

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.

-- [James Madison](#)

**Parallel Report to the Human Rights Committee
on the occasion of the consideration of the
Sixth Periodic Report of Germany
during the Committee's 106 th Session
submitted by:**

Walter Keim, participant of the [Baltic Sea NGO Forum](#)
Torshaugv. 2 C
N-7020 Trondheim, 16th June 2011 [updated 14. September 2012]



auf Deutsch: <http://home.broadpark.no/~wkeim/files/if-dimr-pbt.htm>

Human Rights Institute (Deutsches Institut für Menschenrechte) Zimmerstr. 26/27 D-10969 Berlin	Committee of Human Rights (Ausschuss für Menschenrechte und humanitäre Hilfe) Federal Parliament Bundestag Platz der Republik 1 D-11011 Berlin
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Copy: Transparency, Greenpeace, Deutsche Gesellschaft für Informationsfreiheit, Humanistische Union, netzwerk recherche, Mehr Demokratie

[Nobody answered, therefore this letter was sent directly to the Human Rights Committee]

Access to Information is missing in the 6. state report of Germany according to Article 40 of the Civil Covenant CCPR

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3. The rank of CCPR as a law is *de facto* not respected
4. Recommendations:
 1. **Germany has to adopt access to informations (ATI) laws in all 16 federal states and improve federal ATI law to meet international standards**
 2. Withdraw reservation on Article 19 of CCPR
 3. The rank of CCPR in German law should be improved.
 4. The recommendations of the Human Rights Commissioner of the Council of Europe, e. g. educate administration and judges in international law i. e. CCPR should be done.
 5. Judges should not be hired, promoted and supervised by the executive power i. e. [Resolution 1685 \(2009\)](#) and [Recommendation No. R \(94\)12](#) of the Council of Europe should be followed.
 6. CCPR, International Covenant on Economic, Social and Cultural Rights and the European Convention of Human Rights should be included in the Internet collection of the "laws of Germany" (www.Gesetze-im-Internet.de and <http://bundesrecht.juris.de>).
 7. The German Institute of Human Rights should monitor human rights in Germany.

8. Defamation should be decriminalized.

I refer to the 6. report according to Article 40 of the International Covenant on Civil and Political Rights, reporting to the Human Rights Committee (CCPR) dated 31. March 2010 (1). The EU [Fundamental Rights Agency](#) suggested to contact the Council of Europe (2), answering a complaint on lack of Freedom of information in Germany (3). The GRECO (Group of States against corruption) did not observe that [access to informations laws are missing in 5 states in Germany](#) (N).

1. Access to public documents is a human right according to Article 19 CCPR

Freedom of [Information \(including access to public documents\)](#) is part of Article 19 the International Covenant on Civil and Political Rights (ICCPR), which Germany has signed.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reported e. g. in [E/CN.4/1998/40](#), 28 January 1998 and [E/CN.4/2000/63](#), 18 January 2000 that access to public documents is a human right.

[UN, OSCE and AOS confirmed in a common statement of 6. December 2004](#), that access to [information is a human right](#): (4):

"The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the [principle of maximum disclosure](#), establishing a presumption that all information is accessible subject only to a narrow system of exceptions."

The "General Comment No. 34 on Article 19 of the ICCPR" confirms this (5):

"18. Article 19, paragraph 2 embraces a general right of access to information held by public bodies. Such information includes all records held by a public body, regardless of the form in which the information is stored, its source and the date of production."

"19.(...) States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation."

Germany tried to remove the human right of access to public documents and other human rights (13) from the [Draft General Comment No. 34 on Article 19 ICCPR](#) (see page 17 [reference 14](#)). Decriminalization of defamation and abolition of prison sentences (Article 49) is objected. Access to public documents is not considered a fundamental right according to the German Basic Law. The ICCPR has only the rank of a law. Therefore it is suggested to remove access to public documents from the ICCPR.

2. Five states (Länder) violate the human right of access to public documents

I have informed the states [Hesse](#), [Lower Saxony](#), [Saxony](#), [Bavaria](#) and [Baden-Württemberg](#) several times about the human right access to public documents. However these states continue to violate this human right and access laws are not given (6).

The NGO "Bündnis für Informationsfreiheit in Bayern" has collected many examples of denial of access (10). [Reference 7](#) gives additional examples of denial of access to public documents.

The UN Convention against Corruption of 14. December 2005 has been ratified by 148 states. However [Germany could not ratify because bribery of members of parliament is not a criminal](#) act. This law would have to be given by parliamentarians itself.

[The [Group of States against Corruption](#) (GRECO) of the Council of Europe [saw deficiencies combatting](#)

[corruption in Germany](#) and made 2009 suggestions on transparency of financing of parties ([K](#)). The federal parliament Bundestag refused 2011 (see "Ausschussdrucksache 17(4)283 des Innenausschusses") to comment these suggestions with the majority of the governing coalition parties of CDU/CSU and FDP ([M](#))]

[**More than 115 states with 5.9 billion i. e. 84 % of the world population adopted either FOI laws or constitutional provisions (I).** Citizens in 5 states in Germany with halve of the population lack this human right.]

3. The rank of the ICCPR is not respected in praxis

Paragraph 118 of the State report reads: "CCPR is part of German justice system as federal law. Therefore it is binding for federal states." But this is not respected by German administration and courts.

Therefore German courts may decide against human rights if there is a conflict, e. g. the highest Court in the German land [Rhineland-Palatinate LG Mainz \(1 QS 25/98\)](#) stated that the court can not give access to documents (as the European Convention of Human Rights would demand), because it is the parliament, which would have to give this right. This court expresses here that they are not allowed to do what human rights would say.

Internet pages "laws in Internet" (www.Gesetze-im-Internet.de and <http://bundesrecht.juris.de>) do not contain the CCPR. Therefore I have [28. April 2007 suggested](#) to add it together with other human rights covenant. The answer 14. July 2007 [says that the capacity was not big enough](#). It is difficult to believe this as reason.

Court cases [Walter Keim ./ Germany VG 2 A 85.04](#) and [VG 2 A 55.07](#) show that the Administrative Court of Berlin (Verwaltungsgericht Berlin), and the Higher Administrative Court (Oberwwaltungsgericht) and later the Constitutional Court ([Verfassungsgericht](#)) in cases [1 BvR 1981/05](#), [1 BvR 2565/05](#) and [1 BvR 238/09](#) that the human rights character of access to public documents of the CCPR is ignored ([7](#)). Many application referring to the CCPR are denied without even discussion. This proves that the rank of CCPR being a law is ignored ([7](#)).

The ICCPR human right access to public documents is rejected by the German government, because it is considered no fundamental right of the German Basic law (constitution) ([13](#)).

[**The federal law of Freedom of Information has too many exceptions and violates international principle of maximum disclosure. Comparison with laws from 89 other countries places [Germany on 85th rank](#), i. e. 5.9 billion people have better access laws([J](#)).]**

4. Recommendations

The [Report of the Human Rights Commissioner of the Council of Europe 2006](#) suggests to educate administration and judges in human rights e. g. CCPR ([8](#)). Unfortunately both the federal and local parliaments refused to consider this proposition ([9](#)).

Judges at administrative courts are hired, promoted and supervised by the executive power and are not independent according to Article 14 CCPR ([11](#)).

In approx. 50 States access to public documents is found in the constitution. Approx. [90 states have adopted access to information laws](#). In Europe basically Belarus and 5 German states are missing. After India in 2005, China in 2008, Russia in 2010 and Brazil soon (BRIC countries) adopt laws on access to information only some countries in Africa and the Middle East are missing.

Germany's report should have been given [1. April.2009](#). The report was registered 18. April 2011 at [UN](#).

In many states – e. g. for the European Convention of Human Rights - international conventions have a higher rank compared to laws e. g. Austria, Switzerland and Norway (12).

The Human Rights Commissioner of the Council of Europe suggested to give the German Human Rights Institute the task to monitor human rights in Germany ([F](#)).

Recommendations summarized:

1. **Germany has to adopt access to informations (ATI) laws in all 16 federal states and improve federal ATI law to meet international standards**
2. Withdraw reservation on Article 19 of CCPR
3. The rank of CCPR in German law should be improved.
4. The recommendations of the Human Rights Commissioner of the Council of Europe, e. g. educate administration and judges in international law i. e. CCPR should be done.
5. Judges should not be hired, promoted and supervised by the executive power i. e. [Resolution 1685 \(2009\)](#) and [Recommendation No. R \(94\)12](#) of the Council of Europe should be followed.
6. CCPR, International Covenant on Economic, Social and Cultural Rights and the European Convention of Human Rights should be included in the Internet collection of the "laws of Germany" (www.Gesetze-im-Internet.de and <http://bundesrecht.juris.de>).
7. The German Institute of Human Rights should monitor human rights in Germany.
8. Defamation should be decriminalized.

Sincerely

Walter Keim

Copy: [Human Right Commissioner of the CoE](#), [Fundamental Rights Agency](#), [Ausschuss für Menschenrechte und Humanitäre Hilfe](#), Dr. Valentin AICHELE, Legal adviser, German Institute for Human Rights, [OSCE](#)

References:

1. Consideration of reports submitted by States parties under article 40 of the Covenant CCPR: http://www.cccprcentre.org/doc/HRC/Germany/CCPR_C_DEU_6_en.doc
2. 26.03.2007: German Human Rights Institute is responsible for human rights in Germany: <http://home.broadpark.no/~wkeim/files/eu-hra-070329.pdf>
3. 01.03.2006: Access to Information and other Violations of Human Rights in Germany : <http://home.broadpark.no/~wkeim/files/eu-hra-complaint.htm>
4. 2004 International Mechanisms for Promoting Freedom of Expression: JOINT DECLARATION <http://merlin.obs.coe.int/iris/2005/2/article1>
5. [General Comment No. 34 on article 19 by the Human Rights Committee](#): <http://www2.ohchr.org/english/bodies/hrc/comments.htm>
6. 5 local states (lander) ignore the human right of access to public documents: <http://home.broadpark.no/~wkeim/files/ifg-5-laender-en.htm>
7. Administration and jurisprudence about freedom of information: <http://home.broadpark.no/~wkeim/files/ifg-material.htm>
8. Petition realisation of the suggestions of the Human Right Commissioner of the CoE: http://home.broadpark.no/~wkeim/petition_gg.htm
9. Rejection of the suggestions of the Human Right Commissioner of the CoE by parliament Bundestag and 8 länderparliaments: http://home.broadpark.no/~wkeim/coe_resultat.htm#antworten
10. Bündnis für Informationsfreiheit in Bayern: (In)transparenz in Bayern: <http://www.informationsfreiheit.org/3964.html>

11. Separation of powers in Europe: http://home.broadpark.no/~wkeim/files/separation_of_powers.htm
12. Geiger, Grundgesetz und Völkerrecht, 5. Auflage, S. 160; Schweisfurth, Völkerrecht, S. 202; Nowak, CCPR-Commentary, Second edition, Art. 2, Rn. 55
13. 11. February 2011: Germany asked to remove the human right of access to public documents and other human rights: http://home.broadpark.no/~wkeim/files/German_comments_on_Draft_General_Comment_No.34.pdf
14. HUMAN RIGHTS COMMITTEE. DISCUSSIONS ON DRAFT GENERAL COMMENT NO. 34- MEETING NOTES (18 MARCH – 24 MARCH 2011): <http://freedominfo.org/documents/HRCnotesMarch2011.pdf>
15. X. Baltic Sea NGO Forum, Final Statement, WS III: Human rights: http://www.bsngoforum.org/files/Final_statement.pdf
 1. We urge the CBSS to create an Ombudsman for Human Rights.
 2. In each country of the Baltic Sea Region, there shall be installed independent national Human Rights Institutes according to the Paris principles.
 3. The workshop recommends that the Baltic Sea NGO Network oversee the implementation of the Universal Periodic Review (UPR) process in each country of all the CBSS member states.
16. X. Baltic Sea NGO Forum: The role of international lawmakers and their respective influence on national legislation on access to information: <http://home.broadpark.no/~wkeim/files/ATI-BSNF.htm>

Internet publications:

- A. Telepolis (15.04.2002): Informationsfreiheit ist ein UN Menschenrecht: <http://www.heise.de/tp/deutsch/special/frei/12314/1.html>
- B. Telepolis (08.06.2002): Bananenrepublik Deutschland: <http://www.heise.de/tp/deutsch/special/frei/12689/1.html>
- C. Telepolis (03.05.2002): Was kann der einzelne Bürger bewirken? Interview mit Walter Keim: <http://www.heise.de/tp/r4/artikel/12/12456/1.html>
- D. Tagesspiegel (18.12.2006): Europäischer Menschenrechtshof: Präsident ermahnt Deutschland.
- E. Tabellarische Übersichten: Menschenrecht Informationszugangsfreiheit im Bundesgesetzblatt (BGBl.): <http://home.broadpark.no/~wkeim/IFG.htm#Europarat>
- F. REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS MR THOMAS HAMMARBERG ON HIS VISIT TO GERMANY: <http://home.broadpark.no/~wkeim/files/Bericht-des-Menschenrechtskommissars.html>: **Strengthen the mandate of the German Institute for Human Rights with regard to structural and factual monitoring and in respect to its consultative role in the process of drafting legislation with human rights relevance.**
- G. 21.12.2003: Petition Violations of Human Rights in Germany: Invitation of the Human Rights Commissioner of the CoE to Germany: http://home.broadpark.no/~wkeim/petition_me-en.htm
- H. Human Right Violations in Germany: Freedom of Opinion, Information, Association, Family Life and Right to Fair Trial: http://home.broadpark.no/~wkeim/files/de_human_rights.htm
- I. Legal framework for the right of access to information: <http://right2info.org/laws>
- J. Right to Information Rating: <http://rti-rating.org/results.html>
- K. GRECO (4. December 2009): GRECO Evaluation Report on Germany on Incriminations (ETS 173 and 191, GPC 2): [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)3_Germany_On_e_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)3_Germany_On_e_EN.pdf)
- L. Freedom of Information missing in South Germany: <http://home.broadpark.no/~wkeim/foi-laws-eu-de.gif>
- M. Lobbypedia - GRECO: <http://www.lobbypedia.de/index.php/GRECO>

N. Keim, Walter (24. August 2012): [GRECO failed in Second Evaluation Round and must therefore do better in Third Round](http://home.broadpark.no/~wkeim/files/1208greco-en.htm) : <http://home.broadpark.no/~wkeim/files/1208greco-en.htm>

Development:

- Publication of this document and meeting at Human Rights Committee, [106th session \(15 October - 2 November 2012\)](#), Geneva

Answer:

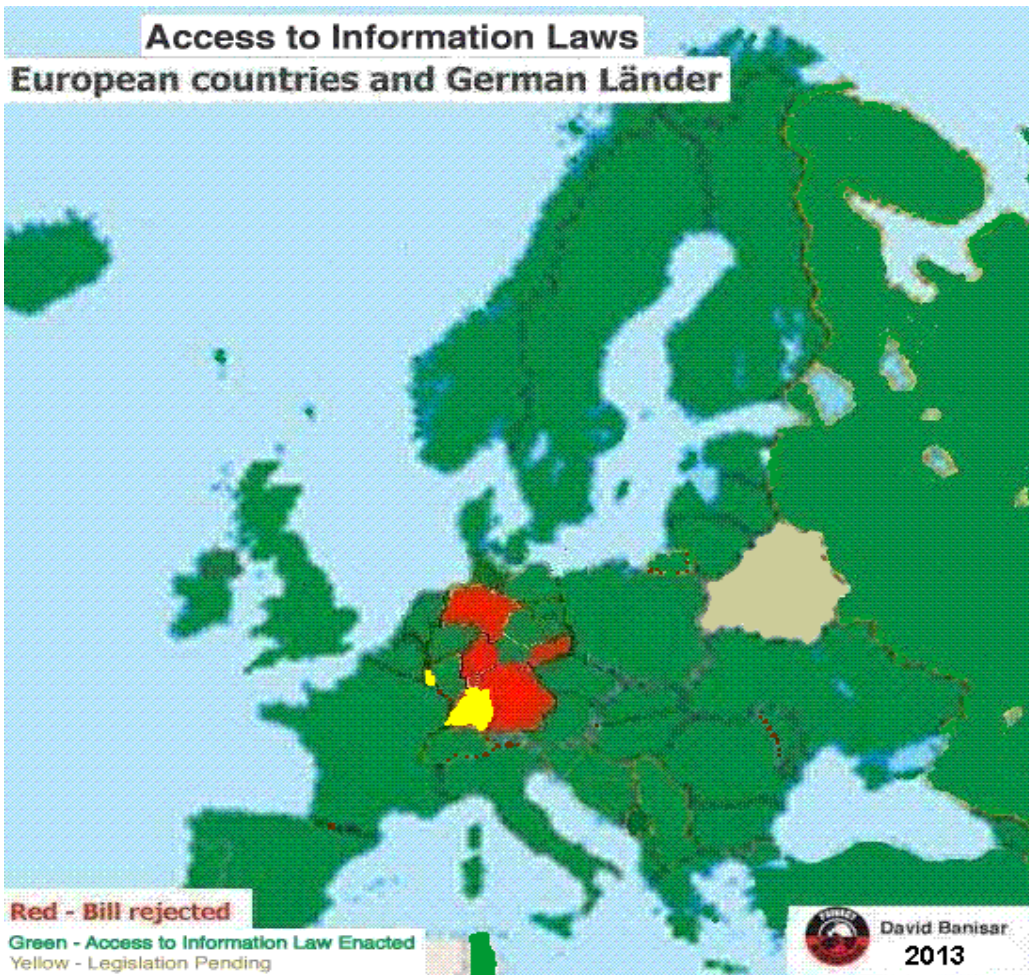
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[\[Freedom of Information\]](#) [\[Petitions\]](#) [\[Constitutional complaint\]](#) [\[Human rights\]](#)
[\[Homepage\]](#)

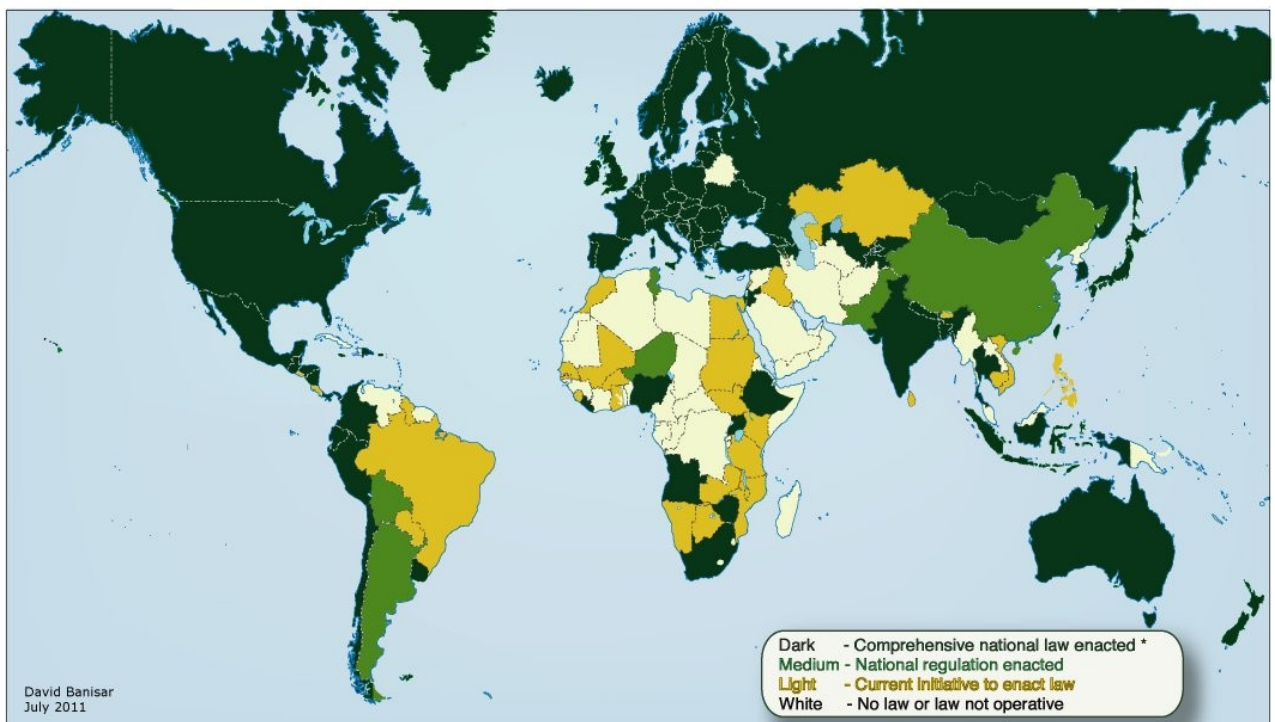
This publication is a "hearing": Please send comments to: walter.keim@gmail.com

You may link this page.

Colours on picture: dark green: FOIA enacted. Yellow: pending law. FOIA= Freedom of Information Act



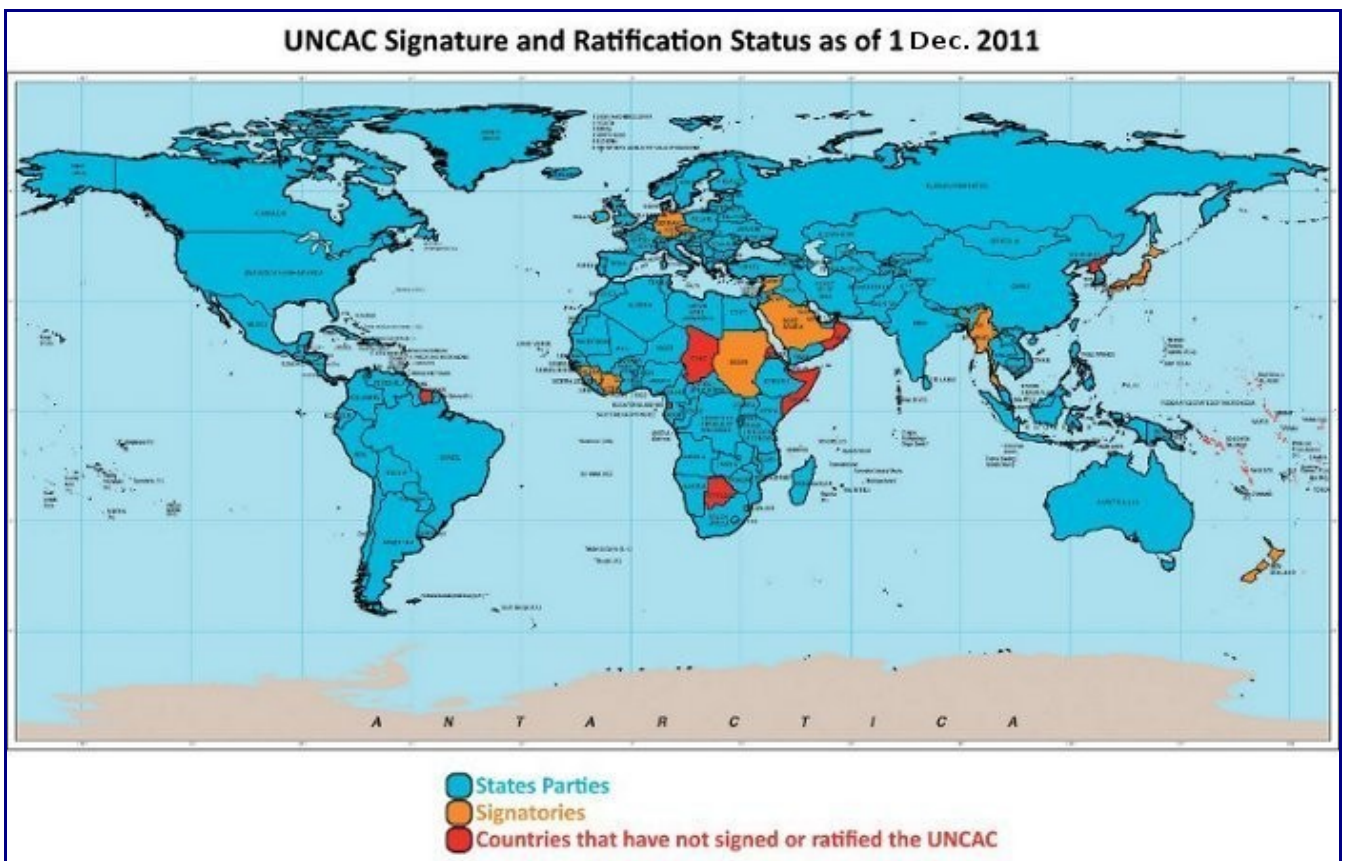
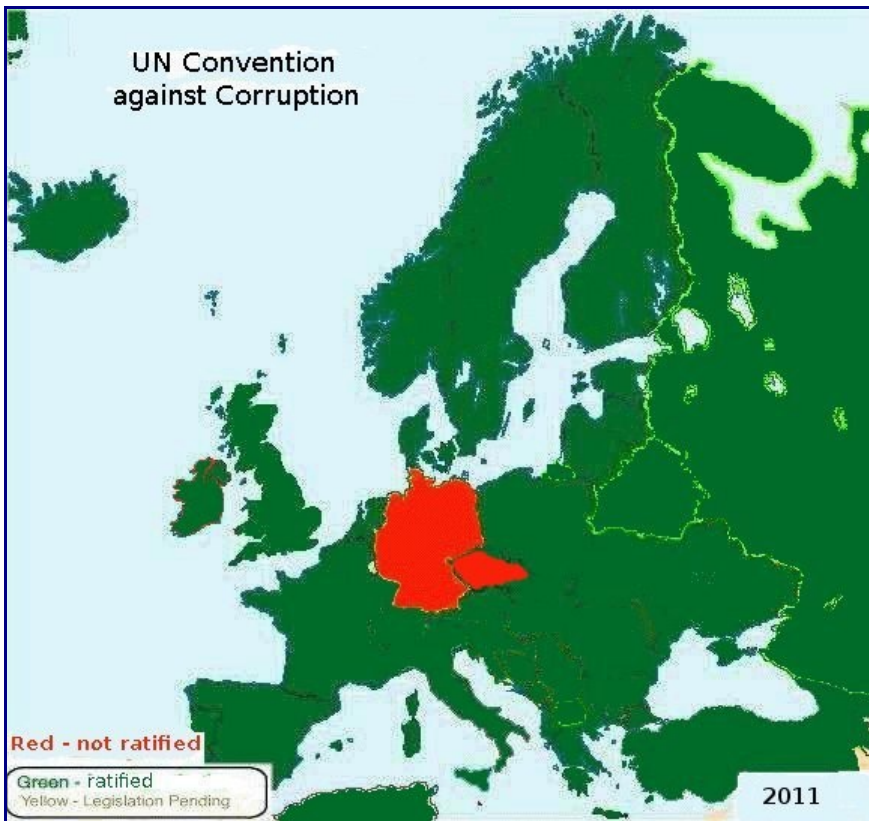
National Right to Information Laws, Regulations and Initiatives 2011



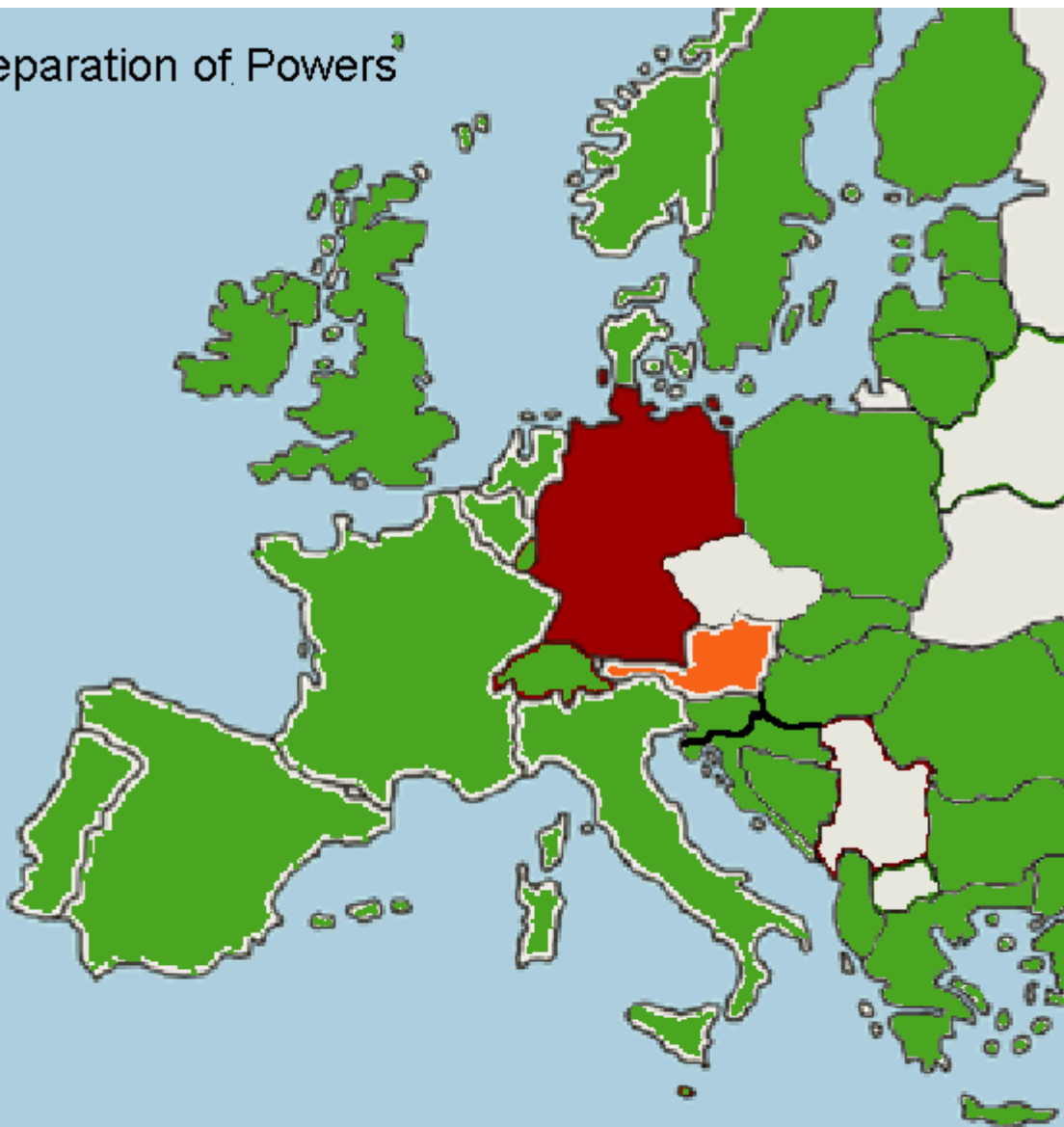
*Not all national laws have been implemented or are effective. See <http://www.article19.org/>




Electronic copy available at <http://www.imbr.org/issue/2007/100>

158 States ratified the UN Convention against Corruption:



Separation of Powers



-  no information
-  Judges employed, promoted and supervised by Executive
-  Judiciary independent from Executive