ *State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr* (Supreme Court of India).

¹⁹ *Re Thomas Cook Group Plc & Ors [2019] EWHC (Ch)* (High Court of Justice (Chancery Division), England and Wales).

²⁰ IBC Laws (No. 38).

es in employment, while as a part of rehab, enterprises actually function providing employment. Additionally, due to enterprise closure, intangible benefits also disappear, whereas in enterprise rehab, businesses exist proving beneficial from this viewpoint as well.

The IMF study dedicated to orderly insolvency processes clearly states that liquidation ought only to happen in cases where there is a lack of an economical possibility of rehabilitation providing long-term, sustainable recoveries from a creditor perspective.²¹ While liquidation offers immediate but often limited returns — especially for distressed asset sales — rehabilitation enables creditors to recover through future earnings. The Financial Rehabilitation & Insolvency Act 2009 indicated that creditors are able to recover “more if the debtor continues as a going concern than if it is immediately liquidated.” This is particularly true for capital-intensive industries where the liquidation values of assets have significantly low values than their enterprise value. A sound rehabilitation framework promotes lending by convincing creditors that distressed businesses are offered a meaningful opportunity to recover. For example, the U.S. Chapter 11 system has protected corporate viability in periods of economic crisis, such as the 2008 financial crisis and the pandemic.

In the Indian context, there is an alignment towards resolution over liquidation as advocated in good governance practices across the world through the IBC 2016. However, due to procedural delays and the huge backlog in hearings, coupled with an incomplete design without any mechanism to implement interventions, there has been an increased trend towards liquidation consequences for stressed accounts. As observed up until December 2024, as many as 2,707 CIRP admissions from 8,175 have been referred to liquidation procedures.

VII.1. Rehabilitation vs Liquidation: A Structural Imbalance

The discussion interchanges on the tension between Legal Design and practical outcomes in India’s insolvency regime. While the IBC was

²¹ International Monetary Fund IMF, (1999). *Orderly and Effective Insolvency Procedures*. Available at: <https://doi.org/https://doi.org/10.5089/9781557758200.071> [Accessed 19.09.2026].

modelled on Chapter 11 (US) and UK restructuring frameworks, its implementation reveals critical deviations. Although the 180-day time-frame with an addition of another 90-day cycle of CIRP, prescribed by the IBC, aims to provide a prompt judicial conclusion to the insolvency procedure, it may compel creditors to choose liquidation in the absence of an immediate formulation of restructuring plans. On the other hand, Chapter 11 facilitates long restructuring timelines through debtor-in-possession financing and an automatic stay. Additionally, the UK's CIGA 2020 creates a moratorium period of up to one year to provide an insolvency-affected company with more time to hold negotiations with creditors. Finally, the absence of a preventive restructuring regime in India, like the one prescribed by the EU's Restructuring Directive, adds to the aforementioned problem. Indeed, the processes prescribed by the EU's regulations include mechanisms to intervene in insolvency cases at an earlier juncture to provide an increased scope of restructuring and reduce liquidation risk.

VII.2. Role of Insolvency Professionals and Transparency

Insolvency Professionals (IPs) and their role on a global perspective from the U.S., the U.K., and E.U., in comparison to Indian insolvent businesses has been crucial and significant in the restructuring process. IPs are responsible to provide an advisory service during pre-packs that include the independent valuation of the business and the need for transparency for creditors, which additionally involve unique approaches that lead the reorganization. Their significance can be examined through the cases analysed above, demonstrating how liquidation is administered to maximize creditor returns while preserving the interests of the debtor company (Itheme and Nanda, 2025). Recent cross-border cases clearly demonstrate how rehabilitation-focused insolvency law has significantly evolved across global jurisdictions, driven by enhanced international cooperation and compliance with local legal frameworks. Furthermore, the Resolution Professionals in India have limited time at hand as well as limited domain expertise in the relevant sectors while assessing the options. Such observations have prompt-

ed the IBBI to amend the rules by keeping the liquidation process in abeyance for 10 days to allow the Section 230 schemes.²² As observed in the Videocon Group case,²³ there has indeed been judicial innovation in consolidation in proceedings, but on a piecemeal basis (Chandrasekhar, 2021).

VII.3. Scenarios in Which Neither Restructuring nor Liquidation Is Viable

There are also scenarios where options of rehabilitation or liquidation just cannot be implemented when the asset realization is beyond practicality and the entity cannot be revived. Thus, in some cases, a business may be so severely distressed that rehabilitation is not viable because its liabilities substantially exceed its assets. Further, the business could be one where future profitability could never be achieved. In a similar sense, the Sick Industrial Companies (Special Provisions) Act of 1985 was also criticized for its attempts to rehabilitate organizations where the chances for the same were extremely low since the equity reserves had run low. Moreover, the business could be one where liquidation itself cannot be achieved for the simple reason that the asset values for liquidation could be abysmally low. In these circumstances, administrative dissolution or voluntary strike-off could be more suitable. There exists the understanding by the IMF that liquidation processes work best where an asset hierarchy exists. Without this, liquidation is a formality that has little economic effect. The concept of a hybrid system involving the sale of a business as a going concern during a state of liquidation blurs this difference (Batra et al., 2024). The sale of a going concern in liquidation maintains employment and enterprise value while still qualifying as a transfer of assets (Singhvi and Tiwari, 2021). The approach taken in the recent German insolvency regime is a model of a unified proceeding, in that the initial proceeding does not assume rehabilitation or liquidation from inception, as outcomes

²² IBBI Amends the Liquidation Regulations and Voluntary Liquidation Regulations. Available at: <https://www.argus-p.com/updates/updates/ibbi-amends-the-liquidation-regulations-and-voluntary-liquidation-regulations/> [Accessed 05.03.2025].

²³ *State Bank of India vs Videocon Industries Ltd & Ors.*

will depend upon continuously changing perspectives.²⁴ The lack of a preventive restructuring regime in India leads quite a few companies coming into CIRP at a late stage, as viability has declined significantly (Sengupta and Sharma, 2016). The proposed system of a moratorium from the IBBI, along with plans for pre-packaged insolvency cases involving larger entities, might address this.

Furthermore, not all businesses may be viable in terms of restructuring. Technologically antiquated businesses, as well as overly leveraged businesses in dying industries, may lack the fundamentals to undergo successful rehabilitation. According to the U.S. Bureau of Labor Statistics, 65 % of new businesses fail to survive past their tenth year. Sustainable business models have not been the case for such businesses. Furthermore, fraudulent promoters impair the rehabilitation process. As recognized by the IBC code with respect to fraudulent promoters not being allowed to develop a plan of resolution, the management is the key to rehabilitation. Thus, it may be noted that though rehabilitation is the more financially viable option, it remains dependent on various factors.

VII.4. Recommendations with Emphasis on Rehabilitation over Liquidation

Structuring rehabilitation as a major goal of insolvency in India, it may be concluded and recommended that a few proposed points under the Insolvency and Bankruptcy Code may be mentioned as codifying rehabilitation as the primary objective. Prioritizing rehabilitation, while considering landmark domestic and international judgments, would facilitate modifications to Section 3 of the Code, read in conjunction with the Swiss Ribbons precedent.²⁵ The Preventive Restructuring Directive issued by the EU in 2019/1023 emphasizes the need to place restructuring measures before insolvency (Mastrullo, 2023). Enhancing Management Involvement & Debtor-in-Rehabilitation stands out from other measures such as liquidation, as continuity matters. It should also provide scope for debtor-in-possession (DIP) finance, like in Chapter 11 of

²⁴ Insolvency Code — Germany 1999 (Insolvenzordnung).

²⁵ *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India* (No. 75).

the U.S. Bankruptcy Code, to generate liquidity, thereby encouraging viable firms to restructure and not wind up.²⁶ The significant role of Resolution Professionals must be highlighted as one of the most contributory aspects in helping a distressed business in its restructuring process (Goel, 2026). The reform should include empowering resolution professionals to propose rehabilitation schemes under Section 230 of the Companies Act, even after liquidation has commenced, and introducing performance-based incentives for professionals who successfully restore distressed entities.²⁷ Introducing cramdown reform and class voting reforms with provisions stated under Chapter 11 under the U.S. Bankruptcy Code, could bind dissenting creditor classes if found fair and equitable. A more efficient system of Class Voting, as outlined in Section 230, would help eliminate unnecessary delay. Analogously, Group Consolidated Resolution of corporate groups must be allowed under the Indian system to protect synergies and to secure value.²⁸ Facilitating going-concern sales and employee retention with a modification to Regulation 32 of the Liquidation Process Regulations provides that going-concern sales are to be presumed unless there is no viability for restructuring of the business. Emphasising that employee contracts survive the going-concern sale and, hence, the workforce continuity, which is sometimes identified as an important factor in business revival, will be achieved (Singhvi and Tiwari, 2021). These reforms place India's insolvency regime as rehabilitation-centric, deepen investor confidence, support economic stability, and enable effective application in an interdependent global economy (Saurav and Saxena, 2024).

VIII. Critical Analysis

Liquidation is the preferred route despite legislative framework tilting in favour of rehabilitation. It was shown earlier that under the

²⁶ United States Code, 2024 Edition, Title 11 — Bankruptcy.

²⁷ Understanding Section 230 of the Companies Act, 2013. The Legal Backbone of Corporate Mergers, Restructuring & Compromises, (2025). *Secretarial Insights*. Available at: <https://uja.in/wp-content/uploads/2025/08/Section-230-of-the-Companies-Act-2013-Corporate-Merger.pdf> [Accessed 19.09.2026].

²⁸ Transforming Insolvency Resolution in India 2025 Report. The Insolvency and Bankruptcy Board of India (IBBI).

IBC legislative framework, the preferred route is resolution. Contrary to the legislative framework, data has shown that over 33 % of CIRP admitted cases (2,707 out of 8,175) have fallen back into liquidation.²⁹ Further, the data could be compared with the Chapter 11 case filing system in the U.S., whereby 70–80 % of Chapter 11 case filing businesses are reorganized. Similarly, the data could be compared with the pre-pack administration case filing system in the UK, whereby 356 pre-pack case filing businesses were recorded in 2017.

Operational creditors dominate low-value defaults; however, recoveries are low for them, too. About 80 % of the cases involving defaults below ₹1 crore are from OCs. However, recoveries of admitted debts are only 25.4 % for OCs, as opposed to 31.4 % for FCs. The reason behind this phenomenon again lies in structural imbalances.

The pre-packaged insolvency is still in its infancy in India (Kumar and Jain, 2022) and has seen minimal uptake in India only for MSME companies. The same has been in existence in India since 2021 but has seen limited uptake due to a lack of transparency in this process in India vis-à-vis the pre-pack process in the U.S. that offers a far more transparent approach in dealing with insolvency through Chapter 11 of the U.S. Bankruptcy Code and in the U.K., which requires valuations through Statement of Insolvency Practice 16 (SIP 16) (Corbae and Erasmo, 2017). There is a vacuum in the law on cross-border insolvency in India. While in the U.S. and the U.K. foreign cases are facilitated by the adoption by both jurisdictions of the UNCITRAL Model Law, in India there has been a vacuum in the law in cases of cross-border insolvency, as evidenced in the recent “Jet Airways” case where Dutch administrators sought to facilitate parallel cases to be heard, initially refused by the court but subsequently allowing cooperation in a ruling by the NCLAT, setting a judicial universalist precedent. Financial institutions handle high value defaults: about 80 % of default petitions based on defaults above ₹10 crores are filed by FCs, as they play a significant role in resolving large-scale corporate defaults. However, in defaults with claims above ₹1,000 crores (totalling ₹8.84 lakh crores), the value that has been realized is just ₹0.44 lakh crores (Chandra, 2024).

²⁹ IBC Laws (No. 38).

IX. Limitations of the Study

Although exhaustive in scope, this study has a few limitations, primarily arising from its reliance on information collected from the IBBI, RBI, and NCLT/NCLAT. This information might not include pending or unreported cases. This analysis is also influenced by information on publication delays and differences in standards. Judicial Discretion and Inconsistency in Indian insolvency case laws are still in an evolving stage and have shown inconsistent rulings from NCLTs. The limited scope of India's Pre-Packaged Insolvency Resolution Process (PPIRP) restricts its application to MSMEs, whereas pre-packs in the U.K. and the U.S. operate within a much broader scope. There were issues of a system that is not just and fair in pre-packs in India, with a lack of transparency and valuations with disclosure to creditors. Empirical research on the conduct of creditors is limited despite the provision of voting rights in the IBC 2016. The Code fails to clearly define the application of Section 29A regarding outstanding insolvency, wilful defaults, and non-performing assets (NPAs). This ambiguity leads to implementation challenges, potential misuse, and debtor mismanagement. Consequently, further research and legislative amendments are required to clarify these restrictions, ensure a fair execution of the resolution process, and maintain systemic efficiency. Adaptation with reference to the IBC 2016 and insolvency laws in the U.S., the U.K., and the E.U. for restructuring of insolvent businesses is still a huge drawback considering India as a mixed economy, creditor-in-possession model, as compared to the trends in the European Union. There are limitations within the current legislation and policy frameworks, which remain heavily theoretical, alongside practical constraints in executing debtor-in-possession models, as demonstrated by data available up to December 2024.

Despite the above limitations, this study has highlighted an extremely beneficial framework comparing rehabilitation and liquidation in Indian law. It has emphasized the extension of pre-pack procedures, introduction of the cross-class cram-down approach, etc., in order to enhance the efficacy of the IBC. The authors highlighted aligning Indian law with other rules across the world in order to improve India's economic growth through entrepreneurship.

X. Conclusion

The Insolvency and Bankruptcy Code (IBC) 2016 heralds a paradigm shift in resolving insolvency or corporate insolvency scenarios in conformity with global best practices in corporate insolvency resolution, focusing significantly on corporate rehabilitation over corporate liquidation. The real-life statistics regarding resolution plans under IBC focusing significantly on corporate insolvency resolution show that the resolution plans under IBC have realized a value of 162.8 % as compared with corporate liquidation, thereby substantiating the economic benefits of corporate revival over corporate resolutions or liquidations. High-profile corporate resolutions under IBC, such as *Ruchi Soya* or *Bhushan Power & Steel*, exemplify corporate rehabilitation scenarios that were undertaken under IBC, thereby highlighting the economic viability of corporate revival.

Unlike the EU's Restructuring Directive (2019/1023) that mandates early restructuring tools, or CIGA 2020 in the UK that facilitates moratoriums and pre-packaged insolvencies, India's IBC largely forces distressed firms into formal insolvency only after viability has eroded. The irreversibility of liquidation is a critical limitation in the IBC. While the Code does not allow conversion of cases from liquidation to rehabilitation, judicial innovation has allowed revival through Section 230 schemes of compromise and arrangement under the Companies Act, 2013. Furthermore, this evolving recognition is reflected in the NCLAT's recent directive in the S.C. Sekaran case, which mandated a ten-day stay of the liquidation process to allow for the submission of a restructuring scheme, a stance subsequently mirrored in a similar proposal by the IBBI. However, these remain ad hoc measures without any statutory support, hence uncertain.

Cross-border remains another significant regulatory gap. Unlike the United States, through Chapter 15 of its Bankruptcy Code, and the United Kingdom, both of which have enacted the UNCITRAL Model Law on the recognition of foreign proceedings, India lacks a comparable statutory framework. While the judgment of the Jet Airways case emphasized universalism, there is no legislation.

Notwithstanding, an analysis of the rehabilitation-liquidation interface reveals underlying structural and procedural challenges. More-

over, a disheartening percentage of cases — where 2,707 out of a total of 8,175 initiated CIRP cases had been sent to liquidation as of December 2024 (over 33 %) — points to an underlying procedural bias towards liquidation. This systemic issue is further exacerbated by the absence of a comprehensive, formal preventive restructuring framework and an inherently inflexible procedural approach.

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Practice-Oriented Training of Students at Law Clinics as a Factor Influencing Accessibility of Legal Assistance

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Abstract: The paper focuses on the role of legal aid clinics in enhancing access to justice. The first part provides a brief overview of law clinics history and development of clinical legal education in some English-speaking countries, highlighting the US evolution from student-led initiatives to accredited experiential learning, the UK's community-focused programs, Australia's community-center-based clinics, and Singapore's mandatory pro bono requirements. Dual goal setting — providing citizens with access to justice and students with real cases experience — is an important characteristic feature of the majority of legal aid clinics. The second part deals with clinical legal education in Russia, where clinics emerged in 1995 and now number about 200 nationwide, coordinated by the Center for Development of Legal Clinics. A case study of Saratov State Law Academy's clinic illustrates its structure: tiered student involvement (from interns-observers to consultants), specialized supervision by faculty and/or practitioners, and outreach programs aiding diverse groups of vulnerable citizens. Empirical data from a Saratov State Law Academy students' survey reveals reasons for joining the law

clinic, students' preferences in work carried out in the clinic, their evaluation of gained experience and importance for future careers. The article concludes that integrating compulsory credit-bearing clinical coursework would advance both educational outcomes and access to justice.

Keywords: law school clinic; access to justice; accessibility of legal assistance; free legal aid; clinical legal education

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I. Introduction

Providing access to justice is one of Russian legal policy priority areas and it constitutes a multifaceted phenomenon. Access to justice guarantees are implemented both in the court system sphere and in the sphere of judicial proceedings. Access to justice studies have allowed scholars to interpret the concept itself, as well as to reveal its essence. Access to justice is interpreted, firstly, as a principle of civil and commercial court procedures in the sphere of court system and legal proceedings, secondly, as an independent legal phenomenon, thirdly, as a task of judicial proceedings in courts (Zhuykov, 2006; Shamshurin, 2011, p. 5; Masaladzhiu, 2009, p. 9; Sidorenko, 2002, pp. 8–9). At the same time, the gravity center shifts either towards organizational or towards procedural guarantees of access to justice. Among access to justice conditions, scholars name guarantees for needy persons to receive legal assistance, including free legal aid (Shakaryan, 2001).

Free legal aid accessibility for citizens (in cases established by the Russian Federation legislation) is proclaimed as one of principles of providing free legal aid to citizens. The accessibility of legal aid in Russia is ensured:

- by genuine free provision of such assistance to persons entitled to receive it;
- by eliminating bureaucratic barriers through simplifying the procedure for collecting documents confirming this right enjoyment and decreasing documents quantity;
- by creating a targeted system of legal assistance regardless of a person's place of residence (for example, through providing online consultations for people living in hard-to-reach areas);
- by establishing convenient work schedules and visiting hours for citizens;
- by language comprehensibility, simplicity of legal structures explanation (Ostapenko, 2013).

Non-accessibility of legal assistance is caused by gaps in legal regulation of a right to qualified legal assistance, court red-tapery, high cost of legal services provided, corruption, etc. (Ostapenko et al., 2012). A system of organizations providing free legal aid is represented by governmental and nongovernmental entities, law school clinics occupying a special place. Nowadays, in the Russian Federation there operate 300 Law school clinics,¹ which are structural divisions of universities or academic organizations. Ministry of Justice of the Russian Federation Order No. 166 dated 19 August 2022 set up a procedure for maintaining a list of law clinics and posting it on the RF Ministry of Justice official website.

Law clinics are authorized to provide free legal aid in the form of oral or written legal advice (Part 4, Art. 23, Federal Law No. 324-FZ dated 21 November 2011 “On Free Legal Aid in the Russian Federation”), however, there are some modern trends of their development. One of perspectives in law clinic development is online counselling. Moreover, a possibility of expanding a provided services range is being actively discussed, in particular, an issue of representing citizens' interests in

¹ List of Law Clinics. Ministry of Justice of the Russian Federation Official Website. Available at: <https://minjust.gov.ru/ru/pages/spisok-yuridicheskikh-klinik/>. (In Russ.). [Accessed 24.04.2026].

court is of vital importance. In addition to work related to consulting citizens on legal issues and drafting procedural documents, law clinics are able to cover such a segment of a legal services market as providing assistance in reconciliation.

Trend-setting ways in expanding law clinic activities supported by a thoughtful approach to their implementation can increase the accessibility of free legal aid, modernize law clinic work, and expand a range of practical skills acquired by students, the latter fully meeting goals of practice-oriented training. Some researchers note that performance of a law clinic social function in providing free legal aid to low-income people competes with an educational function of training law students in practical work with clients (Isaenkova, 2020). In this regard, it is important to conduct a separate study of an educational component in law clinic activities, to investigate students' attitude to this form of training, and to offer ways for developing law clinics work.

II. Clinical Legal Education in Different Countries

Formally the first law clinic appeared in the USA, so it is important to study clinical legal education roots to be able to use and implement existing successful modality and to offer new ways of its development. Originally being British colonies, the United States adopted many things typical of the metropole, legal education not being an exception. By the end of the 18th century almost all newly appeared states had a "trained bar" (Gubbins, 2011) and apprenticeship was the main way to become a lawyer. This particular fact would later become an obstacle to include clinical education programs in curricula as "Law schools wanted to distinguish themselves from apprenticeships" (Gubbins, 2011). Looking at Clinical Legal Education timeline one can see that first law schools appeared almost at the same time (the end of the 18th century) and in 1860 twenty law schools already trained future lawyers, however, only in 1893 an ABA Section of Legal Education was created and in 1923 first 39 law schools were approved by ABA.²

² Clinical Legal Education in the United States of America Time Line. Columbus School of Law. Available at: <https://www.law.edu/nacle/timeline.html> [Accessed 24.04.2026].

Although at the edge of the 20th century law schools were not required to include practical training in their curricula, in 1893 “a student club at the University of Pennsylvania established a legal aid dispensary” (Ogilvy, 2009, p. 4), which is considered the first law school clinic. First decades of the 20th century saw instituting legal aid clinics and societies by both universities and students, however, only volunteering students worked there receiving no credits for their practical training. In 1930-s a new approach to the study of law, distinct from case study and Socratic method prevailing at that time, was introduced by “legal realists,” a group of academics from some law schools, who encouraged students to analyze the existing law and think about possible changes addressing current societal problems (Wizner, 2002, pp. 1931–1932). Legal realist movement encouraged development of clinical legal education intellectually (Wizner, 2002, p. 1933) but it was not compulsory yet and “in 1951 there were only 28 clinics” (Gubbins, 2011).

The Civil Rights movement and, later, protests against the Vietnam War, when “most clinics were student-run and extracurricular,” made law students who had already actively provided free legal assistance and travelled South to help Black lawyers demand curricular reform, “calling for... practical education to prepare them for practice in areas like poverty law, as well as course credit for pro bono legal assistance” (Rothstein, 2023). Moreover, the Economic Opportunity Act of 1964 (War on Poverty Act) cleared the way for clinical legal education financial support “in the person of... a Vice-President of the Ford Foundation... responsible for the Foundation’s anti-poverty initiatives” (Wizner, 2002, p. 1933). By 1970 the number of “credit-bearing clinical programs grew” up to 80³ and in 1973 “professional skills, such as counseling... and trial and appellate advocacy” appeared in the ABA Law School Accreditation Standards (Joy, 2018).

1960-70’s clinics pursued two objectives: to arrange an interactive legal training for law students and to provide those unable to afford lawyers with free legal services (Kotkin, 2019). Although providing access to justice primarily rests on the government, law schools can contribute to resolving this task and one of the main goals of starting a law clinic is

³ Available at: <https://www.law.edu/nacle/timeline.html> [Accessed 24.04.2026].

to provide legal representation for the poor. “Lawyers who had worked in legal aid and public defender programs” shared their knowledge and experience with the students increasing their awareness “of the needs of the poor and oppressed” (Aiken and Wizner, 2004, pp. 997–998). Clinical faculty developed clinical programs and at the same time the Critical Legal Studies (CLS) movement started growing: events which allowed to teach law students “to use the law as an instrument for social justice and change” (Joy et al., 2000, p. 9). By the end of 1980s these efforts changed the vision for clinical education from just “a law-related activity outside the classroom” to “a method of teaching that included student involvement with problems the lawyers confront in practice, that they help deal with the problems and student performance is subjected to intensive critical review” (Gubbins, 2011).

Today “law clinics are a staple of legal education” (Rothstein, 2023) in the USA. Although the ABA standards for law school accreditation require “every student to have at least six credits of experiential courses, defined as simulation, law clinic, or externship courses” (Joy, 2018, p. 580) working at a law clinic is not compulsory and clinicians strive to make law schools develop curricula meeting the societal demands for well-prepared practitioners. However, US leading law schools offer their students a diverse clinical experience. For example, Harvard Law School gives its students an opportunity to participate in “more clinical placements than any law school in the world”⁴ having 24 in-house clinics,⁵ 13 externship clinics,⁶ and the Independent Clinical Program.⁷

Law schools in the US have already started preparing law students to providing assistance in reconciliation through combining clinical education and theoretical courses: the first mediation clinic appeared

⁴ Clinical Education. Harvard Law School. Available at: <https://hls.harvard.edu/clinics/> [Accessed 24.04.2026].

⁵ In-House Clinics. Harvard Law School. Available at: <https://hls.harvard.edu/clinics/in-house-clinics/> [Accessed 24.04.2026].

⁶ Externship Clinics. Harvard Law School. Available at: <https://hls.harvard.edu/clinics/externship-clinics/> [Accessed 24.04.2026].

⁷ Independent Clinical Program. Harvard Law School. Available at: <https://hls.harvard.edu/clinics/independent-clinical/> [Accessed 24.04.2026].

in Moritz College of Law in 1983⁸ followed by Cardozo Law in 1985⁹ and many other law schools. For instance, at a UC Law SF mediation clinic students are offered “a joint program of Center for Negotiation and Dispute Resolution (CNDP) and the Community Justice Clinics” which allows them to get knowledge and experience in dealing with conflicts and dispute resolution and be ready for any type of practice.¹⁰ Research based on a review of 48 mediation clinics websites shows that law schools use different approaches to students’ training at mediation clinics: “about one third are taught by tenure-track faculty, one third are taught by clinical faculty, and one third are taught by adjunct or other faculty” (Lande, 2024, p. 5) and the process of developing mediation representation programs is of vital importance for diverse stakeholders.

Turning to the United Kingdom one can start discussing clinical legal education by mentioning a charity — the Clinical Legal Education Organisation (CLEO) — that actively supports UK law schools on their way to develop clinical legal education. At a 2016 CLEO conference a group of clinicians started a discussion that resulted in publication of “The Clinical Legal Education Handbook” (Thomas and Johnson, 2020) that presents a framework for creating a law clinic at a university law school. Clinical education dual mission (“social justice and education”) determines clinical programs to “meld legal theory with lawyering skills, and students learn lawyering values by providing legal assistance to clients who would otherwise lack access to justice” (Thomas and Johnson, 2020, p. 283).

Similar to US law schools UK law schools actively participate “in plugging the access to justice gap” through law clinics which have taken rightful place in legal education (Ashton, 2024, p. 37). Moreover, alongside with “a credit-bearing law clinic” which “is becoming an increasingly standard feature of the ‘offer’ to prospective students” other community-oriented programs are introduced within a clinical legal education module (Ashton, 2024, p. 66). One of the examples is the StreetLaw program, a part of Street Law Inc. operating in 45 countries

⁸ Mediation Clinic. The Ohio State University. Available at: <https://moritzlaw.osu.edu/academics/clinics/mediation-clinic> [Accessed 05.06.2025].

⁹ Cardozo Law. Available at: <https://cardozo.yu.edu/mediation-clinic> [Accessed 24.04.2026].

¹⁰ UC Law. San Francisco. Mediation Clinic. Available at: <https://www.uclawsf.edu/clinical-programs/mediation-clinic/> [Accessed 24.04.2026].

since 1996 and aimed not only at clinical education but at Public Legal Education as well. Students' participation in this program not only enriches them with experiential learning but also provides opportunities to impact communities and get useful feedback (Ashton, 2024, p. 68).

One more way to reach an access to justice goal of clinical legal education is establishing outreach clinics in deprived areas of the country. Besides proving free legal aid such projects can have additional objectives. For instance, the Blackpool project of Lancaster University Law Clinic was aimed at investigating "the specific challenges individuals are facing when attempting to access legal advice and other related services" (Nyoni-Wood, 2025, p. 22). The project allowed the participants, both students and solicitors involved, to identify opportunities of an outreach clinic and challenges necessary to be overcome while the experience gained allows them to outline steps to be taken to improve the clinic work such as "building better community relationship," increasing clinic working hours, and variegating ways of clinic "advertising" (Nyoni-Wood, 2025, p. 29).

Mediation clinics operate throughout the UK as well following different paths and finding their place in communities and court systems. A University of Strathclyde Mediation Clinic is an encouraging illustration of faculty, students and professional mediators cooperation. Established in 2012 the clinic provided "a free mediation service in 16 of Scotland's 39 sheriff courts" in 2021 (Irvine, 2021) and the number of courts increased up to 18 in 2023 plus four courts served by Edinburgh CAB Mediation Services.¹¹ The key to success is pracademic style the clinic uses "moving through documentation, to theory building, to teaching and training, to action partnerships" (Irvine, 2021, p. 9).

Clinical legal education started developing in Australia in 1970-s and followed different ways in different universities and states (Giddings, 2014). However, there is a distinguishing feature of Australian clinical legal education: "basing a clinical programme in a community legal centre" (Dickson, 2000, p. 39). An emphasis on community service and focus on real cases are characteristic to Australian law clinics as well as an accent on client-centered lawyering when students

¹¹ Free mediation clinics to be expanded across Scotland. Scottish Legal News. Available at: <https://www.scottishlegal.com/articles/free-mediation-clinics-to-be-expanded-across-scotland> [Accessed 24.04.2026].

are taught to take responsibility for their clients. Australian clinicians participate in both teaching and academic activities being contributors to journals and creators of programs. Their work “goes well beyond a focus on legal skills development and concentrates on social justice issues” (Giddings, 2014).

In the last ten years as a result of reforms Singapore’s legal system has developed a nation-wide network of community-based legal clinics for providing legal advice to the needy where volunteer lawyers work *pro bono*. Another result is “at least 20 hours of *pro bono* work as part of their (law students’) degree requirements,” the requirement mainly performed in law clinics within “Faculty-led *pro bono* legal activities” (Ong, 2024, p. 70). Finding effective ways to combine lawyers’ *pro bono* work with students’ credit-bearing clinical education will benefit all stakeholders: students will gain practical experience, volunteer lawyers will have their workload reduced, and, as a result, more clinic attendees will get high-quality legal services (Ong, 2024).

We do not purport to present a complete report about state of clinical legal education in the world but just to give its overview to find out common features and modern trends. Despite various organizational models most legal aid clinics function on the basis of a dual-goal model: to provide legal assistance to those who cannot afford lawyers and to give law students an opportunity to gain experience and understanding of real practice.

III. Law Clinics in Russia

III.1. The History of Law Clinics in Russia

Law clinics emergence in Russia is associated with the name of a Kazan University professor Dmitrii Meir (1819–1856), who in the middle of the 19th century substantiated the need for practical training of law students and organized a legal aid clinic, where he advised clients in the presence of students. This law clinic functioned about 10 years but after its closing legal clinical education ideas were forgotten for decades (Polyakov, 2010, p. 66). However, in the beginning of the 20th century a lively discussion about reviving legal clinics within the framework

of a practice-oriented approach to legal education started in academic literature and in 1901 Professor Alexander Lyublinskii described law clinics work principles paying special attention to free-of-charge basis of legal assistance (Atagimova, 2021, p. 13), yet law clinic projects were not implemented and the idea was not called for.

Clinical legal education went through a tremendous upgrowth in the last half of the 20th century in the USA (see above) and by the end of the century law clinics appeared in many countries all over the world (Polyakov, 2010, p. 67). As for the Russian Federation the first law clinic appeared at Petrozavodsk State University in 1995. The advance of clinical legal education began in the late 1990s, when statutory documents on university law clinics activities were adopted,¹² and clinics formation began. Currently, there are about 200 legal clinics in Russia (Polyakov, 2010, p. 68). Some universities, for example, the Saratov State Law Academy, have a network of legal clinics opened at educational institution branches. The coordination of all law clinics in the country is handled by the Center for the Development of Legal Clinics which cooperated with more than 100 universities of Russia and neighboring countries.¹³ Currently, the Center for the Development of Legal Clinics conducts off-site internships for teachers and students from different cities as well as organizes conferences on current issues in clinical education.

III.2. Some Current Clinical Legal Education Trends in Russia

Large law schools ensure legal clinics functioning throughout a working day, students interviewing and consulting citizens in shifts. Such way of work makes legal clinics quite competitive and full-fledged

¹² Order of the Ministry of Education and Science of the Russian Federation No. 994 dated 28 November 2012 "On approval of the Procedure for the establishment of legal clinics by educational institutions of higher professional education and the procedure for their activities within the framework of the non-governmental system for the provision of free legal aid."

¹³ Autonomous non-profit organization "Center for the Development of Legal Clinics." Available at: <https://asi.org.ru/ngoprofile/czentr-razvitiya-yuridicheskikh-klinik/> [Accessed 24.04.2026].

entities providing free legal aid. Moreover, some universities actively practice trips to municipal districts of a region to consult socially vulnerable citizens on legal issues. Thus, a right to free legal aid is successfully implemented and guarantees accessibility of justice in civil cases. The scope of provided assistance allows citizens not only to apply to the court with a competently drawn up statement of claim (complaint), but also to represent their interests in court independently, and, if it is necessary, seek a piece of advice on procedural issues from the legal clinic. On the other hand, the sliding schedule of legal aid clinics, typical of small law schools, is indicated as a clinics' disadvantage that negatively affects the accessibility of free legal aid. The reason for it is a small number of teachers and students studying and their busy schedule in the educational process (Popova, 2014).

A current trend in the development of legal clinics is remote counseling. It was the Covid-19 pandemic that changed educational format and made universities start using distance learning technologies, law clinics not being an exception. The pandemic has been overpassed; however, remote counseling has turned out to be a high-potential tendency of legal aid clinics development with several types of legal assistance provided:

- sending client's documents to a law clinic's e-mail address, their subsequent analysis by interns and drafting a necessary procedural document;
- using video conferencing through various applications (Zoom, Sber-jazz, and others) to receive a face-to-face legal advice;
- contacting a legal clinic via a phone call to receive prompt legal assistance (Ektov, 2016);
- posting materials on legal awareness in the media and on the Internet.

Law clinic employees, clinicians and students-interns do not have any difficulties working in a virtual format, moreover, some clients feel even more comfortable being at home during such consultation. Diverse instruments can be used: video calls through popular messengers; an exchange of e-mails; a web-office; a combination of the above. Online counseling allows to increase the availability of legal services for citi-

zens living in remote areas, save time and money, since there is no need for a face-to-face visit to a law clinic (Ttuyan, 2022).

On the one hand, information technologies usage outspread in law clinic activities contributes to increasing accessibility of legal assistance, allows providing free legal services to a wider range of people entitled to them, and gives students an opportunity to obtain greater amount of legal knowledge and practical skills in various areas of law. On the other hand, the issues of unidentified clients' applications to a law clinic and of personal data protection when transmitting information have not been resolved yet.

One more debated law clinic development perspective is representing clients' interests in court by interns under curators' supervision, the idea which does not find widespread support in higher education institutions. Expanding services variety will definitely increase availability of free legal services for citizens, however, despite the proposal advance (to grant interns a right to represent citizens' interests in court proceedings) one should adequately assess responsibility that universities will have to bear for providing this kind of free legal assistance. It is necessary to note that clinicians and interns should meet criteria for accessibility and quality of free legal aid set up in Order of the Ministry of Justice of the Russian Federation No. 157 dated 20 May 2024 "On approval of the standard for the provision of free legal aid by entities specified in Paragraph 4 of Part 1 and Part 2 Art. 15, Part 2 Art. 22 of Federal Law No. 324-FZ dated 21 November 2011 'On Free Legal Aid in the Russian Federation,' and the procedure for ensuring control over compliance with its requirements." It is hardly appropriate to talk about interns, people not having a law degree, providing qualified legal assistance to clients in court. At the same time, they can act as assistants to a curator practicing as a court lawyer and carry out his/her particular assignments.

Yet one way to expand legal services variety is providing assistance in reconciliation, in fact, mediation clinics successfully operate not only in foreign law schools (see above) but in the Russian Federation.¹⁴ Indeed, when it comes to protecting violated or disputed rights,

¹⁴ The Conflictology Clinic (Mediation and Counseling Service in Conflict). Available at: <https://english.spbu.ru/partners/conflictology-clinic-mediation-and-counseling-service-conflict> [Accessed 24.04.2026].

traditionally people think only of judicial or administrative procedures, while alternative dispute resolution procedures are unfairly kept silent. However, in light of state support for mediation, this method of dispute resolution cannot be ignored. Considering mediation undoubted advantages, in particular, reducing judges' workload, saving parties' money and time for dispute resolution, it is necessary to empower legal clinics to conduct mediation procedures. These procedures can be conducted by teachers, provided that they receive additional education on mediation procedure application, in accordance with Art. 16 of the Federal Law "On an Alternative Dispute Resolution Procedure with Participation of a Mediator," while students will get an opportunity to gain experience in alternative dispute resolution.

And finally, an important area of law clinic activities is on-site counselling of socially vulnerable categories of citizens in remote areas of a region, in social protection institutions, in probation service institutions, and/or in rehabilitation centers for temporarily displaced persons.

III.3. Law Clinic of Saratov State Law Academy

Saratov State Law Academy established a law clinic in 1999 and now there are 4 clinics functioning in the Academy, SSLA International Law Institute, Balakovo and Astrkhan Academy branches. About 1,000 students of Saratov State Law Academy work in its law clinics annually. Their activities vary depending on their training program, specialty, and year of study. The law clinic is an optional subject that students can take for a semester, a year, or several years. However, second-year students have a compulsory introductory internship at the law clinic, when they attend consultations, become acquainted with law clinic activities, take special online courses on the Academy educational portal, take part in master classes and listen to lectures of practicing lawyers organized by the legal aid clinic. A practice-oriented training system through the portal allows increasing a legal clinic capacity to train students. In fact, the Saratov State Law Academy has successfully implemented an idea that existed for ten years as a progressive idea to introduce distance tech-

nologies into the practical training of lawyers (Hudoykina and Evteeva, 2013).

Turning to law clinic functioning in general, it is necessary to note that the first- and second-year students do not have a right to independently consult citizens, but they can attend citizens' interviews and assist law clinic interns. As a rule, in the third year, students get a legal clinic intern status and are allowed to provide free oral and written legal assistance to citizens, both accompanied by a teacher-curator, and independently. Senior students carry out their activities as consultants, independently interviewing visitors and providing assistance to junior interns.

The law clinic interns receive citizens in accordance with an approved schedule in two shifts daily. Thus, a student has an option to choose time of training in the legal clinic depending on their classes schedule. The number of interns' "office hours" in the legal clinic is not strictly regulated, but it cannot be less than once a week. Currently there are at least 50 law clinic curators, Academy faculty (with and without attorneys' license) and practicing lawyers (also with and without attorneys' license), who supervise and train interns. The curators have a consulting profile depending on the branch of law in which they specialize. Thus, consulting on land issues is carried out by curators — professors of the Land Law Department, on employment issues by curators — professors of the Labor Law Department, family or other issues — by curators of relevant departments teaching a respective subject. Issues related to court protection of citizens' rights are considered by interns accompanied by curators of the Civil Procedure Department. Thus, a student-trainee at his own discretion determines the branch of law that is most interesting and relevant to him/her from the curriculum point of view, and he or she is assigned to this profile curator. Thus, synchronous practical and theoretical study of law subjects is ensured.

Particular attention should be paid to special legal aid days, which are regularly held in the law clinic to provide assistance to certain categories of citizens on specific issues — orphans, refugees, persons evicted from emergency housing, etc. Within such events framework, practical workers of profile authorities — a prosecutor's office, a social services office, the federal service of court bailiffs-executives of the social fund,

etc. — are involved, and they directly participate in resolving problems, and also accept written applications of law clinic visitors. At the same time, the interns can receive career guidance knowledge in their future profession.

Thus, currently the interns of the Saratov State Law Academy legal clinic together with their curators go to rehabilitation centers to provide consultations to citizens evacuated from territories of the Donetsk People's Republic, the Lugansk People's Republic, the Kursk, Bryansk, and Belgorod regions. Most often, the interns provide assistance to refugees on issues of acquiring Russian Federation citizenship, receiving pensions and benefits, registering as disabled, and registering as persons in need of better housing conditions. In addition to oral consultations, the interns together with their curators draw up legal documents to be sent to certain government agencies to receive social assistance and support: requests, applications, complaints about authorized bodies omission, etc. If necessary, appeals to a prosecutor's office and court are also drawn up.

In probation service departments, the legal clinic interns provide legal assistance on civil law issues, namely on issues of paying alimony for minor children maintenance, employment, receiving pensions and benefits, accession to heirship, divorce, acquiring housing rights, and other issues. Such on-site appointments for citizens help the interns get a full understanding of their future profession, acquire practical skills in application of family, employment, civil, land, social security and other branches of Russian law rules. Moreover, the interns directly participate in implementation of state policy of assistance and socialization of persons who, for various reasons, find themselves in a difficult life situation.

Currently, the Saratov State Law Academy is implementing a project to introduce an optional course of additional education "Legal Counseling," which will include a course of lectures and practical classes aimed at forming and mastering lawyering skills necessary for providing legal services to people in various branches of law. Students, having received theoretical knowledge on the most popular aspects of legal practice, will be able to simultaneously consult citizens in the legal clinic in order to develop and strengthen practical skills.

IV. Law Clinic Place in Curriculum: Students' Survey

Students were at the origins of legal aid clinics and it seems relevant to look into students' vision of clinical legal education and its place and content in a law school curriculum.

We prepared a short survey consisting of 3 questions to fix respondents' status and 7 questions to elicit their attitudes to different aspects of clinical education experience, reasons for joining the clinic, impacts on their careers. The questionnaire consisted of yes/no questions; multiple choice questions with one or several answers and a possibility to enter "other"; scales. The obtained empirical data are systematized in pivot tables in Microsoft Excel.

The survey was conducted through Yandex Forms and reached 70 respondents: 35.8 % — academy graduates, 47.1 % — 3rd year students, 17.1 % — 2nd year students. 60 % of the respondents worked in the law clinic 1 term, 11.4 % — 2 terms, and 28.6 % of the respondents chose the answer "other" indicating: 3 years — 2 answers, 2 and a half years/5 terms — 6 answers, 2 years — 4 answers, 3 terms, half of a term, several times — one answer each.

Answering the question about reasons of joining the law clinic (several answers possible) 79.8 % of the respondents chose "to get experience of work with real clients"; 10.7 % — "in company with other students"; only two respondents pointed out "compulsory subject"; "other" reasons (7.1 %) are "encouragement at the exam" (3 answers); "to help people" (1 answer); "because of the professor" (1 answer).

Answering the question about a priority form of law clinic work (several choices possible) the respondents indicated more than one option (138 answers): the most popular variant is "consultation of citizens under clinic curators" supervision (61 answers); "drafting procedural documents" — 42 answers; "group work with a case" — 30 answers; "solving problems online" — 5 answers. Nothing was added in "other."

To evaluate the experience gained at the law clinic the respondents used a 1–5 scale (1 — useless, 5 — very useful). 74.3 % of the respondents appraised it as "very useful"; 14.3 % — "useful"; there were 6 neutral answers; numbers 1 and 2 got one answer each. Although almost 90 % of the respondents evaluated the law clinic experience positively only 70 % of them consider that a law clinic course should be a compulsory

subject in a law school curriculum. However, 91.4 % agreed that law clinic internship facilitated acquisition of law subjects. As for employment opportunities 60 % stated that a law clinic internship certificate helped them to get a position.

V. Conclusion

An academic literature study shows that law clinics activities significantly increase availability of qualified legal assistance for socially vulnerable groups of population on an ongoing basis. Providing legal services in a variety of forms, both in person and remotely, gives an opportunity to consult people with limited mobility; persons living in far-distance and/or localities; persons in a difficult life situation. As legal assistance in law clinics is provided by students both advantages and disadvantages can be found in this type of legal practice.

Among drawbacks of legal clinics activities, the first thing to mention is voluntary basis of interns' work, which leads to irregular nature of their engagement depending on a schedule (subject to change during a semester), periods of holidays and compulsory internships. Secondly, lack of a compulsory legal counseling course in curricula of many Russian law schools reduces a level of demand for legal clinics among students, does not motivate them to acquire practical skills during their studies at a university.

Legal clinic benefits are students' involvement in systematic legal assistance to citizens in various formats: counselling, drafting legal documents, supporting court cases without attending hearings. It was real-life work experience that was named by the majority of the respondents (79.8 %) as the reason for joining the legal clinic, with "client counseling" and "drafting legal documents" named as priority forms of work in the legal clinic, 87 % and 60 % respectively. Moreover, almost 90 % of the respondents rated the experience gained as "very useful" and "useful."

The effectiveness of work in the legal clinic is ensured by continuity of interns' generations, by increase in interns' status depending on length and quality of work in the legal clinic from an intern-observer to a consultant. Although 60 % of the respondents worked in the legal

clinic for only 1 semester (technically, a compulsory introductory internship for one of Academy training programs), about 30 % worked/continue to work until the end of their studies at the Academy.

Work in the Academy legal clinic progress is confirmed by a certificate awarded upon internship completion. 60 % of the respondents confirmed that having such a certificate helped them get a job. All the above makes us conclude that legal education development requires a transition to practice-oriented teaching methods synchronized with classes in a legal clinic. 70 % of the respondents agreed with the statement that a law clinic course should be a compulsory subject in a law school curriculum, moreover, 91.4 % of them stated that law clinic internship facilitated acquisition of law subjects. So, we believe that implementing a “Legal Counseling” course in a law school curriculum alongside with compulsory credit-bearing law clinic internship corresponding to students’ specialization will facilitate improving legal clinical education and, at the same time, promote ideas of access to justice and accessibility of legal assistance as more students will be involved in law clinics work.

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Regional Platforms for International Cooperation in Higher Education

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Abstract: The present overview raises questions regarding the degree of regulation of educational network cooperation between domestic and foreign universities. The current networking models within the educational space, the so-called constructors, are analysed. Special attention is given to the Network University of the Commonwealth of Independent States, the Eurasian Network University, the “Russian-African Network University” Consortium, the University Alliance of the Silk Road, the Australia Africa Universities Network, the Matariki Network of Universities, the Network of Universities of South and South-East Asia, the International Strategic Technology Alliance, the Black Sea Universities Network, and the Association of Pacific Rim Universities. The author highlights the unique advantages of network cooperation, the possibility of combining different processes (theoretical training, research activities, practical internships with employers), the possibility of cooperation in all forms of training with the utilization of remote resources. In the conclusion, it is stated that the network form of cooperation is a trend of innovative and qualitative movement of the educational system and, equally, a special tool for rationalizing partner universities, as well as a mechanism for monitoring and regulating the quality of educational programs. Moreover, a common set of barriers in the development of network educational programs and online universities are identified, in particular, insufficient activity in the field of goal-setting and strategic management and inadequate effectiveness of institutional structures coordinating online educational activities.

Keywords: network forms; cooperation; education; scientific diplomacy; network universities

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I. Introduction

International educational cooperation is implemented at a growing pace through the creation of network programs and universities. This development reflects a broader strategic shift toward institutional flexibility, wherein collaborative academic frameworks are increasingly viewed as instrumental in aligning domestic educational outcomes with evolving global research priorities. The expansion of the boundaries for the introduction of network higher education programs was announced by the Russian head of state as an assignment for the Ministry of Science and Higher Education of the Russian Federation, in particular, it was emphasized that this mechanism would open access to those educational competencies that fully meet Russia’s stated goals in the field of science and technology.

The dynamic initiation of educational programs (EPs) in the network model is laid down in the provisions of the Federal Law No. 273-FZ dated 29 December 2012,¹ according to which the specified matrix is understood as one of the many ways to implement an EP along with the independent activities of an educational organization.

II. Models of Network Cooperation

Strictly speaking, the Federal Law No. 273-FZ dated 29 December 2012 allows two ways of implementing the EPs under the network model — appealing to the resources and possibilities of domestic and foreign educational facilities, as well as other interested institutions.

A potential model of a network constructor may include the interaction of the base university (based on a contract or agreement on a network form of educational program implementation) and the participant university that provides an additional educational program.

The training procedure assumes mutual two-way connection between the base university and the participant universities. At the same time, when implementing these programs, the base university must have an educational license containing information on the type, level, specialty, and field of study. It should be noted that this condition does not apply to educational institutions in foreign countries.

Possible models of network cooperation include the following.

1. The flagship collaboration model — the formation of relationships within which a main educational organization and participant educational organizations are defined.

2. The hybrid collaboration model assumes the presence of participants in areas including education, sports, medicine, culture, as well as other institutions with sufficient educational assets. The value of this collaboration form is derived from training and practical internships being completed at a potential employer's company. Within this framework of this collaboration, the resources of other participants are used in order to implement educational programs. The participants possess the required material and technical bases and resources to perform edu-

¹ Federal Law No. 273-FZ dated 29 December 2012 “On Education in the Russian Federation”. ConsultantPlus Legal Reference System.

cational and practical training. In this case, only the main educational organization issues a diploma, and other participants issue a certificate of education or provide a period of study.

3. The social collaboration model — the formation of vertical relations among the participants of cooperation (the so-called lifelong learning with three stages: a general education organization, an educational organization of secondary vocational education, and an educational organization of higher education).

4. The linear collaboration (interaction) model presupposes the formation of horizontal relations at the level of equal educational structures with similar or analogous programs, which result in the development of a new joint educational project.

In addition to the above-mentioned options, three more subtypes of network cooperation models are possible. The first subtype: a student enrolls in the base educational organization, independently selects modules (disciplines) online in another organization. The modules are subsequently included in the individual training plan. Upon graduation, the student receives an electronic certificate and a diploma from the base educational organization. Such modular flexibility expands a choice of curricula while also requiring robust mechanisms for a credit transfer and improving outcome validation across institutional partners.

The second subtype: the parties are educational, sports, medical and cultural institutions in the field of education providing their technical and material tools to students in order to complete educational and practical training. The student is enrolled in the base organization issuing him the respective diploma.

The third subtype: the base educational organization integrates modules (a set of academic disciplines) into its program on the basis of a network agreement. Students are sent to another educational organization to complete the module (the disciplines). Student enrolment takes place in the base organization, upon completion of which the diploma is issued, and the completed disciplines are covered in the second university that issues a certificate of education for the selected modules and disciplines.

One can point out to key advantages of network cooperation:

1. the competitiveness of the domestic educational path grows,
2. network programs may be more appealing to students, thus making the education process more fruitful,
3. there arises a possibility to combine different processes (specifically, in the areas of theoretical training, research, and practical internships with employers),
4. collaboration is allowed in all forms of learning with the utilization of remote resources,
5. interaction is possible not only with domestic, but also with foreign facilities,
6. the agreement is the legal framework of network cooperation,
7. networking programs are a productive model for international educational cooperation.

The order of registration of the network cooperation model is as follows:

1. the agreement contains requirements for the educational process, the material and technical bases, and the form of cooperation;
2. there is a mandatory procedure for concluding an agreement between educational organizations and, if necessary, also with other specialized institutions;
3. the required terms of the agreement include specifying the attributes of educational programs, a detailed description of academic disciplines, the procedure for issuing diplomas, and a clear specification of obligations and responsibilities of educational organizations (Federal Law No. 273-FZ, 2012);²
4. an approximate form of an agreement on the network form of educational programs may be found in the acts of the relevant ministries of Russia for educational activities (Order of the Ministry of Science and Higher Education of the Russian Federation and the Ministry of Education of the Russian Federation No. 882/391, 2020);³
5. a license for educational activities should be held.

² Federal Law No. 273-FZ dated 29 December 2012 “On Education in the Russian Federation”. ConsultantPlus Legal Reference System.

³ Order of the Ministry of Science and Higher Education of the Russian Federation and the Ministry of Education of the Russian Federation No. 882/391 dated

III. Foreign Experience in Implementing Network Programs and Network Universities

III.1. Network University of the Commonwealth of Independent States (CIS Network University)

The CIS Network University has been operating as an innovative project with the multilateral participation of universities from various foreign countries since 2009.⁴ The development of academic mobility programs for students from the participating states and the development of joint educational programs are the main areas of activity of the CIS Network University. The Patrice Lumumba Peoples' Friendship University of Russia (RUDN University) has been appointed as the parent organization and coordinator, and a separate specialized department for coordinating work with the network universities has been established on its site, performing three functions: unification, coordination and consolidation of the ties between them. Through this institutional architecture, the CIS Network University serves as a practical mechanism for deepening regional integration in higher education, enabling participating universities to pool their academic resources while preserving their individual institutional identities.

The area of responsibility of the CIS Network University parent organization implies interaction with all the participants of the BRICS Network, the University of the Shanghai Cooperation Organization, informational and organizational participation in procedures helping to coordinate the activities of network universities; participation in the preparation and implementation of proposals aimed at creating and maintaining a unified document management system between the participants in the network cooperation aimed at implementing joint educational programs; organization of meetings and other events in the territory of Russia and abroad, contributing to the implementation of the plans of the rectors of the University of the Shanghai Cooperation

5 August 2020 "On the organization and implementation of educational activities in the network form of educational programs". ConsultantPlus Legal Reference System.

⁴ Agreement on the Establishment and Operation Network University of the CIS dated 2020. Available at: <https://docs.cntd.ru/document/561369521> [Accessed 29.04.2026].

Organization, the Coordinating Council of the CIS Network University and the BRICS Network Universities.

RUDN strives to enhance cooperation and exchange of experience between the faculties of partner universities (holding annual round tables with the participation of partner universities to discuss and update joint curricula; participation of professors in conferences of home universities and partner universities, as well as scientific internships and summer schools as co-organizers and speakers); conducting methodological meetings among professors with the purpose of exchanging experience and educational literature; attracting the attention of potential applicants, increasing motivation to study among students.

The annual work plans of the CIS Network University include a set of measures related to organizational and legal support, educational, methodological and scientific efforts, and informational and organizational assistance.

Thus, organizational and legal support involves participation in the implementation of the intergovernmental Agreement on the Establishment and Operation of the CIS Network University signed in 2020; development and approval of a long-term work plan for the medium and long term; preparation of the annual report of the Parent Organization; organization and promotion of the CIS Network University through the Internet; the formation of a database of graduates. Educational, methodological and scientific efforts refer to the coordination and approval of the schedule of the joint state attestation commission; the formation of applications for admission of students; the holding of joint meetings of the state attestation commission; the issuance of documents on higher education. Informational and organizational assistance shall be understood as holding a meeting of the Coordinating Council of the CIS Network University; organizing groups within the framework of major international conferences; holding thematic seminars on priority areas of training.

The second equally crucial form of cooperation in the field of education is the network of higher education institutions of the BRICS Member States.⁵ The founding document of the BRICS Network Uni-

⁵ BRICS Network University. Available at: <http://nu-brics.ru/> [Accessed 29.04.2026].

versities provides for the universities' activities within the framework of the six primary areas of study: scientific research, environmental agenda, energy resources, safety in the digital sphere, problems regarding waste disposal (Memorandum of Understanding on the establishment of the BRICS Network University, 2015).⁶ For the period of 2023–2025, an appropriate concept has been developed, envisioning an increase in the number of new work guidelines, in particular, the approval and testing of collective educational programs, specialized seasonal schools; joint scientific publications; the launch of additional electives in the above-mentioned areas of training; the accumulation of a foreign contingent through academic exchanges.⁷ This conceptual expansion signals a shift toward deeper operational integration, with the designated thematic clusters serving as platforms for sustained joint research and educational exchange.

Despite the fact that the key areas of activity of this model presuppose the introduction of joint Master's and postgraduate training programs, the development of academic mobility of students, professors, and graduate students, it seems reasonable from a practical point of view to implement joint management of dissertation projects, collective cooperation through joint writing of textbooks, teaching aids, and the introduction of extracurricular teamwork of students through moot courts, which will enhance their professional skills. It is rational to consider making changes in the format of a separate protocol to the constituent act of the BRICS Network Universities by expanding priority areas of knowledge to higher legal education. Such expansion could foster curricular harmonization, encourage comparative legal scholarship, and strengthen the Network's capacity to address transnational legal challenges.

III.2. Eurasian Network University

The Eurasian Network University (ENU) is one of the rising institutional forms of international cooperation in Russia in the field of

⁶ Memorandum of Understanding on the establishment of the BRICS Network University dated 18 November 2015. Accessible at: https://www.hse.ru/data/2015/11/25/1080435539/MoU_SU_BRICS_RUS.pdf [Accessed 29.04.2026].

⁷ The concept of functioning and development of the BRICS Network University from 2020 in the medium-term prospects for 2023–2025. Available at: <https://we.hse.ru/mirror/pubs/share/565469615.pdf> [Accessed 29.04.2026].

education and scientific diplomacy.⁸ The training of the qualified personnel in a network manner, including the use of long-distance learning technologies, the development of tools capable of ensuring the free movement of educational services within the Eurasian Economic Union (EAEU), are the main tasks of the ENU.

The activity directly affects the phased formation and creation of a unified educational space of the EAEU. Cooperation in the field of vocational education is provided for in Para. 10.1 and 10.2 of the EAEU Strategic Directions until 2025 (Strategic directions for the development of Eurasian economic integration until 2025, 2020).⁹

The organizational structure is represented by the following bodies:

1. the Secretariat that organizes activities on operational issues and is a working body at the expert level for preliminary elaboration of decisions of the Coordinating Council;
2. the Coordinating Council, the highest collegial body that determines the strategic directions and tactical objectives of development;
3. the Centre for Scientific Cooperation, the Centre for Information and Communication Technologies (ICTs), the Competence Centre, the Centre for Educational Programs and Methodological Support, the Centre for Strategic Development and International Cooperation.

During the period 2023–2025, the scientific activities of the ENU covered a number of events, including holding round tables, approving educational programs for foreign audiences and departmental structures of the EAEU, and holding educational forums 2022 (Decree of the President of the Russian Federation No. 661, 2022).¹⁰

Obvious barriers to the implementation of network educational programs of the ENU are the updating processes of the legislation of the participating countries, the financial resources allocated for train-

⁸ Memorandum of Understanding on the establishment of the Eurasian Network University dated 25 May 2022. Accessible at: <https://eec.eaeunion.org/upload/medialibrary/79d/25.05.2022-g-Memorandum-o-vzaimoponimani-po-sozdaniyu-Earziyskogo-setevogo-universiteta.pdf> [Accessed 29.04.2026].

⁹ Strategic directions for the development of Eurasian economic integration until 2025 approved by the Decision of the Supreme Eurasian Economic Council No. 12 dated 11 December 2020. ConsultantPlus Legal Reference System.

¹⁰ Decree of the President of the Russian Federation No. 611 dated 5 September 2022 “On approval of the Concept of humanitarian policy of the Russian Federation abroad”. ConsultantPlus Legal Reference System.

ing, the organization of business trips, the unsatisfactory motivational level of applicants, the departments themselves, the specialized sub-departments of universities, the varied conditions and requirements for the level of knowledge and skills in the participating countries, organization of student exchanges, quality control of education, inadequate proficiency in a foreign language, maladaptation during integration into a new language environment.

At the moment, it is necessary to identify and create groups of priority areas of training for the development of multilateral network educational programs within the framework of the ENU. It is advisable to initiate activities for the development of network programs with the testing of bilateral cooperation programs. In addition, it is proposed to form an International Student Council, the ENU co-management body, with the aim of involving students from ENU member universities in a joint international educational and scientific system, whose main functions may include active participation in ENU events, expert assessment of initiatives, projects and ongoing network educational programs.

III.3. “Russian-African Network University” Consortium

The Consortium of the Russian-African Network University (RAFU),¹¹ operating on the basis of The Provisions on the Organization of the Activities of the RAFU Consortium and the Agreement on the Establishment of the RAFU Consortium dated 20 August 2021,¹² aims to bring together universities in Russia and Africa and their research institutions in the field of education and scientific diplomacy.

Achieving a unitary platform with equal educational access for students of all universities is the current goal of the consortium. Among the medium-term areas of work are the introduction of common educational programs, innovative interaction tools, increasing exchanges among students and departments, cultural and social integration of foreign students, and adaptation to traditions of the member states.

¹¹ Available at: <https://rafu.ru/> [Accessed 29.04.2026].

¹² Available at: https://rafu.ru/uploads/files/main/agreement_rafu_ru.pdf, https://rafu.ru/uploads/files/main/thesis_rafu_ru.pdf [Accessed 29.04.2026].

Seven principles, aimed at achieving competence-based and competitive educational programs, make it possible to ensure the functioning of the consortium as an association of universities and scientific institutions in Russia, open to any educational and scientific facility in Russia. Those principles are voluntary participation, openness, self-governance, equality and mutuality, focus on educational programs, assurance of high-quality educational programs, and respect (Agreement of Establishing the “Russian-African Network University” Consortium, 2021¹³).

The activities of this structure are monitored by the relevant department of the Ministry of Science and Higher Education of the Russian Federation. The planned course of the Consortium’s activities is aimed at the introduction of digital education services, the implementation of practice-oriented projects and concepts at the request of departmental structures in Russia and interested institutions in Africa.

On the basis of the Consortium, practical internships are successfully and continuously conducted on topics such as document management in the field of medicine, biological diversity of water resources, aviation, artificial intelligence, space industry, innovative entrepreneurship, crop and livestock production, and sustainable development.

III.4. University Alliance of the Silk Road

University Alliance of the Silk Road (UASR)¹⁴ is an alliance of universities organized by Xi’an Jiaotong University (People’s Republic of China, or PRC) in order to implement the national strategy of the PRC, known as the “Belt and Road” Initiative. As a non-governmental, non-profit organization, this alliance strives to apply the principles of openness and transparency in the implementation of international educational cooperation.

The primary advantages of participating in the Alliance are the possibility of multilateral building of scientific communication among its members, as well as building academic potential through bilateral

¹³ Available at: https://rafu.ru/uploads/files/main/agreement_rafu_ru.pdf [Accessed 29.04.2026].

¹⁴ Available at: <http://uasr.xjtu.edu.cn/> [Accessed 29.04.2026].

student exchanges with taking into account the geographical location of the universities of the Alliance.

Current realities show the membership of more than one hundred and sixty universities, a certain proportion of which are members of the EAEU. It is noteworthy for the establishment of legal measures at the university level and the introduction of joint analytical centres.

III.5. Australia Africa Universities Network

The next interesting network form of university cooperation is the Australia Africa Universities Network, based on a Cooperation Agreement between the universities of Australia and Africa¹⁵.

The Founding Act of this network defined the University of Sydney as the central university, acting simultaneously as the leading partner and responsible for the overall coordination of the university network. The network in question is led by a steering group consisting of more than seven Australian member universities operating in Africa and more than ten African member universities. Australia and Africa appointed two co-chairs to lead the steering group.

A consultation group has been established on the network's site, with its main function being the development of the network's subject areas. At the same time, the group's meetings are mainly held in the format of annual meetings and on-demand sittings.¹⁶ Each key area of the network's research, including education and food safety, has an appointed head who contributes to the goal of maximizing the involvement of Australian universities in Africa to develop specialized expert centres for the continents of Australia and Africa.

Among the primary goals of the network are the creation of a transparent information and advisory portal for government agencies, corporate sector enterprises and the media in order to provide direct access to a range of scientific research in Africa through a shared Centre; the expansion of partnerships in the field of institutional research in Africa; the formation of professional development and training programs in

¹⁵ Available at: <https://aaun.edu.au/> [Accessed 29.04.2026].

¹⁶ Governance. Australia Africa Universities Network. Available at: <https://www.aaun.network/about/#aaun-governance> [Accessed 29.04.2026].

the field of agriculture, higher education, healthcare, etc.; development of innovative approaches prepared with the participation of non-governmental organizations and leading researchers; provision of research support to scientists from Africa.¹⁷

The network's strategic plan for the period 2026–2030 assumes utilizing academic diplomacy and science communication through engagement with key stakeholders in academia, government, industry, and communities to support the deepening of Australia-Africa literacy and cooperative relations¹⁸.

The Australia Africa Universities Network is a unique network of universities in Australia and Africa, created to promote innovation in research, education and mobility and to address mutual challenges based on equal partnership and governance, and to create an efficient system of diplomacy and friendship in higher education and scientific research.¹⁹

The main areas of the network's work include environmental protection, agriculture, food and nutrition, health, higher education, sustainable development, and employment issues. The network's further actions are aimed at preserving and developing sustainable development goals, Australia's international Indo-Pacific strategies, continuing cooperation with partners and sponsors (the Australian Department of Foreign Affairs and Trade, the Australian Centre for International Agricultural Research, the National Research Foundation of South Africa, the World Health Organization, the Organization for Economic Cooperation and Development; forming alliances and building relationships with the Indian Ocean Rim Association, the Regional University Forum for Agricultural Capacity Building, the African *Alumni* and Diaspora Network, as well as the search for new strategic partners, the expansion of targeted partnerships between Australia and Africa).

¹⁷ Objectives. Australia Africa Universities Network. Available at: <https://aun.edu.au/objectives/> [Accessed 29.04.2026].

¹⁸ Strategic Plan. Australia Africa Universities Network. Available at: <https://www.aun.network/wp-content/uploads/2026/08/AAUN-Strategic-Plan-2026-30.pdf> [Accessed 28.09.2026].

¹⁹ Strategic Plan. Australia Africa Universities Network. Available at: <https://aun.edu.au/wp-content/uploads/2016/02/AAUN-Strategic-Plan-2020-22-pdf.pdf> [Accessed 29.04.2026].

The latest report of the network reviewed a number of studies on the following topics: sanitation using phosphorus in the framework of sustainable development, improving food security and biodiversity, educational and training programs in the field of climate change and agriculture, ensuring sustainable aquaculture production in Africa, and extending women's workplace rights and opportunities in Africa, food safety risk monitoring in retail trade in Africa and Australia, health and nutrition for sustainable development.²⁰

III.6. Matariki Network of Universities

The Matariki Network of Universities²¹ was established to develop international excellence in research and education at the local and global levels. The University of Western Australia is one of the founders of the Network, the international group of leading like-minded universities that opens up new opportunities for multilateral international cooperation in research and education. The University serves as a forum where universities may discuss issues of common interest.

Each university is responsible for conducting research on the topics of integrative neurobiology, quantum science, sustainability, cybersecurity, and blue economy. The commitment to academic freedom and respect for diversity may be highlighted among the main principles of the network.

The medium-term objectives of the network include the development of new joint educational activities for students; the development of financial infrastructures, strategic research with local and regional communities.

This network provides for the use of common (joint) sites at each of the partner universities, for example, an innovative park or a scientific (educational) Centre. The network also encourages the development of student mobility, international scholarship programs, and summer and winter schools.

²⁰ The Annual Report for 2019. Australia Africa Universities Network. Available at: <https://aaun.edu.au/wp-content/uploads/2016/02/AAUN-Annual-Report-2019-Digital.pdf> [Accessed 29.04.2026].

²¹ Available at: <https://www.matarikinetwork.org/> [Accessed 29.04.2026].

III.7. South and Southeast Asian University Network

The South and Southeast Asian University Network is an important regional platform for international cooperation in higher education, approved by the Department of Education of Yunnan Province (PRC) and initiated by Yunnan University in Kunming (Yunnan Province, PRC) at the end of 2018.

This aforementioned platform is a non-profit international university network formed on a voluntary basis by universities in China, South and South-East Asia and has the seditious goal of strengthening and encouraging mutual exchange and cooperation, jointly improving the quality and level of local higher education in the southern region of China and South-East Asia, creating an international community of higher education facilities; development of more open, inclusive, balanced and mutually beneficial research areas; promotion of regional economic and social development of the regions of China and Asia (The Constitution of the South and Southeast Asian University Network, 2021).²²

To date, the members of the organization encompass more than a hundred universities from various countries, including Afghanistan, Bangladesh, Vietnam, India, Indonesia, Laos, Pakistan, etc., whose tasks are to strengthen cultural exchange and cooperation between Network members; expand channels of research cooperation between Network members; organize a forum of rectors of Universities of South and South-East Asia; creating a platform for sharing resources among Network members.

At this stage of the network's activities, four major brand events have already been held, including the Yunnan Provincial Department of Education Forum (PRC); the Yunnan Conference on International Specialist Exchange organized by the Yunnan Provincial Committee; the Asia-South Asia President's Forum and the Sports Culture Exchange Week.

Starting in 2021, there are four subcommittees: the Subcommittee on Emerging Engineering Education, the Subcommittee on Innovation

²² The Constitution of the South and Southeast Asian University Network. Available at: https://subsites.chinadaily.com.cn/saseaafen/2021-11/19/c_683099.htm [Accessed 29.04.2026].

and Entrepreneurship Education, the Subcommittee on Journalism and Communication, and the subcommittee on Chinese Language Teaching. The current plans include the coordination and approval of a four-year plan for the development of a Network of Universities in South and South-East Asia for the period from 2024 to 2027.

The organizational structure is represented by the founding universities and joining universities. Any university may join on a voluntary basis. In this case, the University submits a written application to the Secretariat, which in turn prepares recommendations for the Network Council. A new member of the Network is approved if supported by the vote of more than 2/3 of the members of the Network Council.

After joining, new members acquire the following bundle of rights: to participate in various Network events; to put forward proposals for the development of the Network; to propose amendments to Articles of the Charter; to receive grants for various exchange and cooperation programs; to monitor the Network; to withdraw membership. It is noteworthy that membership fees are not provided.

The Network holds regular meetings of university presidents to discuss general topics relating to the innovative development of regional higher education, strengthening mutual understanding between universities and sharing university management experience; studies international teaching methods, training undergraduates and postgraduates; promotes mutual recognition of academic diplomas, creating an international certification system within the Network to improve the level of training of innovative and professional talents; promoting international cooperation in the field of scientific research; strengthening the link between analytical Centres and various international laboratories and other research platforms to jointly promote regional economic and social development.

The organizational management mechanism of the Network includes:²³

- the Council of Representatives of the Network members as the highest advisory and decision-making body of the Network. The Council members, who are the legal representatives of the Network members.

²³ Governance. The South and Southeast Asian University Network. Available at: http://www.en.sseaun.ynu.edu.cn/2021-11/19/c_683110.htm [Accessed 29.04.2026].

— the Secretariat of the Network, which is permanently located in Yunnan University (PRC). The secretariat, headed by the Secretary General, who is the Vice President for International Affairs at Yunnan University (PRC).

— the Professional Committee of the Network.

Based on the principles of equality, the Network carries out international exchanges and cooperation with other existing university networks.

III.8. International Strategic Technology Alliance

The International Strategic Technology Alliance,²⁴ founded in 1995, is an international platform for cooperation and partnership with more than thirty higher education facilities in China, the USA and the United Kingdom to promote applied research and development, technology transfer and commercialization of technologies and products on an international scale.²⁵

The Alliance was founded with the support of the Department of Education to use the collective technological potential of Hong Kong Polytechnic University and Chinese higher education facilities in order to develop applied technologies and commercialize them. Through continuous cooperation and network development, the Alliance has expanded its membership to include members from mainland China, Hong Kong, the United Kingdom, and the United States of America (USA).

The main goals of the Alliance are to combine the research capabilities of leading universities in PRC and abroad to provide diversified and competitive technologies and products for various industries; promote the exchange of best practices among its members, strengthen international relations and cooperation, and close partnership between members in order to improve academic efficiency and the quality of applied research.

²⁴ Networks co-founded by PolyU. The Hong Kong Polytechnic University. Available at: <https://www.polyu.edu.hk/geo/partnerships/consortiums-and-networks/> [Accessed 29.04.2026].

²⁵ History. International Strategic Technology Alliance. Available at: <http://www.ista-net.net/en-us/pages/history> [Accessed 29.04.2026].

The key initiatives of the Alliance²⁶ involve targeted work to promote the development and transfer of scientific technologies through various strategies, drawing on the collective experience of individual members in the field of politics and international exchanges.

Under the leadership of the Executive Committee, the Alliance has achieved sustainable development in the following aspects.

1. Encouraging the implementation of research and development activities. With outstanding research abilities and talents among its members, the Alliance promotes the development of applied research projects and their subsequent commercialization at both local and regional levels. This enhances the capacity of the Alliance to translate scientific advances into tangible regional and local benefits. A significant number of projects implemented by the Alliance members have received support within the framework of China's strategic national programs.

2. Improving knowledge management to enhance innovation value. In order to maximize the potential of the Alliance's applied research results, an active platform has been developed to share information about ongoing practice and challenges in knowledge management and intellectual property.

3. Strengthening international networks and communications. The Alliance is consistently gaining the opportunity for its members to take advantage of the prosperous world of opportunities in international financial markets and interactions with the Alliance's international partners. In addition, international organizations such as the Australian Technological Network and the Organization for Economic Co-operation and Development have rated the Alliance as the best partner network.

4. Stimulating regional progress.

The members of the Alliance actively contribute to the creation of scientific, industrial and social clusters in the interests of regional growth. In order to find opportunities for cooperation between institutions and representatives of various industries, training missions have been organized, and forums regarding technology commercialization and scientific and industrial cooperation have been held.

²⁶ Key Initiatives. International Strategic Technology Alliance. Available at: <http://www.ista-net.net/en-us/pages/key> [Accessed 29.04.2026].

5. Creating joint research projects.²⁷

The member universities of the Alliance unify their knowledge and resources for cooperation in the field of scientific research, technology transfer, commercialization and subsequent internationalization between members and partners, joint research centres are being created among the member universities of the Alliance to strengthen research capacity in specific technological fields.

III.9. Black Sea Universities Network

The Black Sea Universities Network is an initiative aimed at creating a platform for cooperation between universities of the Black Sea region.²⁸ The Network has the legal status of an international organization, established on the occasion of the second Rectors Conference of the Black Sea region universities, held in Constanta in July 1998.

More than 120 universities from 12 Black Sea Economic Cooperation Organization Member States, such as Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey, Ukraine and Serbia, participate in the network's activities.

Within the framework of close cooperation with the Parliamentary Assembly of the Black Sea Economic Cooperation Organization, this network has the status of a partner in the sectoral dialogue, and cooperation has also been established through agreements with the Eurasian Universities Association coordinated by the Lomonosov Moscow State University, and the Association of Universities in the Caspian Region.

The Network's decision-making body is the General Assembly — the Conference of Rectors of the Black Sea Region — which includes the rectors of the member universities of the Network. In the period between sessions of the Rectors' Conference, the activities of the Network are coordinated by the three Presidents alongside the Executive Committee, which includes rectors from each of the Network's member countries. This two-tier governance structure ensures both broad

²⁷ Collaboration. International Strategic Technology Alliance. Available at: <http://www.ista-net.net/en-us/pages/collaboration> [Accessed 29.04.2026].

²⁸ Black Sea Universities Network. Available at: <https://bsun.org/> [Accessed 29.04.2026].

representation at the strategic level and operational continuity during inter-session periods, thereby facilitating responsive decision-making while preserving the collective authority of the member institutions.

The Charter of the Network defines a range of responsibilities:

1) to promote a systematic exchange of information and experience between universities and to coordinate the concordance of university management systems;

2) to encourage joined projects in areas of shared interest of universities;

3) to expand access to educational technologies with a focus on a multimedia approach;

4) to update technological capabilities for conducting effective research;

5) to organize courses, exhibitions, seminars, workshops, as well as other events for students, undergraduates, and postgraduates;

6) to support and encourage scientific and educational cooperation between universities and research facilities;

7) to pay special attention to assisting the development of multi-lateral cooperation projects;

8) to encourage cooperation and function as the link between ministries of education, science and facilities of universities and the member countries;

9) to foster the development of bilateral relations between member universities;

10) to develop cultural cooperation by organizing meetings, art festivals, and sports competitions;

11) to strive for the sustainable development of the Black Sea region and protect the environment with joint effort.

The composition consists of a group of core members, associate and affiliate members accredited and verified by local ministries of education.

III.10. Association of Pacific Rim Universities

One of the alluring examples of remote networking is the Association of Pacific Rim Universities, founded in 1997.²⁹ The network con-

²⁹ Association of Pacific Rim Universities. Available at: <https://vse.apru.org/about-apru/> [Accessed 29.04.2026].

sists of 60 leading universities in North and South America, Asia and Australia. It provides its students with an exclusive opportunity to communicate with peers from all over the world to learn new knowledge and skills, exchange ideas and discover each other's cultures.

The Virtual Exchange program allows students to attend academic courses and participate in educational programs remotely.

IV. Conclusion

To summarise, considering that network cooperation is significant for the development of universities, we may state the following.

1. The network cooperation is considered to be a trend of innovative and qualitative movement of the educational system and, equally, a special tool for rationalizing partner universities, as well as a mechanism for monitoring and regulating the quality of training programs.

2. The launch and adaptation of such programs should be accompanied by a full synchronization of the processes of enrolment, expelling, curriculum development, and defining financial responsibility of the parties.

3. The main features of network cooperation include the presence of a voluntary intent to cooperate, a long-term potential of collaboration, participant autonomy, their multilevel synergy of participants and competitiveness.

4. It is reasonable to introduce new methods of program organization at the sites of network universities using a suitable approach, when the facility is simultaneously a platform for joint work of groups of representatives of industry partnerships, also through the principle of interdisciplinary of educational programs, namely, the creation of interdepartmental laboratories and research centres with a unified management centre.

5. It is fundamentally necessary to implement new principles, such as the accessibility of education for all categories of natural persons; variability of higher education programs; transparency (openness) of universities; advancement of the competence of teaching staff and the access to technological resources; further promotion of the Russian language, forums and *alumni* communities, and the creation of their databases.

6. It is important to note and solve the problem of the complementary workload of university teaching staff, the development of algorithms for partner interaction and the optimization of the current quality control systems for the education provided.

7. An advantage of networking is the potential exchange of benchmark university practices and access to library resources and opportunities.

8. An efficient outline the parties' tasks is a prerequisite for networking, thus allowing each university to choose the objectives they may most successfully accomplish — for example, teaching general and specialized courses, language training, organizing internships, workplace training, fostering competencies of students, creating chances for online or hybrid learning.

9. It is rational to accurately determine the audience for which the online form of cooperation will be implemented.

10. A balanced network program structure accessible to the understanding of the university faculty is needed.

11. It is necessary to monitor, within the framework of the quality assurance policy of education, the responses of students and teaching staff, and to receive feedback from them.

12. Network forms of cooperation are a manner of utilizing the educational resources of partner universities on a large scale and strengthening the competencies of students. A network form of university cooperation should become a stimulating element for subsequent changes and achieving a high level of educational program realisation, including improving the quality of scientific research, developing interdisciplinary practices, and forging new approaches to the development of educational modules.

The mission of any internationally-oriented university is to generate and allocate advanced knowledge and technologies in demand abroad, to export personnel for the international labour market, and position itself as a public diplomacy structure.

Essential aspects to take into account with regards to participation in and the development of networks include a clear understanding of the tasks, responsibilities of universities and procedures for implementing educational programs at their sites; the right of each university to

amend the educational process in order to consider the interests of the facility proper and the students; the responsibility of universities for potential violations of the established order of networking.

13. The advantages of a network model of cooperation include the improvement of the quality of education in the absence of the necessary resources from one university; the effective accomplishment of universities within the framework of network partnerships; the strengthening the professional reputation and authority of a given university on an international platform; the reallocation of resources and costs for the implementation of university projects; the accumulation of optimal university resources at the request of the employer (for example, new libraries, updating university staff); the exchange of innovative experienced between universities; the utilization of modern material and technical base and methodological foundations; the creation of interdisciplinary university programs and additional jobs.

Positive examples of the use of networking are the practice of the BRICS Network Universities, the CIS Network University, the University of the Shanghai Cooperation Organization, and the Eurasian Network University. The Humanitarian Policy Concept of 2022 (Decree of the President of the Russian Federation No. 661, 2022) confirms the increased importance of such structures among domestic organizations in the sphere of higher education.³⁰

14. Barriers to the development of network educational programs and network universities include insufficient activity in the field of goal-setting and strategic management (insufficiently or excessively restrictive character of interstate agreements, strategic documents, road maps that would contain data on network areas of interaction, deadlines, resources and Centres of responsibility); absence or inefficiency of institutional structures coordinating network activities; the persistence of difficulties in linking educational programs, requirements for education levels, and study periods; unresolved international issues regarding mutual recognition of educational documents, etc., which necessitates increased activity in the development of international legal

³⁰ Decree of the President of the Russian Federation No. 611 dated 5 September 2022 "On approval of the Concept of humanitarian policy of the Russian Federation abroad." ConsultantPlus Legal Reference System.

frameworks in relevant areas, adjustment and unification of national legislation of member states of organizations with network universities. Another challenge may be the language barrier and the absence of a universally acceptable language within integrational formations (for instance, the BRICS, the SCO), which requires accentuating programs popularizing the Russian language and learning Russian, including on-line or in a hybrid fashion.

The incentives to development of network educational programs and network universities include the consolidation of the best intellectual resources, the selection of advanced educational programs, ensuring relevant interdisciplinarity, which in turn significantly improves the quality of education while maintaining a contingent in their own jurisdictions; the creation of international interdisciplinary research Centres with the involvement of leading experts on the most complex and in-demand issues on the global agenda, aimed at bringing together the norms of legislation, the positions of the organizational mechanisms of the Member States of regional associations.

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