

ARTICLES

IMPLEMENTING THE RIGHT TO INFORMATION AS A KEY ELEMENT OF FREEDOM OF EXPRESSION IN THE BRICS COUNTRIES

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The category of rights and freedoms, including the right to access information and the right to self-expression, is not immutable. Rights and freedoms are a byproduct of the historical development of society and represent a socio-cultural phenomenon that reflects the historical identity of peoples and countries throughout the world. As a result, each legal system has its own legal concept of rights and freedoms, without which the crisis-free development of a particular state is impossible. This is because the degree to which citizens' rights to self-expression and information are realized has a direct impact on the overall quality of a democratic system. This article analyzes the sectoral normative legal acts of the BRICS countries that regulate the right to information. Based on the data obtained, a comparison was made between restrictions and prohibitions regarding the exercise of the right to information. Furthermore, the article describes and analyzes the main approaches to assessing and determining the index of democracy in the world. Based on the comparison of the democracy index, the global ranking of the right to information and the global ranking of the civilian population, a formula for calculating democracy was derived. The degree of democracy in the BRICS countries was then calculated using the formula obtained, and a regional ranking of democracy within the BRICS countries was compiled. The authors believe that providing citizens with the opportunity to fully exercise their right to information, which would be impossible without the balanced participation of the state, results in the creation of an objective information environment, which in turn provides citizens with the opportunity to justly

exercise their right to self-expression. In this regard, it is self-evident that democracy is closely connected with the full realization of the right to information. Today it plays a key role in citizens' exercise of their right to self-expression.

Keywords: right to information; index of democracy; right to self-expression; civil and political rights; human rights.

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Introduction

Human rights and freedoms are part of a complex and multifaceted system, a structure that has the human being at its center, as its integral core element. In truth, we're dealing with a phenomenon that has emerged as a result of a complex process that we will refer to as biosocial cultural evolution, a universe resting on three steadfast pillars: the material, the social and the spiritual elements of human nature manifested in the individual human being and in human society as a whole. Human rights and freedoms serve as a criterion for determining the standards of a modern democratic regime from both political and legal standpoints, with their observance serving as an absolute prerequisite for ensuring stability and successful development at the level of each sovereign state as well as the global community at large.

In the second half of the twentieth century, when the events of world history that had revolutionized the human mind were analyzed and processed by scientists, diplomats and government officials, the understanding of the great value of human rights was brought forth to the international level, making human rights and

freedoms the foundation of today's democracy.¹ It was at that period in history that the hierarchy of human rights was determined.

At the same time, as the twenty-first century saw the dawning of the age of global computer networks that became a game changer for all areas of human life, we witnessed the birth of a new dimension, to be more precise, a cyberspace that obliterated the principles, laws and rules that had been at work in the customary offline world. Consequently, the structure of supreme human rights experienced changes while the legal regulations pertaining to international and domestic protection of rights remained unchanged.

Originally proclaimed in Article 19 of the 1948 Universal Declaration of Human Rights, the human right to "seek, receive and impart information and ideas through any media and regardless of frontiers" was supplemented by the restrictions of the 1966 International Covenant on Civil and Political Rights in order to safeguard the rights of others, as well as morality, public order and general welfare by means of national law. With the advent of the era of the global Internet, the right to information finally took shape. While the right to information used to be merely a declarative right with a secondary role in the body of human rights, in the digital world, the right to information has evolved into the core of fundamental human rights, becoming the foundation in the realization of fundamental human rights and freedoms. As a consequence, the degree to which the human right to information is exercised has come to be an indicator of the development rate of civil society and the level of democracy in it.

In the context of global digital communication, the issue of freedom of speech and access to information is undoubtedly one of the main issues. Thus, according to the degree of exercising, by a person and a citizen, of the rights to freedom of speech and access to information, it is possible to judge the political processes unfolding in a country, to assess the pace of building a civil society and the rule of law. These rights represent the foundation of modern democracy.²

It will not be an exaggeration to claim that the degree to which the right to freedom of expression is exercised by citizens of a particular state varies depending on the development of democratic institutions in that state. In this regard, the right to information, in addition to being a key element in exercising freedom of expression, also becomes a high-precision indicator that determines the level of a country's democratic development.

"Human rights are universal, interdependent, indivisible, inalienable,"³ and, at the same time, the body of rights and freedoms has a socio-cultural and civilizational

¹ Ellen F. Paul et al., *Democracy* 1 (2000).

² Ksenia Ivanova & Madi Myltykbaev, *The Freedom of Speech and Right of Access to Information in the Emerging System of International Information Security*, 4(4) *Law Enforcement Rev.* 80 (2020).

³ David Brunsma et al., *Expanding the Human in Human Rights: Toward a Sociology of Human Rights* 1 (2015).

aspect, in which regard, the state, in order to safeguard the rights of others, of morality, public order and the general welfare, independently determines the boundaries within which the right to information may be exercised. These boundaries must not be excessive and, according to international standards, are to be clearly defined and aimed at the realization of the intended purpose.

The ratio between the restriction of the right to information and the degree to which the citizens of a state are allowed to exercise this right is determined by the country's political regime. The theory of state and law as well as referential democracy balances this ratio almost perfectly.⁴ And yet, Goethe's "All theory... is gray, but the golden tree of life springs ever green" in the conditions of confrontation present in the system of international information security currently taking shape, with the right to information being called to serve as the core of ideological pluralism, becomes the apple of discord, a propaganda tool that cultivates an atmosphere of hostility and hatred between countries and peoples, making the degree to which the right to information is exercised a key element in determining the level of democracy in the state.

Thus, the right to information as a defining component in exercising freedom of expression is closely related to the level of democracy in the state. As a result, in order to fully cover the subject, the following objectives have been outlined:

- to analyze the existing methods for assessing the level of democracy and offer an alternative option for assessing the democracy index;
- describe the key importance of the right to information in exercising freedom of expression;
- analyze the normative legal acts that regulate exercising the right to information in the BRICS countries;
- to compare the democracy index with the level on which the right to information is exercised by the citizens of the BRICS countries and, based on the results of the obtained ratio, to assess the feasibility of restrictions that the BRICS countries impose on the right to information and the exercise of it by their citizens.

This analysis of the right to information as exercised by the citizens of the BRICS countries includes a description of the current legal situation as well as the prevailing opportunities for people to exercise their freedom of expression through the use of the Internet. Furthermore, the article assesses the level of democracy in terms of exercising freedom of expression and the right to information, justifying the principle of lawful restriction of the right to information on the basis of the civilian armament index and the index of political participation of the citizens of the BRICS countries in exercising their right to direct control. The formula proposed in this study may be applied to calculate the level of democracy in any country, as its nature is universal.

⁴ Bruce E. Cain et al., *Democracy Transformed?: Expanding Political Opportunities in Advanced Industrial Democracies* 28 (2008).

1. Calculating the Index of World Democracy

Humanitarian disciplines, including the political, legislative and social sciences, have all made the assessment of the democratic regime the cornerstone of empirical analysis that has been attracting increased attention of late.⁵ According to one scholar,

The issue of democracy is so acute on the agenda today as it has probably never been before; some demand even more democracy, while others insist on surmounting a deficit thereof.⁶

Thus, the standing questions first and foremost and very rightfully are as follows: “What is the right kind of democracy? What is the quality of democracy?”⁷

No public figure or politician would ever publicly speak out against political and civil rights or democracy; no one would ever argue that authoritarianism has any advantage over democracy.⁸ Moreover,

a tyrant, having come to power by the will of the people, does not abolish the formal attributes of democracy. Even worse, he introduces them! Hitler, having come to power in a completely democratic way, did not at all abolish the German parliament – the Reichstag. He simply cleared it of the representatives of the opposition, turning it into “the highest paid male choir in the world” with its functions reduced to singing the national anthem at the opening and closing of the parliamentary sessions.⁹

Democracy has become the measure of all things political, the basis for the legitimization of power,

the sphere of collective decisions. It embodies the ideal system in which decisions concerning the entire community are made by all of its members, and all of them have equal rights to participate in taking this or that decision.¹⁰

⁵ *Democracy at Large: NGOs, Political Foundations, Think Tanks and International Organizations* 5 (Boris Petric ed., 2012).

⁶ Бешлер Ж. Демократия. Аналитический очерк [Zhan Beshler, *Democracy. Analytical Essay*] 7 (1994).

⁷ Морлино Л., Карли Л.-Г. Как оценивать демократию. Какие существуют варианты? [Leonardo Morlino & Luis-Gvido Karli, *How to Evaluate Democracy. What Are the Options?*] 4 (2014).

⁸ Marina Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism* 7 (2003).

⁹ Сироткин С.В. Демократия [Sergey V. Sirotkin, *Democracy*] 66 (2001).

¹⁰ Битэм Д., Бойл К. Демократия: вопросы и ответы [David Beetham & Kevin Boyle, *Democracy: Questions and Answers*] 11 (1996).

In recent years, the assessment and definition of the index of the democratic regime has received a great deal of attention, owing to its

largely profound nature. The possibility of assessing the degree of democracy allows us to attest the relationship between democracy and the quality of life of the population, to determine a certain limit of that quality beyond which there is a reduced probability of deviation from democracy.¹¹

Let us consider the main quantitative measures of the degree of democracy in different countries.

The Polity projects are one of the most well-known and widely used approaches for measuring the degree of democracy. The first Polity project was led by Ted Robert Gurr. The task was completed between the 1970s and 1990s within the frameworks of Polity II, Polity III and Polity IV.¹² Polity V,¹³ covering the period 1800–2018, is being implemented at present. A distinct advantage of the Polity projects is their ability to analyze various political regimes of independent states in the development that they present. This is made possible by a large number of variables that describe the features of the institutions of power that are used, which in turn allows for the production of unambiguous and consistent results. Another advantage of this study is its long duration. The regimes are analyzed over the course of two centuries' worth of dynamics and the information obtained is then used to forecast long-standing political tendencies. It is worth noting that this information is available to a wide audience. At the same time, the universality of the study has a downside: the conclusions are generalized, and only the broadest trends are outlined. Thus, its model does not take into account the extent to which human rights are protected or equality of access to political participation.

*Freedom House*¹⁴ works to protect human rights and promote democratic change, with a focus on political rights and civil liberties. Freedom House was founded on the initiative of the government of the United States in 1941 after the Ring of Freedom, Fight for Freedom and Committee to Defend America by Aiding the Allies were merged. During the war years, the main goal of the organization was to counter the propaganda of fascism and Nazism; in the post-war years, it pursued the goal of preventing the ideas of communism from spreading and worked against the

¹¹ Мельвил А.Ю. Как измерять и сравнивать уровни демократического развития в разных странах? По материалам исследовательского проекта «Политический атлас современности» [Andrey Melvil, *How to Measure and Compare Levels of Democratic Development Across Countries? Based on the Materials of the Research Project "Political Atlas of the Present"*] 4, 39–40 (2008).

¹² Polity IV Project, Systemic Peace (Dec. 12, 2021), available at <https://www.systemicpeace.org/polity/polity4.htm>.

¹³ Polity V Project, Systemic Peace (Dec. 12, 2021), available at www.systemicpeace.org/polityproject.html.

¹⁴ Freedom House (Dec. 12, 2021), available at <https://freedomhouse.org/>.

restrictions imposed on civil and political rights and freedoms. Some sources, particularly media statements, testify to the activities of Freedom House being financed by U.S. government funds during that period of time.

Today, Freedom House positions itself as an independent, non-governmental, non-profit organization that is not affiliated or backed by any of the political parties in the United States, with a broad interpretation of freedom and activities promoting its extrapolation across the world as stipulated in its founding documents.

The main assessment criteria used by Freedom House to determine the global freedom rating are political rights (with a maximum score of 40 points) and civil liberties (with a maximum score of 60 points). The sum of these points, which indicates the degree of freedom in the assessed country, cannot exceed 100.

In addition to the Global Freedom Index, Freedom House also maintains the Global Internet Freedom Index and the Global Democracy Index.

The Global Internet Freedom Index is made up of three criteria: the degree to which a country's citizens possess technical capability to access the Internet (maximum score of 25 points), content restriction (maximum score of 35 points) and violation of user rights (maximum score 40 points). Thus, the total score on all these criteria may constitute a maximum of 100 points.

The global democracy rating takes into account two criteria, "Percentage of Democracy" and "Rating of Democracy."

Despite the claims of Freedom House as being independent and unaffiliated with the ruling political circles of the United States, it is directly funded by the U.S. governmental.

A superficial assessment of political tendencies in today's world in terms of their impact on the degree of freedom is not very optimistic; it prompts a profound critique of the political prejudice inherent in an assessment performed by an organization in the interest of the U.S. government.

Projects under the supervision of Tatu Vanhanen. The University of Helsinki sponsored a number of studies, the results of which were subsequently published in Vanhanen's books *The Emergence of Democracy: A Comparative Study of 119 States, 1850–1979*;¹⁵ *The Process of Democratization. A Comparative Study of 147 States, 1980–1988*;¹⁶ *Prospects of Democracy: A Study of 172 Countries*¹⁷ and *Democratization: A Comparative Analysis of 170 Countries*.¹⁸

¹⁵ Tatu Vanhanen, *The Emergence of Democracy, A Comparative Study of 119 States, 1850–1979* (1984).

¹⁶ Tatu Vanhanen, *The Process of Democratization: A Comparative Study of 147 States, 1980–88* (1990).

¹⁷ Tatu Vanhanen, *Prospects of Democracy: A Study of 172 Countries* (1997).

¹⁸ Tatu Vanhanen, *Democratization: A Comparative Analysis of 170 Countries* (2003) (this research was tested in the framework of the project "Democracy and Peace: The Northern Model." Its results were presented at the Association for International Studies Convention in New Orleans (USA) in 2002 and at the International Political Science Association World Congress in Durban (South Africa) in 2003).

The chief objective of the projects was to research and explain the variables affecting the degree of democracy in the countries concerned. The research team challenges the popular thesis that the factors that contribute to the genesis of specific democratic systems may not be consistent with each other, and instead begins with the axiom of the fundamental possibility of explaining the degree of democracy (or democratization) by a single factor that does not exclude the other independent variables, but rather presents a common denominator for all of them. This factor, according to Vanhanen and his colleagues, is the distribution of resources in society. The central idea of the projects is based on the hypothesis that the degree of democracy is directly related to the distribution of material wealth in the state.

Initially, all independent states were the objects of this research. However, several restrictions were imposed in the years that followed. To begin with, countries with a population of under 100,000 were excluded from the analysis, which was dictated by the difficulties in carrying out data collection, as well as such countries' actual dependence on other countries. Secondly, only countries that had gained independence by 1991 were used as the subjects of the study. These restrictions were introduced in the second half of the 1990s and were discussed in the books, *Prospects of Democracy: A Study of 172 Countries* and *Democratization: A Comparative Analysis of 170 Countries*. Additionally, Taiwan and newly independent countries in Africa and Oceania were brought into the researchers' scope of attention.

The central theoretical idea of the Vanhanen projects stems from an evolutionary paradigm for the study of politics, which includes the following assumptions. To begin with, there are patterns of human behavior that manifest themselves similarly in the field of politics in different national contexts, that is, they cannot be neutralized by frontiers. Secondly, the political struggle for power is a form of the general struggle for survival (due to limited resources), as conceptualized in Charles Darwin's theory of evolution and natural selection. In the studies conducted by Vanhanen and his colleagues, these assumptions are summarized as follows: the struggle for power (a kind of common yardstick in political struggle) is carried out with the aim of gaining and maintaining access to resources; the more power, the wider the access to limited resources. Conversely, the more resources there are the more power those in charge of those resources have. Accordingly, if the resources are concentrated in the hands of one group of people, it is likely that this group will enjoy the largest degree of political influence. If resources are extrapolated among several groups, then power will be distributed accordingly. As a result, a unique interpretation of the dichotomy "autocracy vs. democracy" emerges: in this context, autocracy is interpreted as a situation in which resources are concentrated in the hands of a single group, whereas democracy is interpreted as a situation in which resources are dispersed among different groups. We can speak of democracy when resources are so widely distributed that no one group has the possibility of having an advantage over its competitors and thus establishing a hegemony by controlling

a greater share of the resources. This statement is accompanied by a thesis in *Democratization: A Comparative Analysis of 170 Countries* that claims that the greater the degree of resource distribution and intellectual potential of the population, the more developed the democracy. The specified dependence is considered universal, that is, inherent in all countries, regardless of their economic, cultural, civilizational and other features, and is either subordinated to the general logic of the evolutionary paradigm of the study of politics or ignored entirely.

In the most recent published study, it is proposed to assess the degree of a country's democracy by using the criteria of political participation and electoral competition.

Vanhanen's lowest democracy index is 5.0; for semi-democracies, it ranges from 2.0 to 5.0 and for authoritarian regimes, it is less than 2.0. The main shortcoming of this research project is a simplified understanding of democracy that does not take into account the population's participation in the political process.

Varieties of democracy (V-Dem).¹⁹ The V-Dem Institute is an independent research institute with its headquarters at the Department of Political Science of the University of Gothenburg in Sweden. The Institute was founded by Professor Staffan I. Lindberg in 2014.

A new approach to conceptualizing and measuring the degree of democracy is proposed by researchers at this institute.

According to a statement made by the V-Dem Project, an international team of researchers consisting of more than 50 sociologists from six continents, in collaboration with more than 3,500 experts from different countries, collects data to assess the degree of democracy using five criteria (the electoral criterion, the liberal criterion, the joint criterion, the deliberative criterion and the egalitarian criterion).

By 2020, the V-Dem index consisted of over 470 indicators and indices in its dataset covering 202 countries, ranging from the years 1789 to 2019. The political scientist Daniel Hegedus describes V-Dem as an essential provider of quantitative democracy data for scientific research.

Bertelsmann transformation index. The Bertelsmann Foundation was established in 1977 by Reinhard Mohn. It is the largest private foundation in Germany that develops and oversees projects aimed at finding solutions to the pressing problems of our time. The Foundation's main project in the field of research of political and economic systems of the world is the Bertelsmann Transformation Index (ITB).²⁰

The ITB measures the degree of democracy and market economy, as well as the quality of public administration in each of the countries considered in the research and its dynamics over the past five years. The results obtained are intended to contribute to the improvement of strategies for political management of transformational processes. That is, the results of scientific research serve as the basis for practical

¹⁹ Varieties of Democracy (V-Dem) (Dec. 12, 2021), available at <https://www.v-dem.net>.

²⁰ Melvil 2008, at 54.

recommendations to improve management techniques and methods as well as models of external support of transformational processes. ITB analyzes and evaluates the quality and dynamics of democracy, market economy and political governance in 129 developing countries and countries whose economies are in transition, over the past five years, and estimates their successes and failures on their path to democracy based on the rule of law and socially responsible market economy.²¹

The ITB is the first cross-national benchmarking index to use self-collected data to comprehensively assess the quality of governance during transitions.

The Democracy Index, presented in the annual report of The Economist Intelligence Unit (EIU), the analytical arm of the British magazine *The Economist* (ISSN 0013-0613), is one of the most well-known and popularly used indices for measuring the level of democracy around the world. Its main criterion for assessing the level of democracy is the degree of participation of the civilian population in the political life of the country. Structurally, the democracy index consists of five categories: (a) electoral process and pluralism, (b) government activity, (c) political participation, (d) political culture and (e) civil liberties. The assessment is carried out by means of a survey of sixty key indices from anonymous experts from the relevant countries. Registration on the EIU's official website is required to view the reports for the years 2019²² and 2020;²³ earlier versions are available in open access.

The Economist Intelligence Unit's policy is frequently criticized, and quite reasonably so, in light of the issue of drawing up the final report, due to the lack of transparency and accountability for the results it provides. Thus, the final report is drawn up on the basis of expert assessments by country, despite the fact that it does not contain expert data per se, nor does it specify the scope of their work or the number of experts that were involved. For example, it remains unknown whether they are employed by the EIU or are independent scientists. All information, even with anonymized personal data, is absent, and the countries of origin of the experts are not specified either. The policy exercised by the EIU in relation to the authors of the report is also ambiguous, classifying the authors and not providing any information about the experts is generally unreasonable, and raises doubts about the impartiality of the rating. With the authors information being classified, the EIU's policy regarding the readers of the reports appears contradictory: since 2008, access to the research has required the following information in the form of a questionnaire, with the completion of all fields being mandatory: family name, place of employment, occupation, position, part-time position (this field is also

²¹ Bertelsmann Transformation Index, United Nations Economic and Social Commission for Western Asia (Dec. 12, 2021), available at <https://archive.unescwa.org/bertelsmann-transformation-index>.

²² Democracy Index 2019, Economist Intelligence Unit (Dec. 12, 2021), available at https://www.eiu.com/public/topical_report.aspx?campaignid=democracyindex2019.

²³ Democracy Index 2020: In sickness and in health?, Economist Intelligence Unit (Dec. 12, 2021), available at <https://www.eiu.com/n/campaigns/democracy-index-2020/>.

required, even if one does not hold such a position), country of residence, work email, work phone number, as well as accepting the terms of use and the privacy policy which are primarily designed to protect the EIU from legal claims, and not in the least aimed at protecting the interests of those registering in its system.

To summarize, each of the aforementioned research projects on assessing the degree of democracy has its own distinct set of strengths and weaknesses. They are based on long-term research involving a diverse group of experts, the assessment and monitoring of the dynamics of the political process in a wide range of countries and the collection and systematization of valuable databases. On the one hand, expert assessments make it possible to accurately describe the political situation in a country; on the other hand, no expert can ever be completely objective. This is frequently the result of opportunistic political motives, which in turn has a negative impact on the objectivity of research.

Power is meaningless without ideals, and ideals without power are merely an illusion. What exactly is democracy? In its most general and simplest form, it is the absence of fear of exercising one's freedom of expression.

The values of self-expression are more closely related to democracy than any other factor, such as the level of trust between people, the level of participation of the population in various social associations.²⁴

What is it, then, that drives away the fear of exercising freedom of expression and replaces it with assurance that people's pride, honor and dignity will not be compromised by the state and that their human rights and property will not be infringed? What is the factor that sustains the silent agreement between the population and the state? Without a doubt, it is human strength, the power that each citizen possesses, that can provide a commensurable rebuff to legalized violence. The understanding by the country's political leadership of the presence of such a force in society generates a balance of interests between civic society and the private interests of the statesperson, and democracy without any adjectives emerges.

In view of the above, we may put forward a hypothesis that freedom depends on the level of the population's armament.

By comparing the index of democracy with the indices of the armed forces of the civilian population of the state, we obtain a new formula for calculating the degree of democracy, which will allow us to assess the appropriateness of restrictions on the right to information imposed by governments on citizens exercising their freedom of expression.

The formula will be calculated as the sum of the positions a given country occupies in the global ranking of the democracy index and the index of the population's armament.

²⁴ Ronald Inglehart & Christian Welzel, *Modernization, Cultural Change, and Democracy: The Human Development Sequence* 4 (2005).

It appears that, the lower the resulting number is, the higher the degree of democracy is that the state seems to have. It should be noted that compliance with the requirement of the national law to restrict the right to information in order to protect the rights of others, morality, public order and the general welfare in such democracies must be firm, and the penalty for violating this requirement must be proportionately high.

However, the higher the number based on the sum of the two indices is, the lower the degree of democracy is that the state has. Therefore, the number of requirements for restricting the right to information should be minimal, with liability for their violation absent or limited to a warning.

This formula, in addition to statistical indicators of democracy, will allow governments of countries seeking to establish democracy to introduce acceptable limits restricting the right to information, thus paving the way for a realistic democratic future.

2. The Significance of the Right to Information Pertaining to Freedom of Expression

The degree to which people exercise their right to freedom of expression defines the degree of democracy in a state. In this regard, we will consider the concepts of freedom of expression and the right to information and define the role that the right to information plays in exercising freedom of expression.

Freedom of expression is an essential component of democratic rights and freedoms.

At the first meeting of the United Nations General Assembly in 1946, before the key international agreements on human rights were signed, Resolution No. 59 was adopted, stating that, "Freedom of information is a fundamental human right and a criterion for all freedoms that fall under the jurisdiction of the UN."

Freedom of opinion and of its expression is one of the fundamental human rights, as stated in Article 19 of the United Nations Universal Declaration of Human Rights.

Freedom of opinion and the right to freedom of expression, including the freedom to seek, receive and impart information and ideas across frontiers, are essential pillars of today's information society.

Free, independent and pluralistic media play a key role in ensuring good governance in a democratic society, regardless of its "age." Open and pluralistic media are most valuable when they simply serve as a "mirror" in which society can see its true reflection. Seeing this reflection helps society in setting community goals and in determining the course of action for change when society (or its leaders) senses it has lost its bearings as to its own common good but wishes to set matters right.

However, freedom of speech is still no more than a pipedream for many countries around the world. The Information and Communications Technology (ICT) revolution, the development of virtual communication and the Internet make it easy to reach

even more people in all of the world's countries, introducing them to a wide range of information resources and giving them plenty of opportunities to exercise their freedom of expression. Cyberspace presents real opportunities for fast and massive distribution of information, as well as for increasing the level of transparency and good governance.²⁵

In its broadest form, freedom of expression can be defined as the right to free expression of beliefs from the moment a person is born. One's belief system is formed in the process of socialization under the influence of the information environment they live in.

In this way, a person's self-expression is largely determined by the information environment that surrounds that person, which in turn is shaped and controlled by the state. It should be noted that the information environment is every state's weak spot in building democracy, and the process of its (this environment's) formation is the Achilles heel of each country that has overcome the bar of democratic standards. The problem is essentially quite obscure. The countries of the world have formally proclaimed their commitment to establishing democracy, which means that there must be a single global information environment that is free of controversy throughout the world. However, because technologies that shape this information environment are not solely dedicated to sustaining ideological pluralism but are also largely focused on fulfilling the political ambitions of countries, the information environment becomes a place of propaganda, "ideological confrontation that poses a threat to international security and cultivates an atmosphere of enmity and hatred between countries and peoples."²⁶

In this regard, the right to information is the cornerstone in the formation of a democratic information environment, which implies freely searching for and obtaining reliable information that can be freely spread by any means and regardless of frontiers, subject to reasonable and proportionate restrictions established by national law in order to ensure public order, morality, security as well as safeguard the rights of others.

As a result, we have the following sequence: exercising the right to information in full, which may only be possible on condition of the state's balanced involvement, will create an objective information environment, which in turn will provide the population with an opportunity to exercise a justifiable freedom of expression.

²⁵ International law and human rights, catalog of electronic resources (Dec. 12, 2021), available at <https://hr-libguide.bsu.by/freedom-of-expression/>.

²⁶ Ivanova & Myltykbaev 2020.

3. The Global Rating of the Right to Information

The global rating of the right to information (hereinafter the Rating) is a joint project by

Access Info Europe (a human rights organization dedicated to promoting and protecting the right to information in Europe as a means of protecting civil liberties and human rights and promoting the population's participation in decision making and government accountability) and the Center for Law and Democracy (a Canada-based non-profit organization that works to promote, protect and develop the human rights that democracy resides on, including the right to information and freedom of expression, the right of participation and freedom of association and assembly).²⁷

The Rating's chief objective is to assess the depth of the legal framework regulating the right to access government information resources on the basis of sixty-one discrete indices, each of which looks at a specific feature of the legislative regime and is divided "into seven main categories: the right of access, the scope of that right, the request procedure, exemptions and renunciations, appeals, sanctions, and measures of protection and enforcement."²⁸

The highest achievable score in the Rating is 150 points. All of the world's regions today have a significant number of countries with legislation in place regulating the right to information, which is a major change since the Rating was first introduced in 2011. Notably, no Western country is ranked in the top 25, although eight are ranked in the bottom 25 in the Rating. Moreover, between 2000 and the present, all but one of the top 25 countries adopted a specialized right to information law for the first time. Thus, the statistical analysis of the Rating shows that the quality of the legislation is steadily improving, with the average score of laws introduced every five years becoming qualitatively higher than in the previous five-year period, although there are still areas that require further improvement.

The methodology of the Rating is based on a comparison of the legal framework of the right to information for each country in the world. It is important to note that the Rating is limited to assessing the law regulating the right to information, and not the quality of compliance with it. In some cases, countries with a relatively weak legal framework may still achieve significant success in practice due to the thoroughness with which established legal norms are implemented, whereas even relatively well-developed laws regulating the right to information cannot guarantee accessibility of information to the population if they are not executed properly. Despite this flaw,

²⁷ Global Right to Information Rating (Dec. 12, 2021), available at <https://www.rti-rating.org>.

²⁸ *Id.*

practical experience clearly demonstrates that a well-developed law regulating the right to information is the key to increasing the accessibility of information and helping its users protect and promote this right. It is also important to note that while accessibility covers factors that lie beyond the legal framework of the right to information, a solid legal framework is an essential prerequisite for exercising the right to freedom of expression in full.

4. Sectoral Legal Acts Regulating the Exercise of the Right to Information in the BRICS Countries

As we have already seen, the extent to which the right to information is exercised is fundamental to the freedom of expression that serves as the foundation for democratic institutions.²⁹ Along with this, taking into account the objective data of the World Bank, which shows that the total area of the BRICS countries (Brazil, Russia, India, China and South Africa) constitutes approximately 30 percent of the world's land mass and 42 percent of the world's population, it would be appropriate to consider laws regulating the implementation of the right to information in the BRICS countries.

Brazil. The rules establishing the right to information in Brazil are set out in the following legal documents:

- Constitution of the Federative Republic of Brazil of 5 October 1988;³⁰
- Law No. 12.527 of 18 November 2011 "On Access to Information";³¹
- Resolution No. 7.724 of 16 May 2012.³²

The right to access information. This right is established by paragraph 33 of Article 5 of the Brazilian Constitution. Everyone residing in the country, Brazilians and foreigners alike, has the right to obtain information relating to collective or common interests from the country's public authorities; such information is provided within the time limits established by law under threat of liability, with the exception of information that is kept secret in order to ensure the state's and population's security.

According to paragraph 2 of Article 216 of the Brazilian Constitution, the government is obligated by law to manage the storage of government documents and make them available for consultation to anyone who requires them.

²⁹ Adam Przeworski et al., *Democracy and Development Political Institutions and Well-Being in the World, 1950–1990* 1 (2000).

³⁰ Constituição da República Federativa do Brasil de 1988 (Mar. 30, 2022), available at http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

³¹ Lei nº 12.527 de 18 de novembro de 2011 (Dec. 12, 2021), available at https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm.

³² Decreto nº 7.724 de 16 de maio de 2012 (Dec. 12, 2021), available at https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/decreto/d7724.htm.

Article 3 of Law No. 12.527 of 18 November 2011 “On Access to Information” establishes the following principles in order to ensure the fundamental right to access information: (a) observance of the general rule of publicity, with the exception of secrecy; (b) distribution of information representing the public interest, irrespective of requests; (c) the use of communication means powered by information technology; (d) promotion of the development of a culture of transparency in public administration and (e) development of social control of public administration.

Exemptions. Resolution No. 7.724 of 16 May 2012, regulates the scope of activities of the Federal executive authorities, the procedure for ensuring access to information and the classification of information subject to restricted access in accordance with the levels and terms of secrecy stipulated in the provisions of Law No. 12.527 of 18 November 2011, providing access to the information specified in paragraph 33 of Article 5 and paragraph 2 of Article 216 of the Brazilian Constitution.

Russia. In Russia, the rules establishing the right to information are contained in the following legal documents:

- The Constitution of the Russian Federation adopted by popular vote on 12 December 1993, with amendments approved during a nationwide vote on 1 July 2020;³³
- Federal Law of 27 July 2006 No. 149-FZ “On Information, Information Technologies and Information Protection” (hereinafter Federal Law No. 149-FZ);³⁴
- Federal Law of 9 February 2009 No. 8-FZ “On Ensuring Access to Information regarding the Activities of Government Bodies and Local Self-Government Bodies” (hereinafter Federal Law No. 8-FZ).³⁵

The right to access information. According to part 4 of Article 29 of the Constitution of the Russian Federation, everyone has the right to freely seek, receive, transmit, produce and distribute information in any legal manner. The legal definition of the concept of “information” is found in paragraph 1 of Article 2 of Federal Law No. 149-FZ.

³³ Конституция Российской Федерации (принята всенародным голосованием 12 декабря 1993 г.) (с учетом поправок, внесенных Законами РФ о поправках к Конституции РФ от 30 декабря 2008 г. № 6-ФКЗ, от 30 декабря 2008 г. № 7-ФКЗ, от 5 февраля 2014 г. № 2-ФКЗ, от 21 июля 2014 г. № 11-ФКЗ) // Собрание законодательства РФ. 2014. № 31. Ст. 4398 [Constitution of the Russian Federation (adopted by a nationwide vote on 12 December 1993) (considering amendments, introduced by the RF Laws on amendments to the RF Constitution of 30 December 2008 No. 6-FKZ, of 30 December 2008 No. 7-FKZ, of 5 February 2014 No. 2-FKZ, of 21 July 2014 No. 11-FKZ), Legislation Bulletin of the Russian Federation, 2014, No. 31, Art. 4398].

³⁴ Федеральный закон от 27 июля 2006 г. № 149-ФЗ «Об информации, информационных технологиях и о защите информации» // СПС «КонсультантПлюс» [Federal Law No. 149-FZ of 27 July 2006. On Information, Informational Technologies and Protection of Information, SPS “ConsultantPlus”] (Dec. 12, 2021), available at <http://pravo.gov.ru/proxy/ips/?docbody&nd=102108264>.

³⁵ Федеральный закон от 9 февраля 2009 г. № 8-ФЗ «Об обеспечении доступа к информации о деятельности государственных органов и органов местного самоуправления» // СПС «КонсультантПлюс» [Federal Law No. 8-FZ of 9 February 2009. On Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government, SPS “ConsultantPlus”] (Dec. 12, 2021), available at <http://pravo.gov.ru/proxy/ips/?docbody&nd=102127629>.

Messages and data, regardless of the form of their presentation, are considered information.

Article 8 of Federal Law No. 149-FZ guarantees the right of access to information.

Article 8 of Federal Law No. 8-FZ defines information user rights, including the rights to: (a) receive reliable information about the activities of state bodies and local self-government bodies; (b) refuse to receive information about the activities of state bodies and local self-government bodies; (c) not substantiate the need to obtain the requested information on the activities of state bodies and local self-government bodies, the access to which is not limited; (d) file a complaint in the prescribed manner about acts and (or) actions (inaction) of state bodies and local self-government bodies and their officials violating the right to access information about the activities of state bodies and local self-government bodies, as well as the established procedure for exercising this right; (e) demand, in the manner prescribed by law, compensation for harm caused by violation of the right to access information concerning the activities of state bodies and local self-government bodies.

Exemptions. Distribution of classified information is prohibited. The list of information constituting a state secret is determined by federal law, specifically part 4 of Article 29 of the Constitution of the Russian Federation.

Article 9 of Federal Law No. 149-FZ outlines the restrictions imposed on access to information in order to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others and to ensure the defense and security of the state. The provisions of this Law in restricting access to information are broadly defined.

Article 19 of Federal Law No. 8-FZ describes the procedure for providing information on the activities of state bodies and local self-government bodies upon request. These provisions provide a detailed description of the consequences of refusing to provide information.

India. In India, the rules establishing the right to information are contained in the following legal documents:

- The Constitution of India of 26 January 1950,³⁶
- Law No. 22, 2005 on the Right to Information of 21 June 2005.³⁷

The Indian Constitution does not openly protect the right to information. However, in 1982 the Supreme Court ruled that access to information of public authorities is a general guarantee of freedom of speech and expression and is protected by Article 19 of the Indian Constitution. Secrecy has been defined as “an exception justified only in cases where it is necessary under the strictest requirements of the public interest.” After the ruling was approved, it took some time for the law on access to information to be passed.

³⁶ Constitution of India, 1950 (Dec. 12, 2021), available at <https://legislative.gov.in/constitution-of-india>.

³⁷ Right to Information Act, 2005 (No. 22 of 2005) (Dec. 12, 2021), available at <https://www.indiacode.nic.in/bitstream/123456789/2065/1/A2005-22.pdf>.

India's Freedom of Information Act was passed into law in December 2002 after years of public debate. The law was widely criticized and never came into force because the government did not officially publish it. An intense public campaign, as well as the arrival of a new government in 2004, led to the fact that the Law on the Right to Information of 2005 (hereinafter the Right to Information law) was signed by the President in June of the same year. However, all of its provisions came into force only in October 2005.

The right to access information. This right has been repeatedly recognized by the Supreme Court of India, including in its 1982 ruling, despite the fact that the Indian Constitution does not contain a special provision for this right, stating that this right is a general guarantee of freedom of speech and freedom of opinion, and is protected by Article 19 of the Indian Constitution.

The preamble of Law No. 22, 2005 declares that democracy requires citizen awareness and transparency, both of which are vital to its functioning as well as to restraining corruption and holding governments and their bodies accountable.

Law No. 22, 2005 is a legally binding document at both the national and regional levels, which is reflected in a number of its provisions. The law recognizes the need to appoint a government public relations officer and public relations specialists in each of the states and establishes the positions of the Commissioner General and State Commissioner with relevant specialists appointed for the latter in each of the states.

According to section 3 of Law No. 22, 2005, every citizen has the right to information under its provisions. The "the right to information" is defined in section 2(j) as "the right to information ensured by law." Despite some ambiguity in the definition, it is a guarantee that citizens have the right to access information held by public authorities.

Exemptions. The exemptions are outlined in section 8 of Law No. 22, 2005 which provides a comprehensive regime for the protection of secrets, public and private. Section 24 completely excludes from the scope of the Act a number of intelligence and security agencies, namely the eighteen organizations listed in the second annex, including the Bureau of Intelligence and the Bureau of Drug Control. It is up to the government to change the second annex through an official notification, which must be submitted for consideration in Parliament. State governments may also exclude intelligence and security agencies from the annex by means of a special notice in the Gazette, which is submitted to the appropriate state legislative body. The exclusion of these bodies from the scope of the Right to Information Act is neither appropriate nor necessary. At the same time, there is at least one exception: it applies to information relating to allegations of corruption and the violation of human rights. When information that may prove a violation of human rights is requested from the relevant authorities, the information must be provided but only after the consent of the relevant Commission (the Government or the State Commission) and within

forty-five days, regardless of the time frame specified in section 7. No additional procedures are required when requesting information that may prove corruption.

“While in force,” the law regulating the right to Information, according to section 22, overtly prevails over conflicting provisions of other laws, in particular, the Official Secrets Act of 1923. The majority of exceptions, but not all are subjected to damage testing. The Right to Information Act also establishes a significant priority of public interests over other interests. If the public interest in disclosing information outweighs the degree of harm that the disclosure could cause to legal interests, the information must be subjected to disclosure, contrary not only to the exceptions foreseen in the Right to Information Act, but also to any provisions of the Official Secrets Act (section 8(2)). Section 10(1) provides for the severability of disclosures if any portion of the record cannot be disclosed due to the lack of an exemption.

China. In China, the right to access information is governed by the Regulation of the People’s Republic of China on Disclosure of Government Information, which was adopted at the 165th meeting of the State Council on 17 January 2007 and became effective as of 1 May 2008 (hereinafter the PRC Information Protection Law).³⁸

On 17 January 2007, China adopted a model law on freedom of information with a special focus on clarifying statements concerning freedom of information. The law, as an administrative regulation approved by the National Council, may not repeal any of the laws or provisions of the Constitution. The freedom of information in China is of a declarative nature that must not contradict the official party politics of China. The emergence of such a law was conditioned by the expansion of information flow in the world and China’s desire to demonstrate an increased transparency in the Chinese information environment. This improved information flow would contribute to creating a favorable reputation for China.

The right of access to information. Article 1 of the Chinese Regulation of Information makes it clear that this regulation has been drafted in such a way that the population, the legal bodies, and other organizations have the right to receive government information in accordance with the law in order to enhance the level of transparency in the work of the government as well as to ascertain the superiority of the law in the government in order to play to the full the role of government information in total production management and sustaining the population, as well as their economic and social activities.

³⁸ 中(zhong1) 华(hua2) 人(ren2) 民(min2) 共(gong4) 和(he2) 国(guo2) 国(guo2) 务(wu4) 院(yuan4) 令(ling2) 第(di4) 492 号(hao4) 《中(zhong1) 华(hua2) 人(ren2) 民(min2) 共(gong4) 和(he2) 国(guo2) 政(zheng4) 府(fu3) 信(xin4) 息(xi1) 公(gong1) 开(kai1) 条(tiao2) 例(li4) 》 已(yi3) 经(jing1) 2007 年(nian2) 1(1) 月(yue4) 17(17) 日(ri4) 国(guo2) 务(wu4) 院(yuan4) 第(di4) 165 次(ci4) 常(chang2) 务(wu4) 会(hui4) 议(yi4) 通(tong1) 过(guo4), 现(xian4) 予(yu2) 公(gong1) 布(bu4), 自(zi4) 2008 年(nian2) 5 月(yue4) 1 日(ri4) 起(qi3) 施(shi1) 行(xing2)。 [Regulations of the People’s Republic of China on Open Government Information, adopted by the State Council on 17 January 2007, Effective 1 May 2008] (Dec. 12, 2021), available at http://www.gov.cn/zhengce/content/2008-03/28/content_1734.htm.

Article 5 of the Regulation declares that disclosure of government information by administrative bodies must make disclosure a norm, and non-disclosure an exception, while respecting the principles of justice, honesty, legitimacy and the comfort of the population.

Article 19 of the Regulation states that administrative bodies must be actively involved in disclosing government information, for a correction of the public interest requires a broad public understanding or the participation of society in decision making.

And article 27 of the Regulation states that, apart from government information actively disclosed by administrative bodies, the population, legal and other entities may apply to bodies of self-governance for obtaining relevant government information on all levels or to the departments of people's governments on the provincial level or higher, exercising, on their own behalf, the functions of administrative management (including remote and internal bodies stipulated in paragraph 2 of Article 10 of this Regulation).

Exemptions. Article 14 of the Regulation of Information in the People's Republic of China declares that government information legally defined as a state secret, government information that is not subject to disclosure according to laws and regulations, as well as government information that may jeopardize national security, social security, economic security, or social stability as a result of its publication, may not be disclosed under any circumstances.

Article 15 of the Regulation states administrative bodies must not disclose government information containing commercial or private secrets that, if disclosed, may negatively affect the legitimate rights and interests of third parties.

Article 14 of the Regulation states that information concerning internal matters of administrative bodies, including personnel and logistics management, internal operational processes, as well as information in other similar areas, may not be disclosed. Discussion protocols, procedure drafts, letters of consultation, and other similar information regarding types of procedures, as well as files of administrative legislative cases, may not be disclosed.

And, Article 17 of the Regulation states that administrative bodies create and complement open government information review mechanisms, clarifying procedures and responsibilities.

Administrative bodies disclosing government information carry out a checkup of government information liable to disclosure in compliance with the Regulations of the People's Republic of China on State Secrets as well as other laws, normative acts and relevant government regulations.

In cases when administrative bodies cannot determine whether certain government information may be disclosed, they must abide by laws, regulations and relevant government provisions to inform a relevant competent authority or an administrative Department of Privacy Management for confirmation.

The Information Regulations of the People's Republic of China also contain other restrictions contained in Articles 18, 32, 33, 34, 35, 36 and 37.

The existence of an excessive number of detailed restrictions with the possibility of broad interpretation as to what information can be disclosed, creates an impression that the Regulation of Information in the People's Republic of China is not intended for citizens to be able to exercise their right to information, but rather to guide civil servants in disclosing information.

The absence of a single document regulating the operation of the "social credit" system implemented through the means of facial recognition, which clearly outlines in simple terms what is allowed, what is forbidden, and what consequences non-compliance will incur, is by all means alarming, as is China's refusal to disclose information on "correction camps" in the Xinjiang Uygur Autonomous Region or collaborate with the United Nations on this issue.

In 2018, Human Rights Watch published a report on the persecution of Muslims in Xinjiang. According to the report, large numbers of Uyghurs have been groundlessly detained and placed into prisons and correction camps, the social status and fate of millions of people depending on the points awarded in the "social credit" system.³⁹

South Africa. In South Africa, the rules establishing the right to information are contained in the following legal documents:

- The Constitution of the South African Republic of 1996;⁴⁰
- The Law on the Development of Access to Information, adopted in 2000 and effective as of 2001.⁴¹

The 1996 Constitution of the South African Republic guarantees not only the right of access to government information but also the right of access to information from private organizations that is necessary to enforce or protect any right. The Constitution also requires the acceptance of a law by the government to begin enacting this right within three years of its entry into legal force. This is an extremely practical provision that forces the government to pass legislation on time and within a specified time frame.

The Law of Developing Access to Information, which regulates enforcement, went into effect in March 2001. South Africa has one of the most progressive laws on

³⁹ Human Rights Watch, 'Eradicating Ideological Viruses': China's Campaign of Repression Against Xinjiang's Muslims, HRW Publ. (2018) (Dec. 12, 2021), available at www.hrw.org/sites/default/files/report_pdf/china0918_web2.pdf.

⁴⁰ Constitution of the Republic of South Africa (No. 108 of 1996) (Mar. 30, 2022), available at <http://housingfinanceafrica.org/app/uploads/Constitution-of-the-Republic-of-South-Africa-Act-108-of-1996.pdf>.

⁴¹ Promotion of Access to Information Act, 2000 (No. 2 of 2000) (Dec. 12, 2021), available at https://www.gov.za/sites/default/files/gcis_document/201409/a2-000.pdf.

freedom of information in the world. The main disadvantage is the lack of a guarantee of an administrative appeal. As a result, if a request is rejected by a government agency, only a court can review it. Furthermore, the Law does not have an obligation to actively distribute information that serves the public interest, despite the fact that this issue has received significant attention in a number of modern legislative systems; and it represents an important aspect of access to information on request.

The right to access information. Article 32 of the South African Constitution of 1996, "Access to Information" declares:

- (1) Everyone has a right to access:
 - (a) any information held by the government;
 - (b) any information held by any other person that may be deemed necessary for exercising, or ensuring protection of, any rights.
- (2) National legislation must regulate the implementation of this right, providing measures to mitigate the administrative and financial oppression exercised by the state.

The Preamble to the Access to Information Development Act in South Africa lists the following aims:

- foster a culture of transparency and accountability in public and private bodies by implementing the right of access to information;
- actively contribute to the creation of a society in which the people of South Africa have effective access to information enabling them to more fully exercise and protect all of their rights.

Article 2 of the Law of Information Access Development in South Africa states:

2. (1) In interpreting the provisions of this Law, each court shall prefer any reasonable interpretation of that provision consistent with the purposes of this Law over any alternative interpretation inconsistent with these purposes.

Article 9 of the Law states:

9. The objectives of this Law are as follows:
 - a) exercising constitutional right of access to:
any information owned by the state; and
all information owned by any other person and necessary for the exercise or protection of rights;
 - b) to exercise this right:
considering justified limitations, including, but not limited to, those aimed at a reasonable protection of privacy, business secrecy and efficient, effective and benevolent governance; and

(II) in such a way that this right is balanced with any other rights enumerated in the Bill of Rights in Chapter 2 of the Constitution;

c) ensure that the state's constitutional obligations to promote a culture of human rights and social justice are met by including state bodies in the definition of "requester," allowing them, inter alia, to access information from private bodies while complying with this Law's four requirements, including an additional obligation for certain public authorities to act in the public interest in certain cases;

d) establish voluntary and mandatory mechanisms or procedures to exercise this right in such a way that individuals will be able to access documents from public and private bodies as quickly, cheaply and effortlessly as possible;

e) generally promote transparency, accountability and effective governance of all public and private bodies, including but not limited to empowerment and education for all;

(i) to understand their rights in terms of this Law in order to exercise their rights in relation to public and private bodies;

(ii) to understand the functions and activities of government bodies; and

(iii) to effectively analyze and participate in, decision-making endeavors by state bodies affecting their rights.

Article 11 of the Law states:

(1) The requesting party should be given access to the government record in the event when:

(a) the requesting party complies with all procedural requirements of this Law as concerns requesting access to the record; and

(b) access to this record has not been denied based on any reasons for denial stipulated in Chapter 4 of Part 2.

It should be noted that the implementation of the Law of Developing Access to Information has always been weak, with the level of "silent failures" being high and requests often left without any response.⁴²

Exemptions. Article 5 of the Law of Information Access Development in South Africa applies to the exclusion of any provision of any other legislation that (a) prohibits or restricts the disclosure of records owned by a public or private body; and (b) materially contradicts the object or any of specific provision of this Law.

Articles 33–44 of the Law stipulate exemptions from the right of access in accordance with international standards. These exemptions relate to national

⁴² Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, United Nations Educational, Scientific and Cultural Organization (2008), at 99 (Dec. 12, 2021), available at https://law.yale.edu/sites/default/files/documents/pdf/Intellectual_Life/CL-OGI_Toby_Mendel_book_%28Eng%29.pdf.

security, international relations, public health and security, prevention, investigation and prosecution of infringements of rights; confidentiality; lawful commercial and other economic interests; economic management; fair administration of justice and the privilege of legal advice; preservation of the environment and other operations of government agencies.

With all of this in mind, Article 46 of the Law of Information Access Development in South Africa contains a mandatory priority of the public interest; in this regard, information must be disclosed if this serves public interest, even if it has the potential to harm interests that are under its protection.

Conclusion: the Democracy Index of the BRICS Countries and the Feasibility of Restrictions Imposed on the Right to Information

The population's embrace of the opportunity to fully exercise its right to information, which is impossible without a balanced involvement of the state, leads to the formation of an objective information environment, which in turn provides the population with the opportunity to exercise freedom of expression in a reasonable manner. In this regard, a close relationship between the democracy index and fully exercising the right to information, which plays a key role in the population exercising freedom of expression, becomes apparent.

We believe it is advisable to take into account the civilian armament index in the definition of democracy calculated by using the formula for adding up the places that the state occupies in the global rating of the democracy index (based on data from The Economist Intelligence Unit's annual report, Democracy Index 2020: In sickness and in health?⁴³) and the Civilian Armament Index (based on 2018 report data: "Estimating Global Civilian-held Firearms Numbers"⁴⁴ drawn up by The Small Arms Survey's Aaron Karp).

The BRICS association is the largest of the world's unions in terms of territory and population. It is particularly interesting in terms of calculating the degree of democracy of its member states using the formula proposed in the second paragraph above to determine the extent to which the population has the opportunity to exercise its right to freedom of expression, as well as determining the advisability of limiting the right to information by the BRICS countries by comparing the data on democracy and rights as well as exemptions enumerated in the countries' normative legal acts.

⁴³ Democracy Index 2020, *supra* note 23.

⁴⁴ Aaron Karp, *Estimating Global Civilian-held Firearms Numbers*, Briefing Paper, Small Arms Survey (June 2018) (Dec. 12, 2021), available at <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf>.

According to the global rating of the democracy index for 2020, the BRICS countries are ranked in the following order: (a) South Africa is ranked 45th; (b) Brazil is ranked 49th; (c) India is ranked 53rd; (d) Russia is ranked 124th and (e) South Africa is ranked 151st.

According to the global civilian armament rating in 2017, the BRICS countries hold the following positions in the rating globally:

- Russia is ranked 68th, with 12.3 weapons per 100 people, with a population of 143,375,000, and the total number of firearms in civilian possession amounting to 17,620,000 units;

- South Africa is ranked 89th, with 9.7 weapons per 100 people, with a population of 55,436,000, and the total number of firearms in civilian possession amounting to 5,351,000;

- Brazil holds the 97th place with 8.3 weapons per 100 people, a population of 211,243,000, with the total number of firearms in civilian possession amounting to 17,510,000;

- India holds the 120th place with 5.3 weapons per 100 people, a population of 1,342,513,000, and the total number of firearms in civilian possession amounting to 71,101,000;

- China holds the 139th place with 3.6 weapons per 100 people, a population of 1,388,233,000, with the total number of firearms in civilian possession amounting to 49,735,000.

Adding up the data with the use of the formula, we get the following:

1. Democracy in South Africa = $1+2= 3$
2. Democracy in Russia = $4+1 = 5$
3. Democracy in Brazil = $2+3 = 5$
4. Democracy in India = $3+4 = 7$
5. Democracy in China = $5+5 = 1$

Thus, South Africa leads in the degree of democracy and, therefore, also in terms of allowing its population to exercise its right to information and freedom of expression. An analysis of laws regulating access to information in South Africa showed a high level of elaboration with a very small number of exemptions. Russia and Brazil share second place. The legal norms regulating the right to information and freedom of expression in these countries are enumerated in their constitutions; laws regulating these rights and freedoms are balanced between rights and restrictions, with a tendency for exemptions to prevail over rights. India is ranked third in this rating of democracy and the implementation of the right to information in legal terms, significantly inferior to Russia and Brazil. In India's case, in particular, there is no direct indication of access to information in the constitution, which is compensated for by the rulings of the Supreme Court of India. The fourth place in terms of democracy among the BRICS countries is held by the People's Republic of China, which may be characterized by the lack of opportunities to fully exercise their right to information and freedom of expression. There are no constitutional guarantees for these rights,

and the Chinese Regulation of Information, which serves as a de facto guide for civil servants in determining what information can be disclosed, contains an excessively unreasonable number of detailed restrictions that could be interpreted broadly.

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