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EXAMINING THE RELATIONSHIP BETWEEN LAW LIBRARIES AND DEMOCRACY IN  
TRANSITIONAL STATES – A CASE STUDY OF THE REPUBLIC OF RWANDA

BY

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THESIS

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## ABSTRACT

Democracy is now recognized as the preferred form of governance in the world. With its rise from the foundation of the United States and growth throughout the world, most recently with the fall of the Soviet Union, democratic governance is the cornerstone for the majority of governments worldwide. Three key elements emerge as essential to democratic governance: transparency, accessibility, and accountability. A democratic government must be transparent in that it allows citizens and active civil society participants to see into the halls of government. It must allow access to laws—and preferably the lawmaking process—to grant citizens an opportunity to scrutinize government actions. Finally, there must be a mechanism for citizens to hold government actors accountable for these actions, if necessary.

With these processes in mind, lawmakers, scholars and development professionals for decades have sought to define what institutions can best support transparency, accessibility, and accountability in government. One of these institutions—libraries—has gained support among information professionals and governance expertise alike as ideal for supporting the access principle of democratic government. Focusing on access, public libraries have long been held as institutions that have a wide-reaching effect on providing information to citizens regardless of socio-economic status, and are well-suited to promote accessibility and therefore democracy. Little has been written, however, about the important relationship between law libraries and democracy. These special libraries serve a similar but more narrowly defined mission in the democratic sphere: providing access specifically to that information necessary for scrutiny of government action.

Especially in developing democracies—those states transitioning from an authoritarian to democratic form of government—law libraries can play a significant role to promote and uphold

the access principle of democracy. Law libraries collect precisely the information necessary to scrutinize government actors: records of lawmaking, administrative rules and decisions, government reports, and of course the laws themselves. In addition to the general public, law libraries also serve constituent groups important to governance, such as lawyers, judges, and lawmakers. Providing competent collections and research assistance for these groups strengthens good governance in its own ways as well.

This thesis seeks to clarify the relationship between libraries and democracy, and how it specifically supports the access principle of democratic governance. It particularly seeks to highlight this relationship between law libraries and democracy, and that role in developing and transitional states. Finally, it applies this analysis to a field investigation conducted in the Republic of Rwanda in June 2013, which sought to understand the role of law libraries in the developing democratic state.

## TABLE OF CONTENTS

1. INTRODUCTION .....	1
2. DEMOCRACY DEFINED .....	4
2.1 <i>Transparency</i> .....	5
2.2 <i>Accessibility</i> .....	5
2.3 <i>Accountability</i> .....	7
3. ACCESS TO INFORMATION AND DEMOCRACY .....	9
3.1 <i>International Legal Principles of Information Access</i> .....	10
4. LIBRARY ORGANIZATIONS AND DEMOCRATIC PRINCIPLES.....	13
5. PUBLIC LIBRARIES AND DEMOCRACY .....	16
6. LEGAL AND GOVERNMENT DOCUMENTS IN LIBRARIES, THE FDLP, AND DEMOCRACY.....	21
6.1 <i>Access to Government Information</i> .....	21
6.2 <i>U.S. Federal Depository Library Program</i> .....	23
7. LAW LIBRARIES AND DEMOCRACY.....	26
7.1 <i>Law Libraries and the Access Principle</i> .....	26
7.2 <i>Law Libraries Supporting Other Democratic and Rule of Law Institutions</i> .....	28
8. LAW LIBRARIES, DEMOCRACY, AND TRANSITIONAL STATES .....	30
8.1 <i>Law Libraries and Transitional Regimes</i> .....	30
8.2 <i>The Role of Law Libraries in Transitional Governments</i> .....	32
9. CASE STUDY: LAW LIBRARIES IN RWANDA.....	35
9.1 <i>Rwanda – A Brief History</i> .....	35
9.2 <i>Survey of Rwanda’s Law Libraries – Summary and Introduction</i> .....	36
9.3 <i>Perceptions of Law Libraries in Rwanda</i> .....	54
9.4 <i>Conclusions: Law Libraries Supporting Democracy in Rwanda</i> .....	56
10. OVERALL CONCLUSIONS.....	58
11. BIBLIOGRAPHY .....	59

## 1. INTRODUCTION

Democratic governance has existed in varying forms for centuries. In modern times, democracy has progressed in several waves, most recently with the fall of the Soviet Union and most other communist governments.<sup>1</sup> This wave of democratization led to immediate and significant effects around the world, and particularly in Eastern Europe and sub-Saharan Africa,<sup>2</sup> with varying results. Some states have successfully developed democracies, while others still struggle with some form of authoritarian regime. Nonetheless, scholars generally agree that the preferred form of government—and the end goal of a government transition—is to create a democracy with the rule of law.<sup>3</sup>

In historical perspective, there has been a long-term trend in favor of moving toward democratic governance in most, if not all states.<sup>4</sup> As a result, especially in those states more slow to transition, institutions dedicated to providing access to government information are critically important to help strengthen the principles of rule of law and good governance, by promoting accountability through transparency and access to information. This transition, however, is no easy task. As Alexis de Tocqueville pointed out in his landmark investigation into democratic governance in the early United States, democracy is difficult to maintain.<sup>5</sup> To do so successfully, certain institutions are needed to protect and promote democratic principles.<sup>6</sup> Spaces are needed, for example, to create a forum for regular open and free interactions among

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<sup>1</sup> Axel Hadenuis, *Institutions and Democratic Citizenship* 66-69 (Oxford, 2001). Dictatorships in Spain, Portugal, Greece fell in the 1970s, which spread quickly to several Latin American and Asian countries within a decade. *Id.* at 69.

<sup>2</sup> *Id.* at 69.

<sup>3</sup> John Ferejohn and Pasquale Pasquino, *Rule of Democracy and Rule of Law* in *DEMOCRACY AND THE RULE OF LAW* 242, 242 (Maravall and Prezeworski, eds., 2003).

<sup>4</sup> Hadenuis, *supra* note 1, at 71.

<sup>5</sup> Hadenuis, *supra* note 1, at 82; *see generally* ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Regnery, Brice Frohnen, ed., 2002).

<sup>6</sup> *See, e.g.* Hadenuis, *supra* note 1, at 83-85.

citizens.<sup>7</sup> Other institutions, as will be noted in the following sections, are those which support the access principle of democracy, and have the power to facilitate meaningful interactions between citizens and government. The flagship among these institutions is, and will continue to be, the library.

When investigating democracy, especially its modern history and relationships with libraries, one cannot help but focus on the United States. Indeed, the United States boasts the first modern democracy,<sup>8</sup> and there is no surprise that there is a fair amount of literature about the relationship between public libraries and democracy in the United States. There has been less study, however, about libraries and democracy outside the United States. Somewhat surprisingly, there is virtually nothing written, in comparison, discussing the role law libraries play in supporting democracy, either in the United States or abroad. The current discourse on public libraries and democracy largely focuses on the role of a library as a place primarily to gather information, but also as an assembly point for active participants in citizen-democracy. This has led to a new focus of the relationship between libraries and democracies, and how libraries can fulfill a more active role as advocate for democratic ideals related to open information and public discourse. The more important role, however, that is critical especially for young democracies, is an institution designed for the collection and access of information, specifically including government information.

Since their inception, libraries have played a unique role in societies – that of an impartial mediator, brokering information from those who dispense it to those who seek it. This perception of an honest and impartial dealer in information garners a certain respect for libraries as institutions, existing for the betterment of society. Law libraries fulfill this role in a similar

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<sup>7</sup> Hadenuis, *supra* note 1, at 84.

<sup>8</sup> See Ralph Ketcham, *THE IDEA OF DEMOCRACY IN THE MODERN ERA* 40 (Univ. Press of Kansas, 2004).

way, but within the context of a special collection of legal materials. In addition to specialized collections, law libraries are unique in that they serve specialized patrons – lawyers, prosecutors, judges, and law students, along with the general public. This collection and availability of laws to these patron populations is important to support and promote the rule of law – a critical concept of democratic governance. It is theorized in this paper that because of this specialized relationship, and the purpose of law libraries serving communities of users of laws, that law libraries are especially significant to the promotion and support of democracy. Because of this, law libraries are well-positioned to support the development of democracy in transitional states.



## 2. DEMOCRACY DEFINED

The concept of democracy and democratic governance is something that has been considered, researched, and examined for centuries.<sup>9</sup> As a result, multiple theories have emerged suggesting the elements of successful democracy, from those elements that are essential to a democracy, to those that are desirable to its success, and those that are simply unattainable.<sup>10</sup> The challenge of defining democracy is compounded when societal values and norms are considered to understand what democracy means *within a particular society*.<sup>11</sup> In this way, Laurence Whitehead is correct to note that “no unitary definition [of democracy] can be incontestable or universally applicable without regard to context.”<sup>12</sup> Yet, despite the challenge of finding a universally accepted definition of democracy or democratic governance, there are key components that consistently emerge in democratic theory, which can be identified as universal norms. Among these are three core principles of democratic governance and the rule of law: transparency, accessibility, and accountability.<sup>13</sup> Transparency refers to a government openness in its actions, allowing all interested to understand what government actions are taken; accessibility refers to open access to laws, as well as information related to the lawmaking process; and accountability broadly refers to the ability to hold leaders accountable for their actions through peaceable means, often the electoral process.

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<sup>9</sup> Laurence Whitehead, *DEMOCRATIZATION: THEORY AND EXPERIENCE* 7 (Oxford, 2003) (citing John Dunn (ed.), *DEMOCRACY: THE UNFINISHED JOURNEY: 508 B.C. TO A.D. 1993* (Oxford, 1992)).

<sup>10</sup> *Id.* at 8-9 (noting the “difficulties arising from the claim that the term ‘democracy’ has a clear core meaning that is universally applicable and that is essentially objective”).

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 25.

<sup>13</sup> See, e.g. Eleanor D. Kinney, *The Emerging Field of International Administrative Law: Its Content and Potential*, 54 ADMIN. L. REV. 415, 428 (2002); Philipp Dann and Marie V. Engelhardt, *The Global Administrative Order Through a German Lens: Perception and Influence of Legal Structures of Global Governance in Germany*, 12 GERMAN L. J. 1371, 1376 (2011); Maya Sen, *Courting Deliberation: An Essay on Deliberative Democracy in the American Judicial System*, 27 NOTRE DAME J. L. ETHICS & PUB. POL’Y 303, 319 (2013); Sarah Klaper, *The Sun Peeking Around the Corner: Illinois’ New Freedom of Information Act as a National Model*, 10 CONN. PUB. INT. L.J. 63, 78 (2010) (noting “Representative democracy requires transparency, accessibility, and accountability so that the citizenry can be educated on how public officials are conducting public business and so that it can be involved in that business.”).

## 2.1 Transparency

Transparency has been called an “essential part of democracy” in that it is necessary to lend legitimacy to acts of public authorities.<sup>14</sup> In order to instill legitimacy in government, actions of decision-makers must be known to the general public. If government decisions are hidden, “[g]overnmental transactions behind closed doors are likely to cause distrust.”<sup>15</sup> Transparency, therefore, means that “law, decrees, ordinances, and regulations, once made, are publically and widely accessible to the citizenry at large.”<sup>16</sup>

While there are acceptable limits to transparency, or how much information should flow freely to the general public, these limitations are most frequently used only to protect individual privacy or for legitimate concerns for national security.<sup>17</sup> By and large, however, open governments should generally disclose not only laws, but the entire lawmaking process and other information about public actors necessary to evaluate government. This transparency ultimately leads to accountability in government,<sup>18</sup> in that government actors can be held accountable by citizens and non-state actors, such as the media and NGOs.<sup>19</sup> However, this is only possible if there is *meaningful access* to government information.

## 2.2 Accessibility

Transparency, and ultimately accountability in government, is only meaningful if citizens and other non-state actors have access to laws. It is necessary, therefore, that “the law-making

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<sup>14</sup> Jost Delbrück, *Exercising Public Authority Beyond the State: Transnational Democracy and/or Alternative Legitimation Strategies?*, 10 IND. J. GLOBAL LEGAL STUD. 29, 31 (2003); Allan R. Brewer-Carías, *The Principle of Separation of Powers and Authoritarian Government in Venezuela*, 47 DUQ. L. REV. 813, 817 (2009) (highlighting that “transparency of governmental activities” is an essential element of representative democracy as outlined in the Inter-American Democratic Charter).

<sup>15</sup> Delbrück, *supra* note 14, at 42.

<sup>16</sup> Michael J. Trebilcock and Ronald J. Daniels, *RULE OF LAW REFORM AND DEVELOPMENT* 29-30 (Elgar Pub., 2008).

<sup>17</sup> Delbrück, *supra* note 14, at 42.

<sup>18</sup> *Id.* at 42-43.

<sup>19</sup> *Id.* at 42; *see infra* text accompanying notes 25-28.

process at . . . various levels of government is non-secretive and open to public scrutiny and participation.”<sup>20</sup> In order for this to occur, the public must have access to government information, including laws, and preferably the lawmaking process, to scrutinize it. Therefore, whether information is sought by individuals, the media, or NGOs, government information must somehow be accessible in order to have meaningful rule of law interactions with government. The relationship between transparency, accessibility, and accountability has been described as follows:

Transparency entails openness of proceedings and **access to official documents**. It supports democracy by facilitating access to information that enables citizens to participate in public life, hold public authority accountable to public opinion, counter “a capture” of public institutions by special interest groups, enhance citizens' confidence in public authority, and improve the performance of public officials.<sup>21</sup>

It is generally accepted that the access principle is core to democracy and good governance. One civil rights activist noted that “without access to information today, democracy is a myth.”<sup>22</sup> Recognition of accessibility as a core element of democracy reaches beyond the United States. Interpreting the access to information legislation in Canada, the Canadian Supreme Court noted:

The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.<sup>23</sup>

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<sup>20</sup> Trebilcock and Daniels, *supra* note 16, at 30.

<sup>21</sup> Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AM. J. INT'L L. 489, 493-94 (2001) (emphasis provided); see also Brian Anderson and Howard Fenton, *Internet Enhancement of the Role of Civil Society in Promoting the Rule of Law in Transitional States*, 1 J. OPEN ACCESS TO LAW \_\_ (forthcoming 2013).

<sup>22</sup> Peter Goodrich, et al., *Critical Legal Studies in Intellectual Property and Information Law Scholarship*, 31 CARDOZO ARTS & ENT. L.J. 601, 614 (2013) (citing Eduardo Moisés Peñalver and Sonia K. Katyal, PROPERTY OUTLAWS: HOW SQUATTERS, PIRATES, AND PROTESTERS IMPROVE THE LAW OF OWNERSHIP 7 (2010)).

<sup>23</sup> *Dagg v. Canada (Min. of Finance)*, [1997] S.C.J. No. 63, 213 N.R. 161, 148 D.L.R. (4th) 385 (Sup. Ct. Canada, 1997).

### 2.3 Accountability

To have accountability in government means that government officials cannot act with impunity, and are held to account for their actions—to others in government, to their constituents, and to society at large. Government transparency and accessibility of laws are preconditions to accountability in government, where citizens have ready access to the information and the capacity to use it. It has been proven that in such a system there is less room for individual discretion to make extra-legal decisions, participate in corruption, or otherwise fail to serve one's constituents.<sup>24</sup>

Accountability has long been a core principle in democracy. For example, there are records of citizens having full electoral rights in ancient Greece, electing magistrates who were subject to public scrutiny only prior to election to office.<sup>25</sup> In the modern era, *representative democracy* has emerged as the primary form of democratic governance, and a key example of how accountability acts as a lynchpin of democratic governance. In this way government officials must make themselves available to public scrutiny before, during, and after election to office.<sup>26</sup> Accountability can take many forms: legal processes; internal investigation or audit; electoral sanctions; oversight from a free and independent media; scrutiny from international organizations or governments; investigation from NGOs or civil society organizations; or economic responses from market activity.<sup>27</sup> Almost universally, however, all these means of accountability require *information* – some data or evidence by which to judge the actions of those governing.

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<sup>24</sup> See Anderson and Fenton, *supra* note 21.

<sup>25</sup> Whitehead, *supra* note 1, at 93.

<sup>26</sup> *Id.* at 93.

<sup>27</sup> *Id.* at 96.

In whatever form, accountability has come to be recognized as a norm for good governance and the rule of law in democracies. Whitehead noted:

In most new democracies an internationally approved drive for ‘good governance’ has reinforced whatever domestic demands may exist for strengthened public accountability. This drive has been gathering momentum for a decade or more, and would seem to derive from a variety of partially overlapping sources. Democratization necessarily requires an honest electoral process and a plurality of centers of power. Some forms of accountability follow more or less inevitably from this requirement, and others are natural accompaniments.<sup>28</sup>

As noted above, while the end result for democracy is to have government accountability, transparency and accessibility are preconditions to this, and without one, democratic governance is not possible. Thus, with the access principle being an essential element to democracy, the importance of libraries and their role in democracies becomes clear.

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<sup>28</sup> Whitehead, *supra* note 9 at 109.

### 3. ACCESS TO INFORMATION AND DEMOCRACY

The benefits of open access to government information are well documented, as is its relationship to democracy. For instance, one scholar noted that “governments of working democracies, as long ago as the early Greek states, recognize the value of public access to government records as a means of keeping bureaucrats accountable for their activities, but they also understand the value of public records as a way to educate the public through authentic or official text.”<sup>29</sup> More recently, open information has been linked to ending corruption and promoting economic development in addition to its fundamental effects. One statement from the World Bank noted that accountability, transparency, and the freedom of the press are inextricably linked to development, and therefore necessary for economic growth and stability.<sup>30</sup> Given the importance of this process, the access principle of democracy plays a critical role. It is here that libraries in general – and law libraries in particular – can play a tangible and perhaps fundamental role in supporting and promoting democratic governance and the rule of law.

Governments operating with transparency and providing access to information includes more than just archiving information. Information must be made available for individuals to have *meaningful* access to information, and only then to be able to use information to take the next steps to interact with governments and attempt to hold government actors accountable. A meaningful interaction between citizens and government can be achieved in the following way:

- 1) Governmental information is disclosed; 2) The disclosed information reaches its intended public; 3) Members of the public are able to process the disclosed information and react to it; and
- 4) Public officials respond to the public’s reaction or are sanctioned by the public through

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<sup>29</sup> Shannon Martin & Gerry Lanosga, *The Historical and Legal Underpinnings of Access to Public Documents*, 102 LAW LIB. J. 613, 6634 (2010). This article presents a historical look on the legal activities in the U.S. but is instructive to the benefits and challenges of open access to legal information in any open democratic society.

<sup>30</sup> See, Anderson & Fenton, *supra* note 21.

institutional means.<sup>31</sup> It is the second step in this transaction—the access to information—where libraries, and particularly law libraries, can be of immeasurable benefit to the democratic process.

It has been noted that access to information in a democracy is important because it provides “a permanent record available for citizens and scholars to reflect upon indefinitely.”<sup>32</sup> More importantly, informed decision-making is critical in a representative democracy to shape public debate, and ultimately hold leaders accountable.<sup>33</sup>

### *3.1 International Legal Principles of Information Access*

Key international legal agreements and aspirational documents, important to promoting and upholding the principles of democracy, universally acknowledge the importance of the right to access to information. Article 19 of the Universal Declaration of Human Rights (UDHR) states: “Everyone has the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>34</sup> While not compulsory upon states, the UDHR is an aspirational document that embodies fundamental international norms, and as some argue, customary international law related to individual rights.<sup>35</sup> The American Declaration of the

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<sup>31</sup> See, Anderson & Fenton, *supra* note 21 (quoting Tiago Peixoto, *The Uncertain relationship Between Open Data and Accountability: A Response to Yu and Robinson’s The New Ambiguity of “Open Government”*, 60 UCLA LAW REVIEW DISCOURSE 200, 203 (2013)).

<sup>32</sup> Paul T. Jaeger and John Carlo Bertot, *Responsibility Rolls Down: Public Libraries and the Social and Policy Obligations of Ensuring Access to E-government and Government Information*, 30 PUB. LIBRARY QUARTERLY 91, 93 (2011) (citing A.C. Quinn, *Keeping the citizenry informed: Early congressional printing and 21st century information policy*, 20 GOV’T INFO. QUARTERLY 281, 282 (2003)).

<sup>33</sup> See, e.g. *id.*

<sup>34</sup> Universal Declaration of Human Rights, Art. 19, G.A. Res. 217A, Dec. 10, 1948.

<sup>35</sup> Jack Donnelly, INTERNATIONAL HUMAN RIGHTS 15 (Westview Press, 2007)

Rights and Duties of Man, also a non-binding aspirational document, states at article IV that all have the right to investigation of information.<sup>36</sup>

In addition to aspirational declarations of rights, several positive international laws support the principles of freedom to access information. Article 19 of the International Covenant on Civil and Political Rights sets forth a positive obligation on signatory nations to ensure the right for everyone to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>37</sup> Article 13 of the Convention on the Rights of the Child grants children the right to “seek, receive and impart information” as well.<sup>38</sup> By definition, those nations party to these treaties must incorporate these principles into their domestic law, and support and enforce these rights to seek information.

Regional international agreements also promote this right to information. The African Charter on Human and Peoples’ Rights, at article 9, states that “every individual shall have the right to receive information.”<sup>39</sup> Article 13 of the American Convention on Human Rights has a similar provision regarding the right to “seek, receive, and impart information and ideas of all kinds.”<sup>40</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms notes, at article 10, that everyone has the right to freedom of expression, which includes the freedom to “receive and impart information and ideas without interference by public

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<sup>36</sup> American Declaration of the Rights and Duties of Man, Art. IV, O.A.S. Res. XXX (1948).

<sup>37</sup> International Covenant on Civil and Political Rights, Art. 19, G.A. Res. 2200A U.N. Doc. A/6316 (1966) (Mar. 23, 1976).

<sup>38</sup> Convention on the Rights of the Child, Art. 13(1), G.A. Res. 44/25, U.N. Doc. A/44/49 (1989).

<sup>39</sup> African Charter on Human and Peoples’ Rights, Art. 9, OUA Doc. CAB/LEG/67/3 (Oct. 21, 1986).

<sup>40</sup> American Convention on Human Rights, Art. 13(1), O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 (Jul 18, 1978).



authority.”<sup>41</sup> By all understanding, these are key and fundamental international agreements and expressions of individual rights, and all endorse and protect the right to access to information.

Libraries and information centers are critical institutions for the implementation of the access principles in these treaties and declarations. Moreover, law libraries serve a critical role in the access to legal and governmental information, expressly or impliedly part of these access principles. What follows is an explanation of this relationship between libraries upholding and supporting the access principle, and in turn, democracy.

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<sup>41</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 10(1), 213 U.N.T.S. 222 (Sept. 3, 1953).

#### 4. LIBRARY ORGANIZATIONS AND DEMOCRATIC PRINCIPLES

Several national and international library organizations have recognized the important role libraries can play in civil society, and in promoting democracy. In 1973, the International Federation of Library Associations (IFLA) issued the Standards for Public Libraries. Describing the role of public libraries in society, it noted that the public library is “a democratic institution for education, culture and information.”<sup>42</sup> Moreover, in describing its function in democratic governance, it stated that the public library portrays “a practical demonstration of democracy’s faith in universal education as a continuing and lifelong process, in the appreciation of the achievement of humanity in knowledge and culture.”<sup>43</sup>

Adopted in 1994, the United Nations Education, Scientific and Cultural Organization (UNESCO) and IFLA jointly issued the Public Library Manifesto, in part highlighting the need for libraries in the development of democracy. The Manifesto states:

Freedom, Prosperity and the Development of society and individuals are fundamental human values. They will only be attained through the ability of well-informed citizens to exercise their democratic rights and to play an active role in society. Constructive participation and the development of democracy depend on satisfactory education as well as on free and unlimited access to knowledge, thought, culture and information.<sup>44</sup>

This declaration supports the idea of libraries serving as public depositories of information to support the essential access principle of democracy.

In 2002, building on its work promoting democratic values, the IFLA issued the Glasgow Declaration on Libraries, Information Services and Intellectual Freedom (Glasgow

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<sup>42</sup> Alex Byrne, *Libraries and democracy – management implications*, 25(1/2) LIBRARY MGMT. 11, 13 (2004) (quoting IFLA Section of Public Libraries, *Standards for Public Libraries*, 13-4 (1973)).

<sup>43</sup> *Id.*

<sup>44</sup> IFLA, *The IFLA/UNESCO Public Library Manifesto* in THE PUBLIC LIBRARY SERVICE: IFLA/UNESCO GUIDELINES FOR DEVELOPMENT 87, 87 (Carol Henry, ed. 2001)

Declaration).<sup>45</sup> The Glasgow Declaration asserts that access to information is a fundamental right, and a library's commitment to intellectual freedom is a "core responsibility of the library and information profession worldwide."<sup>46</sup>

The American Library Association (ALA) has been a longstanding proponent of the role that libraries can play in democracy. In 2000 the president of ALA created an initiative for the organization to focus on the role of libraries in democracy, highlighting the unique relationship and promoting the role libraries will play in the future to support democracy.<sup>47</sup> The history of the ALA, in fact, shows adherence to democratic principles far ahead of mainstream America or even the U.S. Government. For example, in 1876 thirteen of the original founding members of the ALA were women, and "[w]orking with people of all races and sexes has been a goal since early in ALA history."<sup>48</sup> In 1921, the ALA hosted a roundtable meeting to discuss initiatives to promote access to information for minorities.<sup>49</sup> In the 1950s the ALA banned states in the U.S. from having separate chapters in an effort to avoid segregation among library organizations.<sup>50</sup> Further combating discrimination, and promoting the access principle of democracy, the ALA in 1962 commissioned a study about access to libraries, which concluded that the ALA should "use every means at its disposal" to continue to promote freedom of access to information.<sup>51</sup> In 1967

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<sup>45</sup> IFLA, Glasgow Declaration on Libraries, Information Services and Intellectual Freedom, Aug. 19, 2002, *available at* <http://www.ifla.org/publications/the-glasgow-declaration-on-libraries-information-services-and-intellectual-freedom> (last visited Sept. 2, 2013).

<sup>46</sup> *Id.*

<sup>47</sup> *See, e.g.* Reports – Nancy Kranich 2000-2001 ALA President Reports, ALA Website, <http://www.ala.org/aboutala/governance/officers/past/kranich/reports> (last visited Nov. 23, 2013).

<sup>48</sup> ALA history 1876-1899, ALA Website, <http://www.ala.org/aboutala/1876-1899> (last visited Nov. 23, 2013).

<sup>49</sup> ALA history 1920s, ALA Website, <http://www.ala.org/aboutala/1920s> (last visited Nov. 23, 2013).

<sup>50</sup> History of Libraries, Libraries and Civil Rights, <http://eduscapes.com/history/contemporary/1960.htm> (last visited Nov. 23, 2013).

<sup>51</sup> *Id.*

the ALA established its Office for Intellectual Freedom to participate in issues of social responsibility and libraries.<sup>52</sup>

These declarations and activities by prominent national and international library organizations support the role of libraries as promoting and supporting democracy. One commentator noted that these statements “give the public library an instrumental role in the strengthening of civil society through building social capital.”<sup>53</sup> What follows is an examination of how public libraries have been portrayed as supporting democracy, and investigation as to how law libraries can do the same.

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<sup>52</sup> ALA history 1969, ALA Website, <http://www.ala.org/aboutala/1967> (last visited Nov. 23, 2013).

<sup>53</sup> Byrne, *supra* note 42, at 12.

## 5. PUBLIC LIBRARIES AND DEMOCRACY

There has long been a connection between libraries and democracy. In the lifespan of libraries in the United States, they have come to be seen as a center for learning and information for all, and a way to inform all members of the public on matters – including those of government.<sup>54</sup> In fact, it has been noted that “libraries in the United States of America have long cultivated democratic environments.”<sup>55</sup>

Nancy Kranich, a prolific writer on the subject of libraries and democracy, has emphasized the need for libraries in democratic systems.<sup>56</sup> In fact, Kranich notes that since the inception of libraries, they “have served as pivotal community institutions upholding, strengthening, and realizing some of the most fundamental democratic ideas of our society.”<sup>57</sup>

Kranich, in perhaps too idealistic of an evaluation, says:

Libraries are the only American institutions that make knowledge, ideas, and information freely available to all citizens. They are where people can find differing opinions on controversial questions and dissent from current orthodoxy. They serve as the source for the pursuit of independent thought, critical attitudes, and in-depth information. And in so doing, they guard against the tyranny of ignorance, the Achilles heel of every democracy.<sup>58</sup>

The implication that without libraries there would not be democracies is somewhat of an overstatement. Kranich is close in her assessment, however, when she notes that an “informed public constitutes the very foundation of a democracy” and the important role libraries can play

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<sup>54</sup> Laura A. Pinhey, Libraries and Democracy, ERIC Digest 1 (ERIC No. ED414211) (Dec. 1996), *available at* <http://eric.ed.gov/?q=libraries+and+democracy&id=ED414211> (last visited Sept. 3, 2013).

<sup>55</sup> *Id.*

<sup>56</sup> Nancy C. Kranich, *Libraries, the Internet, and Democracy*, in LIBRARIES & DEMOCRACY: THE CORNERSTONES OF LIBERTY 83, 83 (Nancy Kranich, ed., 2001) (stating with certain finality: “Democracies need libraries.”).

<sup>57</sup> Kranich, *supra* note 56, at 83.

<sup>58</sup> *Id.*

to inform the public.<sup>59</sup> It is not that the library must seek to inform the public itself, but rather that it is an institution where the public has thorough access to information.<sup>60</sup>

Access to information, of course, must be universal for libraries to be stewards of this democratic principle. In theory, at least, public libraries in the United States are seen as being open to all, by providing access “regardless of a person’s economic status, education level, or information-seeking skills.”<sup>61</sup> In this way public libraries have been described as an “information commons” designed to be available for all citizens.<sup>62</sup> These commons then provide a place to access information needed to engage in discussions about policy, governance, and other concerns, and increase civic engagement, irrespective of one’s place or role in society.<sup>63</sup>

By and large, Kranich’s and others’ observations about libraries and democracy are theoretical at best. This is because there is no real methodological means to measure the exact impact of libraries’ role in democratic governance. However, what is well established is the importance of the access principle of democracy, and that it is well served by open and public libraries and information centers. It is this role of libraries and its relation to the rule of law and democratic governance that is often taken for granted in current discourse of libraries and democracy. Kranich is correct, therefore, in highlighting the belief that “maximum access to public information sources and channels of communication is necessary for political, economic, and social participation in a vigorous democracy,”<sup>64</sup> and the library can play a significant, if not

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<sup>59</sup> *Id.*

<sup>60</sup> See discussion of transparency and accessibility concepts of democracy, *supra* section 2.

<sup>61</sup> Nancy C. Kranich, *Libraries, the New Media, and the Political Process* in LIBRARIES & DEMOCRACY: THE CORNERSTONES OF LIBERTY 108, 111 (Nancy Kranich, ed., 2001)

<sup>62</sup> Nancy Kranich, *Libraries: The Information Commons of Civil Society* in SHAPING THE NETWORK SOCIETY, 279, 281 (Douglas Schuler, ed., 2003).

<sup>63</sup> Kranich, *supra* note 62, at 281-84.

<sup>64</sup> Kranich, *supra* note 56, at 91.

vital role in this access by providing community and government resources and information to the broader public.<sup>65</sup>

This role of public libraries in the context of democracy has been regarded at the international level as well. In the 2001 IFLA/UNESCO Guidelines for Development, among the purposes of public libraries, the contribution to democracy was specifically noted. It states:

The primary purposes of the public library are to provide resources and services in a variety of media to meet the needs of individuals and groups for education, information and personal development including recreation and leisure. They have an important role in the development and maintenance of a democratic society by giving the individual access to a wide and varied range of knowledge, ideas and opinions.<sup>66</sup>

This language closely mirrors the access principles set forth in the international treaties and declarations noted above. In other words, the IFLA is directly linking the correlation to public libraries and implementation of access principles of democracy and good governance.

Internationally, libraries have also been viewed as important institutions during regime change and the development of democracy. For instance, in a 1996 report, authored shortly after the fall of the Soviet Union, libraries were described as “an essential component of the global resurgence of democracy.”<sup>67</sup> In former communist states, libraries and information centers were plagued with a lack of public trust, in the belief that they limited access to information.<sup>68</sup> Strengthening these institutions, therefore, was recognized as an important part of transitioning from totalitarian communist rule to democratic governance.<sup>69</sup> At that time, it was noted that

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<sup>65</sup> See generally Joan C. Durrance, et al., *Libraries and Civil Society* in LIBRARIES & DEMOCRACY: THE CORNERSTONES OF LIBERTY 49, 49 (Nancy Kranich, ed., 2001) (providing a survey of individual library efforts to provide community information, including government information).

<sup>66</sup> IFLA Section of Public Libraries, *The Public Library Service – IFLA/UNESCO Guidelines for Development*, IFLA Publications 97, 2 (IFLA Publications, Carol Henry, ed.) (2001).

<sup>67</sup> Pinhey, *supra* note 54, at 2.

<sup>68</sup> *Id.* at 3 (citing Prosser Gifford, *The Libraries of Eastern Europe: Information and Democracy* in FUTURE LIBRARIES (Prosser Gifford, ed., 1995); Evgeny Kuzmin, *From Totalitarianism to Democracy: Russian Libraries in Transition*, 24 AM. LIBRARIES 568-70 (1993)).

<sup>69</sup> See generally Pinhey, *supra* note 54.

globally libraries have helped citizens to participate more fully and effectively in their democracy, to make informed choices about government.”<sup>70</sup>

In addition to the existence of libraries as institutions, librarians themselves are an essential component in the connection between libraries, the access to information, and democracy. Not only is the access principle fulfilled by having a repository of information, but users and seekers of information must be able to find it. Especially when seeking government information, the average user is at a disadvantage because of a lack of knowledge of sources, types of information, and overall deficits in information literacy. The gap in computer literacy is also growing, increasing the digital divide between citizens in any society and online information. Librarians are often well suited to bridge this divide and navigate complex systems and databases to find information for library users.<sup>71</sup>

Beyond supporting the access principle, libraries have increasingly been viewed as supporting principles of democracy in other ways. Especially recently, for instance, the library has been promoted as a place for community organization and engagement, which supports the *use* of open government information. In this way, libraries have been described as “civic spaces where [people] can speak freely, share similar interests and concerns, and pursue what they believe is in the public’s and their own interest.”<sup>72</sup> Libraries have also been viewed as supporting democracy as institutions that inherently support and promote freedom of expression. Also hailed as essential in a democratic society, libraries allow citizens to explore and share new and diverse ideas, and in theory promote ideas that range from near-universal to downright

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<sup>70</sup> Pinhey, *supra* note 54, at 2.

<sup>71</sup> Anne Heanue, In Support of Democracy: The Library Role in Public Access to Government Information in LIBRARIES & DEMOCRACY: THE CORNERSTONES OF LIBERTY 121, 124-25 (Nancy Kranich, ed., 2001).

<sup>72</sup> Kranich, *supra* note 61, at 109; Kranich, *supra* note 62, at 283-85.



controversial.<sup>73</sup> Libraries also serve democratic ends by strengthening civil society and increasing the ability for civic participation in governance. Public libraries have been described as “unique providers of civic and government information” in their communities, unparalleled to other organizations or agencies tasked with providing a broad range of information to citizens.<sup>74</sup> More than this, libraries strengthen civil society by “provid[ing] information and the opportunities for dialogue that the public needs to make decisions about common concerns.”<sup>75</sup>

Internationally, the purpose of the library has also been described as an interactive one in community life. This is, in part, based on those the library serves, and a “concern for the underserved and under-represented . . . so the library does not just serve the already privileged.”<sup>76</sup> In its role supporting democracy, however, the library should also reach out “to all members of the community it has been established to serve.”<sup>77</sup>

There is no question, however, that the greatest connection between libraries and democracy is the availability of information, and in particular government information. Taking advantage of a government’s willingness to provide information, libraries that supply it fulfill the access principle of democracy – a principle necessary in any successful democratic system. Indeed, one commentator noted that “[m]ost who value government information consider public access a basic right of every citizen,” and something that is necessary for self-governance and ensuring accountability of governments.<sup>78</sup> It is in this way that law libraries can uniquely serve this role in society, with expertise to collect and provide access to government information.

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<sup>73</sup> See generally, e.g. Paul K. McMasters, *Libraries: Where the First Amendment Lives* in LIBRARIES & DEMOCRACY: THE CORNERSTONES OF LIBERTY 140 (Nancy Kranich, ed., 2001) (discussing the role of libraries and censorship and the First Amendment guarantees of freedom of expression in the U.S. Constitution).

<sup>74</sup> Durrance, et al., *supra* note 65, at 49.

<sup>75</sup> Kranich, *supra* note 56, at 84.

<sup>76</sup> Byrne, *supra* note 42 at 13.

<sup>77</sup> *Id.*

<sup>78</sup> Heanue, *supra* note 71, at 121.

## 6. LEGAL AND GOVERNMENT DOCUMENTS IN LIBRARIES, THE FDLP, AND DEMOCRACY

Libraries can be seen as institutions important to democracy for several reasons as noted above, but specifically for supporting access to information and the access principle of democracy. Therefore, if law libraries in particular are important to the access principle, it is necessarily because the special collections of these libraries (and the librarians experienced with these collections) are important to democracy. Evidence and practice from the U.S. and beyond of depositing government documents in libraries is instructive to understand how law libraries are important to promoting democracy through access to government information.

### *6.1 Access to Government Information*

Requiring public access to laws and legal documents in order to better inform the public of government activity is not a convention only of modern democracies. In early Greece, for example, a law was adopted to retain authentic copies of laws in a city's records office.<sup>79</sup> The authenticity of these records was reportedly so respected that they were sought out first over other more available copies of the same records for inclusion during the establishment of the library in Alexandria during the Ptolemaic Dynasty – the first major public library.<sup>80</sup> More recently, in the past few centuries governments “have relied on libraries—including public, academic, state, and courthouse, among others—as a mechanism for disseminating government information to the public.”<sup>81</sup>

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<sup>79</sup> Shannon Martin & Gerry Lanosga, *The Historical and Legal Underpinnings of Access to Public Documents*, 102 LAW LIB. J. 613, 616 (2010). The context of keeping the records, according to the authors, was to verify the accuracy of dramatic portrayal of the law. *Id.* Nonetheless, a record of the retention of such documents as early as 325 B.C. indicates an important event in the retention of laws or legal documents for public consumption.

<sup>80</sup> *Id.* at 616 (citing Lionel Casson, LIBRARIES IN THE ANCIENT WORLD 31, 35 (2001)).

<sup>81</sup> Jaeger and Bertot, *supra* note 32, at 92.

The United States has a storied and often romanticized history of the dedication of founding fathers to information access and discourse. Government information in the United States, however, was not at its foundation freely available, and whether the government should publish and make available records of government activity were hotly debated issues. Nonetheless, in the nation's founding several prominent statesmen actively promoted access to information as a right.<sup>82</sup> During this debate and discourse, James Madison, America's fourth President, wrote:

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. Knowledge will forever govern ignorance: And a people who mean to be their own Governor, must arm themselves with the power which knowledge gives.<sup>83</sup>

Based on this support, in April 1792, a resolution was introduced in the House of Representatives to require congressional debates be published by the U.S. Government.<sup>84</sup> It was not until March 1873, however, when the Federal Government began full publication of the Congressional Record.<sup>85</sup> It would be more than twenty years after that in 1895 when the U.S. Congress centralized government printing, and just over 50 years after that when federal agencies began depositing government information from the Government Printing Office.<sup>86</sup> With government publication of information, however, there was a need to fulfill the role of providing access to this information. It is this role that many libraries, including law libraries, filled to provide access to government information.

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<sup>82</sup> *Id.* at 92-95 (providing an early history of the open information movement intertwined with the founding and early development of the United States Government).

<sup>83</sup> Heanue, *supra* note 71, at 121-22 (*quoting* James Madison, WRITINGS 790 (New York: The Library of America, 1999)).

<sup>84</sup> John Spencer Walters, *Whose Vision Fulfilled? Toward a Rightful Ideological Progenitor for the U.S. Federal Depository Library Program*, 26(4) J. GOV'T INFO. 347, 355 (1999) (*citing* Publication of Debates, *Annals of Congress*, 563).

<sup>85</sup> *Id.* at 355 (*citing* Elizabeth Gregory McPherson, "Reporting the Debates of Congress," *Quarterly J. of Speech*, XXVIII, no. 2 (Apr. 1942) 148). Official Government publication of the Congressional Record followed previously privately published records of congressional activity such as the *Annals of Congress*, *Register of Debates*, and *Congressional Globe*. *Id.*

<sup>86</sup> *Id.* at 94.

## 6.2 U.S. Federal Depository Library Program

Building upon the changes in government publication and making information available to the public, the U.S. institutionalized libraries as a strong symbol of democracy by creating the United States Federal Depository Library Program (FDLP). The FDLP began in the early 19th century, when Congress deposited government documents for public access and use at certain public libraries throughout the U.S.<sup>87</sup> By depositing government information for public use, Congress showed “a commitment to broad-based democracy, keeping the general public well informed, not only the wealthy or landed gentry.”<sup>88</sup> The goal of the program “was to ensure that no matter how far a citizen lived from the seat of power, he or she could gain knowledge of the inner workings of the government through the wide dispersal of the information it produced.”<sup>89</sup>

Today there are forty-seven FDLP regional depository libraries in the United States, which retain all government publications for public use.<sup>90</sup> Additionally, there are more than 1,150 libraries in the United States designated as FDLP selective libraries, which select certain government information to retain in a library collection.<sup>91</sup> The FDLP program has been described as an “efficient and effective avenue for the dissemination of government information.”<sup>92</sup> These designated libraries contain primary source materials in print from all branches of government, maintain access to electronic information, and have librarians and staff

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<sup>87</sup> Heanue, *supra* note 71, at 122.

<sup>88</sup> Heanue, *supra* note 71, at 122.

<sup>89</sup> Tammy R. Pettinato, *Legal Information, the Informed Citizen, and the FDLP: The Role of Academic Law Librarians in Promoting Democracy*, 99 LAW LIBR. J. 695, 695 (2007).

<sup>90</sup> R. Eric Peterson, et al., Congressional Research Service Report, Federal Depository Library Program: Issues for Congress 2 (March 29, 2012) available at <http://www.fas.org/sgp/crs/misc/R42457.pdf> (last visited Oct. 25, 2013).

<sup>91</sup> *Id.*

<sup>92</sup> Heanue, *supra* note 71, at 122.

to assist citizens to search and access information.<sup>93</sup> In fact, FDLP libraries have a legal requirement to provide free public access and professional assistance to all library users.<sup>94</sup>

The FDLP also specifies that its mission “involves more than physical access” to a library facility.<sup>95</sup> It also includes: “Bibliographic identification of depository resources; Physical access to depository resources by primary users and the general public; Sufficient computer capabilities to use online Federal depository library materials; [and] A commitment to staff training to ensure the provision of reference services in the use of U.S. Government information.”<sup>96</sup>

This last element—providing reference service and research assistance—is of extreme importance to libraries fulfilling the access principle of democracy. In this way, librarians have the ability to provide essential assistance to seekers of government information who cannot otherwise navigate the overwhelming amount and complex organization of government information.<sup>97</sup> One law librarian in the U.S. explained this role in the context of access to government information and democracy as follows:

Law-related documents are perhaps the most essential form of government information, yet they are also one of the most difficult for both ordinary citizens and experts to access and understand. As service-oriented experts in legal research, academic law librarians are particularly suited to helping people navigate the complicated terrain of such government documents.<sup>98</sup>

Librarians are also essential in locating information that escapes normal government publication processes. Often referred to as “‘fugitive’ publications,”<sup>99</sup> librarians have the training and

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<sup>93</sup> *Id.*

<sup>94</sup> FDLP Website, Free, Public Access, <http://beta.fdlp.gov/requirements-guidance/guidance/18-free-publicaccess#free,-public-access-defined> (last visited Oct. 27, 2013).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See, e.g. Heanue, *supra* note 71, at 123.

<sup>98</sup> Pettinato, *supra* note 89, at 696.

<sup>99</sup> Heanue, *supra* note 71, at 124.

information literacy skills to help locate hard-to-find information. This is especially important as more government agencies and committees are relying on the internet to publish information.<sup>100</sup>

In addition to providing access to current government information, FDLP libraries do more for democracy by fulfilling the role of a depository of past information. Historical information, whether of a law or even an individual lawmaker, can help drive current and future policymaking and political events.<sup>101</sup> For example, the voting record of a member of congress from years past may be relatively unimportant until that same person runs for higher office, or seeks a post that demands higher scrutiny of current and past actions. Similarly, the legislative history of a specific bill may be important to judge whether current lawmakers adhere to the purpose and intention of laws.

In whatever role, the FDLP and the diffusion of government information have had a well-recognized positive effect on the spread of democracy in the United States. With increased recording of information and reporting on government activity through newspapers, letters, and official publications, there was greater public participation in government and a greater sense of accountability by use of this information.<sup>102</sup> One commentator noted that this reporting of information “made Congress increasingly accessible and considerably more responsive to ‘external rewards offered by constituents rather than by the internal rewards of colleagues.’”<sup>103</sup> It has also been estimated that the FDLP libraries in the U.S. have assisted “millions of Americans every year to locate print and electronic government information.”<sup>104</sup>

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<sup>100</sup> Pettinato, *supra* note 89, at 707.

<sup>101</sup> See Heanue, *supra* note 71, at 123 (noting that voting records of politicians may become important only later in time when running for different office).

<sup>102</sup> Walters, *supra* note 84, at 353.

<sup>103</sup> *Id.* (quoting Thomas Leonard, *THE POWER OF THE PRESS: THE BIRTH OF AMERICAN POLITICAL REPORTING* 83 (New York: Oxford University Press, 1986)).

<sup>104</sup> Heanue, *supra* note 71, at 123.

## 7. LAW LIBRARIES AND DEMOCRACY

With the connection between laws and government information to the access principle of democracy, law libraries inherently become the best institutions to provide access to government information.<sup>105</sup> This is not to dismiss the role of public libraries supporting principles of democracy. Notably, the public library has been said to have been created to “uphold, strengthen, and realize some of the most fundamental democratic ideals” of American society.<sup>106</sup> In part, public libraries serve this role by being “the only agency in American society that makes knowledge, ideas, and information freely available to all citizens.”<sup>107</sup> In a democratic society, the public library has been cited as “a storehouse of knowledge providing unfettered access to all forms of information and expression.”<sup>108</sup>

### 7.1 Law Libraries and the Access Principle

Public libraries, however, are not the best institutions to meet public demand in the area of access to legal information. This has come to be true in the U.S., for example, as budget shortfalls in the 1990s caused public libraries to withdraw from the FDLP and provide less government (and legal) information to library users.<sup>109</sup> Even among those public libraries that maintain a government documents collection, most “simply do not have the resources needed to help patrons with their legal questions or to allow those patrons to help themselves.”<sup>110</sup> This is in large part because public librarians, by and large, are not lawyers, legal bibliographers, or well-

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<sup>105</sup> See, e.g. Pettinato, *supra* note 89, at 709 (stating that “the importance of law libraries to the mission of the FDLP is obvious”).

<sup>106</sup> Arthur W. Hafner and Jennifer Sterling-Folker, *Democratic Ideals and the American Public Library* in DEMOCRACY AND THE PUBLIC LIBRARY: ESSAYS ON FUNDAMENTAL ISSUES, 9, 19 (Arthur W. Hafner, ed., 1993) (Greenwood Press: Westport CT).

<sup>107</sup> *Id.* at 18.

<sup>108</sup> *Id.* at 25 (citing Arthur W. Hafner, *Public Libraries and Society in the Information Age*, 18 THE REFERENCE LIBRARIAN 107, 114 (1987)).

<sup>109</sup> Jaeger and Bertot, *supra* note 32, at 97.

<sup>110</sup> *Id.*

trained to assist patrons with legal research.<sup>111</sup> As a result, there is a significant deficit in the connection between libraries and democracy with the access principle—providing actual access to pertinent government and legal materials and having librarians trained to help information seekers use such information.

Providing meaningful access to laws and government information, however, is precisely the role that law libraries play in promoting democracy. In this way, law librarians are “specially equipped to ensure that law-related government documents are both accessible and understandable.”<sup>112</sup> Law libraries offering this service are also increasingly important as more government information becomes available through electronic means, as well as in print, and is continuously more difficult to research.<sup>113</sup>

Former law professor and New Zealand Supreme Court judge Sir John William Salmond, on a trip to New York in 1922, noted the significance of law libraries, not only to the legal profession, but to society at large. He stated:

A law library, rightly regarded, is one of the most formidable achievements of the human intellect. As well in its essential character and significance, as in its magnitude and its terrible possibilities of infinite growth, it is a thing well calculated to excite the emotions of wonder and of fear.

...

A law library, however, is not a mere dead record of a dead past. It is something far more than a collection of historical materials. It represents in large part a living, operative authoritative, expression of the human spirit.<sup>114</sup>

Salmond’s comments came at an earlier time in the history of law libraries; however, one part remains true today. At their core law libraries represent the living operating force of law in a given society. By their very nature, law libraries are designed to collect, at a bare minimum, the

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<sup>111</sup> *Id.* (noting “public librarians usually are not trained in the use of [legal] resources or about the limitations on providing help with using legal resources”); Pettinato, *supra* note 89, at 709 (“law librarians have particular skills that make them especially suited to work with law-related government documents.”).

<sup>112</sup> Pettinato, *supra* note 89, at 716.

<sup>113</sup> *Id.* at 711.

<sup>114</sup> John W. Salmond, *The Literature of Law*, 22 COLUMBIA L REV. 197, 197-98 (1922).



laws of one or more given jurisdictions. This becomes especially important in common law systems, with constantly expanding bodies of case law that must be recorded and accessed by those reading the law. In other words, law libraries above all other information institutions can be depended upon to contain the most complete record of its jurisdiction's laws, and more complete legislative histories and other pertinent documents. Therefore, it is these libraries above others that allow citizens and other interested parties to access laws and government information needed to hold government actors accountable.

## *7.2 Law Libraries Supporting Other Democratic and Rule of Law Institutions*

In addition to being specially equipped to provide access to legal information to the general public, law libraries support democratic governance in another important way – by giving resources and support to legal institutions. There is no question that citizens require access to laws and government information to hold government actors accountable. However, operating on another level entirely, law libraries that serve specific legal communities support democracy by ensuring that lawmakers and other government actors have accurate and efficient access to laws.

In order for democratic governance and the rule of law to function, legal institutions must efficiently and effectively use legal information. Judicial institutions operate more effectively when supported by reliable access to legal information.<sup>115</sup> Lawyers can better serve their clients, including more economically, with proper legal information.<sup>116</sup> One commentator, noting the importance of law libraries to democratic governance, highlighted the importance of law library

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<sup>115</sup> I. Tuhumwire & C. Okello-Obura, *Sources and Means of Access to Legal Information by Lawyers in Uganda*, 2010 LIB. PHILOSOPHY AND PRACTICE 1, 1 (May 2010), <http://unllib.unl.edu/LPP/tuhumwire-okello-obura2.htm> (last visited Oct. 27, 2013).

<sup>116</sup> *Id.* (citing W.T. Broady-Preston, *Using information to create business value: City of London legal firms, a case study*, 5(1) PERF. MEASUREMENT AND METRICS 5 (2004)).

collections by noting that “[government] documents can serve as primary sources of legislative intent. They can have substantive value as legal analysis, and, of course, they can provide interdisciplinary information in the nature of policy statements and statistical data.”<sup>117</sup>

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<sup>117</sup> Pettinato, *supra* note 89, at 709 (*quoting* Dennis J. Stone, *Government Documents*, in *LAW LIBRARIANSHIP: A HANDBOOK* 387, 388 (Heinz Peter Mueller & Patrick E. Kehoe eds., 1983)).

## 8. LAW LIBRARIES, DEMOCRACY, AND TRANSITIONAL STATES

As noted above, access to laws and government information is a linchpin for citizens to hold government actors accountable in a democratic system. Additionally, beyond the access principle of democracy, it is imperative for those in the legal sector to have reliable access to legal information, which is readily available.<sup>118</sup> Therefore, compiling legal information in a well-organized and readily available format is extremely important for a well-functioning democracy. Law libraries are the institutions best suited to collect and make available laws, government information, and other legal documents for use in a democratic system.

### *8.1 Law Libraries and Transitional Regimes*

In states transitioning from closed regimes to democracy, the development of democratic governance and the rule of law has faced significant challenges since the most recent wave of democratic reform. Trebilcock and Daniels have argued that one reason for this is of a “technical or resource-related character,” where leaders have the political will to transition and reform, but lack strong institutions to do so.<sup>119</sup> One such institution that can help this reform—at least insofar as access to information—is the law library, which is even perhaps the best institution suited to uphold the access principle of democracy.

Indeed, the importance of access to laws and government information has been recognized in societies in transition from closed regimes to democracy. In Estonia, for instance, it was noted that the “availability, access to and provision of information is one of the key elements in transition from a closed dictatorship to a democracy.”<sup>120</sup> This was especially important with

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<sup>118</sup> See, Tuhumwire & Okello-Obura, *supra* note 115, at 3-4 (noting that the practice of law is “an information-intensive profession”).

<sup>119</sup> Trebilcock and Daniels, *supra* note 16, at 38.

<sup>120</sup> Julia Laffranque, *Access to, and Provision of, Legal Information in the Transition from Communism to Democracy in Estonia*, 6(2) LEGAL INFO. MGMT. 113, 113 (2006).

regards to access to legal information – both for legal practitioners as well as ordinary citizens.<sup>121</sup>

In Uganda, authors of a 2010 study of access to legal information in that country noted that “availability, access to and provision of legal information is one of the key elements in transition from a closed dictatorship to a democracy.”<sup>122</sup> One observer of democratic transition in Kenya noted that “the availability of legal information, the rule of law, good governance, political stability, and economic development are closely intertwined.”<sup>123</sup>

Writing about the transition from communism to democracy in Estonia, Judge Julia Laffranque, noted the importance of access to information to democracy. She noted: “Assuming the attitude of a totalitarian system favours the manipulation of information - the more you know about the system and about your rights - the more dangerous you are.”<sup>124</sup> According to Laffranque’s experience, part of allowing greater access to information in a democratic society “means that citizens regularly receive appropriate information on the organisation of public authorities” giving an understanding of how the law works and how to gain access to justice through administrative and judicial processes.<sup>125</sup> In Estonia, law libraries play a role on providing access to information, with libraries at all legal institutions as well as at Tartu University, where the library is also a depository library of the European Union.<sup>126</sup>

As with many transitional and developing states, the primary source for legal information in Estonia is through online resources.<sup>127</sup> A study of legal information access in Kenya also noted that the Internet is quickly surpassing print resources as the primary vehicle for the publication of

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<sup>121</sup> See, *id.* at 133.

<sup>122</sup> Tuhumwire and Okello-Obura, *supra* note 115, at 1.

<sup>123</sup> John N. Gathegi, *Democracy through access to legal information for newly democratizing nations: The Kenyan perspective and lessons from the American experience*, 22 GOV’T INFO. Q. 108, 109 (2005).

<sup>124</sup> Laffranque, *supra* note 120, at 113.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 115-17.

<sup>127</sup> *Id.* at 116.

laws.<sup>128</sup> With the rapid technological and infrastructure development in developing states, one may ask why invest in libraries at all? While some areas in development can be leap-frogged, libraries as institutions should not. Law libraries and trained law librarians are still identified as needed to help locate and access certain legal information in any society.<sup>129</sup> Librarians are also often needed, even to assist legal professionals, to navigate the overwhelming amount of information online. This is because legal information literacy remains at a crucial deficit especially in developing and transitional states. Even in modern democracies, for example, with the advancement of information available via the internet and information technology, one commentator noted that “the overwhelming glut of information sources make being an information-literate citizen more critical.”<sup>130</sup>

Accepting the paradigm of libraries – and law libraries – supporting democracy, it is worthwhile to understand what role law libraries should play to support democracy in developing and transitional states.

## *8.2 The Role of Law Libraries in Transitional Governments*

First and foremost, law libraries in developing and transitional states are best suited to provide access to laws and other government information.

In addition to providing access to laws and government information, reform of law libraries in developing and transitional states can similarly promote democratic governance and the rule of law reforms by supporting legal education. Specifically, it has been noted that legal education reform in emerging democracies is of great importance, because law schools train the future

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<sup>128</sup> See generally Gathegi, *supra* note 123.

<sup>129</sup> *Id.* at 117.

<sup>130</sup> Elizabeth L. Marcoux, *Information Literacy for the Twenty-First Century Citizen* in Libraries & Democracy: The Cornerstones of Liberty, 70, 70 (Nancy Kranich, ed., 2001).

leaders in a democracy, tasked with upholding the rule of law.<sup>131</sup> Resource constraints have been identified as a “significant impediment” to successful legal education,<sup>132</sup> not the least of which are legal information resources needed to teach research and analytical skills to future lawyers. Additionally, law libraries are important for the promotion of legal information literacy among students, lawyers, and even the public at large. One scholar defines it as “the ability to find and use information.”<sup>133</sup> The Association of College and Research Libraries in the United States has defined this as a “set of abilities requiring individuals to ‘recognize when information is needed and have the ability to locate, evaluate, and use effectively the needed information.’”<sup>134</sup> In any case, there is a significant deficit, especially in developing states, of information literacy skills.<sup>135</sup>

In providing access to information, however, the role of law libraries and librarians should be one of committed indifference to political and private motivation. In other words, in developing and transitional states, law librarians should be engaged in the collection of information and assistance to patrons *only*, and not entangled in promotion of particular agendas, even if only encouraging open access to information. In developed democracies, for instance, librarians have been hailed as warriors in the fight for open information, to “lead the charge to ensure citizens can exercise . . . their information rights,”<sup>136</sup> or “enter the struggle adequately armed”<sup>137</sup> to promote public access to information. In the United States, librarians have played a significant role since the establishment of the Library of Congress to not only ensure public access, but

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<sup>131</sup> Trebilcock and Daniels, *supra* note 16, at 304-05.

<sup>132</sup> *Id.* at 306.

<sup>133</sup> Marcoux, *supra* note 130, at 71.

<sup>134</sup> *Id.* (citing Association of College and Research Libraries, *Information Literacy Competency Standards for Higher Education* (Chicago: ALA, 2000)).

<sup>135</sup> See, e.g. Emmanuel E. Baro and Tarela Keboh, *Teaching and Fostering Information Literacy Programmes: A Survey of Five University Libraries in Africa*, 38 J. OF ACADEMIC LIBRARIANSHIP 311, 311-12 (2012).

<sup>136</sup> Kranich, *supra* note 62, at 293; See generally Nancy Kranich, *Civic Partnerships: The Role of Libraries in Promoting Civic Engagement*, 18(1/2) RESOURCE SHARING & INFO. NETWORKS 89 (2005) (giving a detailed description of the role of libraries promoting civic engagement in civil society).

<sup>137</sup> *Id.*

lobby the Government to be forthcoming with the law.<sup>138</sup> Government documents librarians in the U.S., for example have been said to have “a long history of pushing for broad use and accessibility of those records entrusted to their care.”<sup>139</sup> One commentator has gone so far to say that libraries should go beyond the passive role of providing access to information, but become “the lead agency in tackling pervasive social problems.”<sup>140</sup>

In closed societies, or those slowly starting to open in transition to democratic governance, such promotion could do more harm than good. Open advocacy by librarians would likely damage the reputation of a library as an impartial institution whose mission is to provide access to information. A more apt description of the role of libraries in transitional societies is that of libraries a century ago in the U.S. – institutions that provided “balanced and unbiased access to materials so that informed citizens could make decisions for themselves.”<sup>141</sup>

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<sup>138</sup> Martin and Lanosga, *supra* note 79, at 617-18.

<sup>139</sup> *Id.* at 618 (citing Susan Lee Grabler, *Government Information of, by, and for the People: The Changing Mission of the American Library Association's Public Documents Committee, 1876-1956*, 22 J. GOV'T INFO. 45, 45-46 (1995)).

<sup>140</sup> Taylor L. Willingham, *Libraries as Civic Agents*, 27(2) PUBLIC LIBRARY Q. 97, 99 (2008). Willingham claims that a number of libraries in the U.S. have made this transition into an advocacy role, by “directly engaging in partnerships with others to solve community problems.” *Id.*

<sup>141</sup> *Id.* at 100-01.

## 9. CASE STUDY: LAW LIBRARIES IN RWANDA

The Republic of Rwanda provides an excellent case study for the examination of law libraries and their interplay with democratic governance. This is due to several factors, including the relatively small size of the country, the recent rebuilding of legal and civil society after the 1994 genocide, and a significant commitment from the Government of Rwanda to transition towards democratic rule.

### *9.1 Rwanda – A Brief History*

Rwanda has a rich and fascinating history, with pre-colonial migration for hundreds of years leading to monarchical rule of a vast area in East Africa.<sup>142</sup> This history was interrupted when in 1890 Germany asserted a claim of colonial control over present-day Rwanda.<sup>143</sup> With Germany's fall in World War I, Belgium took over colonial governance in Rwanda, and aggressively implemented policies and laws in the colony.<sup>144</sup> Also under Belgian colonial rule, a class system was codified into a system of racial identification and division, providing significant benefit to a small ruling minority—the Tutsi (15% of the population)—over the vast majority of Rwandans—the Hutu (85% of the population).

Rwanda became an independent state on November 24, 1962 under President Grégoire Kayibanda.<sup>145</sup> What followed was majority Hutu rule in a country and sporadic and significant periods of tribal violence of Hutus against Tutsis.<sup>146</sup> This culminated in the 1994 Genocide, in which an estimated one million Tutsi and moderate Hutu were killed in the span of one hundred

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<sup>142</sup> See generally JAN VANSINA, ANTECEDENTS TO MODERN RWANDA (Univ. of Wisconsin Press, 2007); JULIUS O. ADEKUNLE, CULTURE AND CUSTOMS OF RWANDA (Greenwood Press, 2007)

<sup>143</sup> WILLIAM A. SCHABAS AND MARTIN IMBLEAU, INTRODUCTION TO RWANDAN LAW 4 (Yvon Blais, 1997).

<sup>144</sup> *Id.* at 4-6.

<sup>145</sup> *Id.* at 6 (Yvon Blais, 1997).

<sup>146</sup> See PHIL CLARK, THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA 12-18 (Cambridge 2011).



days.<sup>147</sup> The Genocide ended when the rebel group Rwandan Patriotic Front took control of the capital city of Kigali, ended hostilities, and ultimately seized control of the Rwandan government.<sup>148</sup> Today, the RPF remains in power under President Paul Kagame, who led the rebellion in 1994 to end the Genocide.<sup>149</sup> Since then, significant reforms have been made in government that lend Rwanda to be regarded by some as one of the most successful transitions in post-conflict governance in recent history.

## *9.2 Survey of Rwanda's Law Libraries – Summary and Introduction*

In an effort to understand the potential for law libraries to support democratic transition, a survey of Rwandan law libraries was conducted from June 18, 2013 through June 28, 2013. Site visits and interviews with library personnel were conducted at all of Rwanda's law libraries. Additional visits were made to other libraries that serve legal institutions, notably the majority of Rwanda's law schools. Questions focused on two main areas – the users of libraries as perceived by library personnel and the collections in the libraries and how they serve their users. Inquiries were also made into those who administer libraries, funding, and other issues generally related to library management.

In total, Rwanda has eight law libraries that serve distinct populations within the legal communities. A table listing the libraries, locations, and populations served is below:

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

**Table 9.1: List of Law Libraries in Rwanda**

No.	Library	Location	Primary Population Served	Open to Public
1	Law Library, National University of Rwanda	Butare, Southern Province	Law students at the faculty of law, National University of Rwanda	Yes
2	Law Library, ILPD	Nyanza, Southern Province	Lawyers in training at the Institute for Legal Practice and Development	Yes
3	Parliamentary Library	Kacyiru, Kigali	Ministers of Parliament and staff	Yes
4	Supreme Court Library	Kacyiru, Kigali	Justices of the Supreme Court and staff, and Judges of the High Court of Kigali and staff	Yes
5	Library – National Public Prosecution Authority	Kacyiru, Kigali	Prosecutors and local lawyers	Yes
6	Ministry of Justice Library	Kacyiru, Kigali	Lawyers and legal drafters at the Ministry of Justice	Yes
7	Kigali Bar Association Library	Kicukiro, Kigali	Kigali Bar Association Members	Yes
8	UN Library (ICTR)	Kyovu, Kigali	Students, Lawyers, Public	Yes

*Open but not used by the public*

In general, all Rwanda's law libraries are open to the public. However, in practice very few members of the public use the law libraries, and they almost exclusively serve those primary patron populations of the institutions to which they belong. There is no general advertisement that the libraries are open to the public. Librarians and library staff believe that there are two main causes for the lack of public use of law libraries in Rwanda: 1. the public is not aware they can use the law libraries; and 2. in general there is no capacity for the greater public to use legal materials because of a lack of education. The executive director of the Kigali Bar Association,

discussing the KBA's library, succinctly stated that the library is "open but not promoted."<sup>150</sup> Nonetheless, the libraries remain open to the public – an important factor as noted above related to libraries and democracy.

#### Limitations to collection development

Some themes also emerged with the collections in Rwanda's law libraries. Staff at nearly all libraries indicated that there were significant deficits with funding, with at least one library relying almost entirely on donations to build and maintain a collection. Perhaps as a result of this, virtually no law library in Rwanda has a detailed collection development plan or a list of a core collection that can be found in any given library. All, however, maintained print copies of the Official Gazette, the official government publication of laws of Rwanda. All libraries also had odd items in their collections, most certainly gifts from visiting attorneys or legal professions, or cast-offs acquired through third parties.<sup>151</sup>

#### Minimal research and reference assistance

Also common among Rwanda's law libraries is the level of training (or lack thereof) of its librarians and library staff. Most law libraries have one dedicated staff member, but at most two. Among those, only one person designated as a librarian or head of a law library has any formal library science education.<sup>152</sup> No librarians or library directors have formal legal training. This is not to judge the capability of those running law libraries, or to discredit the services they offer. However, based upon interviews with library personnel, only two (or at best three) law libraries provide meaningful reference and research assistance. The majority of Rwanda's law libraries

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<sup>150</sup> Interview with Victor Mugabe, Executive Director of the Kigali Bar Association, June 19, 2013, notes and audio recording on file with author.

<sup>151</sup> Almost all libraries, for example, had one or more random case reporters from the United States, which contains case law from a given jurisdiction for a small period of time. Such texts are virtually useless to the legal researcher unless a case they require is actually located in the volume.

<sup>152</sup> The librarian at the law library at the National University of Rwanda, Bernadette Nyiritunga, received training in a master's program in librarianship in Senegal. Interview with Bernadette Nyiritunga, National University of Rwanda, June 25, 2013, notes and audio recording on file with author.

maintain collections and handle the general operational duties of libraries, including providing materials for users who request them. Additionally, at law schools, there is no formal research instruction provided by librarians or library staff, and only one of the five law schools has a law library, while others rely on legal collections in their respective university libraries.<sup>153</sup>

*Transition to e-resources outpacing law libraries' capacity*

A final general observation is the fast-paced transition to electronic resources for legal information in Rwanda. In addition to the Official Gazette published online, Rwanda has for several years had an online database to search its laws, called Amategeko.net (amategeko literally translated to “law” from the native Kinyarwanda).<sup>154</sup> This was possible due to massive investment creating the infrastructure for high-speed internet access in the country. Specifically, in 2011 work was completed that ran 2,300 kilometers of fibre optic cable across the country, linking it with undersea cables along the east African coast.<sup>155</sup> While this has caused a dramatic increase in the use of online resources for legal research, libraries have not caught up with the demand for e-resources. In general Rwanda’s law libraries have little to no funding for subscriptions to online legal materials. Those which have subscriptions are through donor funding, or partnerships with national institutions funded by donors.<sup>156</sup> Additionally, law libraries have few, if any computer terminals for public use, ranging from as many as nine computers at the UN ICTR law library to none at the law libraries at Parliament and the Supreme

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<sup>153</sup> Only the National University of Rwanda—the flagship university—has multiple libraries, including a law library. The remainder of law schools in Rwanda rely on university libraries for legal materials.

<sup>154</sup> Access to the now defunct website is through the Rwanda Legal Information Portal, which was de-funded in 2011 and has since not been updated with current laws. Interview with Jean-Louis Kaliningondo, Ministry of Justice ICT Advisor, June 18, 2013, notes and audio recording on file with author. *See also* Republic of Rwanda, Legal Information Portal [http://www.lip.gov.rw/LIP/Laws\\_all.aspx](http://www.lip.gov.rw/LIP/Laws_all.aspx) (last visited Dec. 3, 2013).

<sup>155</sup> Reuters, Rwanda completes \$95 mln fibre optic network, Mar. 16, 2011, <http://www.reuters.com/article/2011/03/16/ozabs-rwanda-telecoms-idAFJOE72F07D20110316> (last visited July 19, 2013).

<sup>156</sup> The Swedish International Development Cooperation Agency is largely responsible for providing funding earmarked for subscriptions to online databases at the National University of Rwanda (NUR) and the UN ICTR law library. As a government university, other government users have been granted access to the NUR databases, though are seldom used outside NUR.

Court. Finally, in general most library staff at Rwandan law libraries have little expertise searching for online legal materials. Most libraries, in fact, only maintain library catalogs in print, and in some cases even use a handwritten notebook to log when items are borrowed. Thus, even with the infrastructure in place to access online materials, there is generally no capacity for law libraries to provide meaningful access to online legal materials.

### *9.2.1 Law Library – National University of Rwanda<sup>157</sup>*

The National University of Rwanda (NUR) is the flagship university in the country, with multiple colleges, including a faculty of law. It is also the only university in Rwanda that is supported by more than one library, and has a law library on its campus in Butare, roughly two hours south from the capital Kigali.

The library is run by Bernadette Nyiritunga, a Documentalist at the NUR Law Library, who studied library science at a university in Dakar, Senegal. She holds faculty status at the National University, and teaches a course in research methodology at the faculty of law. The most recent inventory of the library, from 2011, showed approximately 1,500 monographs in the library's collection and approximately 9,000 other items, including serials, periodicals, and dissertations of students.<sup>158</sup> Acquisitions for the library are facilitated from the central university library. However, Ms. Nyiritunga indicated that it takes approximately one year for the law library to fulfill an acquisitions request because of the bureaucratic processes required for the public institution. The University library also facilitates acquisitions of electronic resources; however, none are specific to the law curriculum, and the available e-resources have been described by Dr.

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<sup>157</sup> Information in this section from interviews with Dean Emmanuel Muragijimana, Dean of Law Faculty at NUR and Bernadette Nyiritunga, Documentalist at the NUR Law Library on June 25, 2013, notes and audio recording on file with author.

<sup>158</sup> Until recently, all students at the faculty of law needed to complete a dissertation for the LL.B. degree, and had to deposit a copy at the law library, which in part accounts for this high number of items in the law library's collection.

Emmanuel Muragijimana, Dean of the Faculty of Law, as insufficient for the research needs of students and professors.

Of the importance of law libraries to legal practice and education in Rwanda, Ms. Nyiratunga stated they are “needed, and very important.” She noted the need for more resources, and perhaps a library consortium agreement could fulfill maximizing use of the available materials within the country. Dean Muragijimana expressed the opinion that law libraries are “extremely critical to empower people to do legal research” and very necessary at NUR and in Rwanda. Further, he envisions the law library playing a major role as the country transitions towards a common law system and completely integrates in the East African Community.<sup>159</sup> Dean Muragijimana indicated that law libraries should “play a major role in achieving quality justice in Rwanda.”<sup>160</sup>

**Fig. 9.1: Outside of NUR Law Library**



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<sup>159</sup> Interview with Dean Emmanuel Muragijimana, Dean of Law Faculty, National University of Rwanda, June 25, 2013, notes and audio recording on file with author.

<sup>160</sup> *Id.*

**Fig. 9.2: Stacks in NUR Law Library**



### *9.2.2 ILPD Law Library<sup>161</sup>*

The Institute of Legal Practice and Development (ILPD) is a post-graduate practical education institution for lawyers in Rwanda. The ILPD is run by a British lawyer and law professor Nick Johnson, and houses a law library on its campus in Nyanza, in Rwanda's southern province. Its mission is to train lawyers through continuing education, including research skills.

Professor Johnson indicated that there are several reasons why law libraries have not become critical institutions in the Rwandan legal system as they are in other more developed systems. One reason he identified is that Rwanda has an “unelaborated legal system” with no history or tradition of commentary or critique of the law. Law faculties have no publication requirements of their professors, and there is no significant scholarly or practical critique of the law, in part due to Rwanda's history as a relatively closed society. Professor Johnson, however, finds law libraries to be of critical importance to the future of Rwanda's legal system. He noted that this importance is in the role law libraries play to discovery in the legal academy: in the sciences, the laboratory is critical to discovery, whereas in law the law library is the laboratory for discovery and knowledge.

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<sup>161</sup> Information in this section from interviews with Professor Nick Johnson, Rector at ILPD, and Justin Rwabukwisi, librarian at ILPD on June 21, 2013, notes and audio recording on file with author.

The ILPD library is run by librarian Justin Rwabukwisi, with no formal education in law or librarianship. An annual budget is given to the library for acquisitions, but the library relies in substantial part on donations to the collection. This collection contains approximately 6,000 monographs related to the law. Primary legal materials in print include all current copies of the Official Journal. Additionally, two computer labs with 20 computers each provide access to the internet and some online databases for legal research. Like most of Rwanda's law libraries, the ILPD library collects some non-legal periodicals, such as regional magazines and newspapers, for local consumption. The library is open to the public, however, due to its relatively rural location approximately one hour from Kigali, there are no major legal or citizen communities to serve outside students at ILPD.

**Fig. 9.3: Outside of ILPD Law Library**





**Fig. 9.4: Interior of ILPD Law Library**



### *9.2.3 Parliamentary Law Library and Archives<sup>162</sup>*

The Rwandan Parliament building houses both a law library and Parliamentary archives. The law library is operated by Yves Twagirayezu, a Documentation Officer of Parliament with no formal education in law or librarianship. The collection houses approximately 3,700 monographs related to the law, as well as newspapers and magazines. All library materials are housed in a large open stack and reading room space—essentially the entire library space. The primary users of the law library are Ministers of Parliament and their staff. Additionally, the library frequently serves members of the public and students who require access to laws and other legal materials.

The law library keeps patron counts, and averaged 177 users per month during the first six months of 2012. Mr. Twagirayezu indicated that the more frequent users of the library are those Ministers of Parliament “known to be readers,” who come frequently to the library while some do not come at all. The library is open to the public, and three times a year the Parliament hosts an “open public day” when services, including access to the library, are made known to the

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<sup>162</sup> Information in this section from an interview with Yves Twagirayezu, a Documentation Officer of the Parliament of Rwanda on June 24, 2013, notes and audio recording on file with author.

public. The library offers some research assistance, but largely assists patrons with subject searching the library's online catalog to find library materials.

The Parliamentary library has a budget for acquisitions; however, the funds do not always reach the library. It therefore also relies on donations for a large part of acquisitions activity. If funds are available, requests from Ministers and staff are fulfilled provided they meet the needs of the institution. The library also has print copies of the Official Journal for public use. There are no computer terminals for public use and no wi-fi access in the library. As such, there are no electronic resources available to library patrons.

The Parliamentary archives are also housed in the Parliament building in two separate locations. They contain explanatory notes, records of discussion and debate from committees, and records from the plenary sessions of Parliament. These records are used, albeit infrequently by comparison to the law library, by researchers such as law students, lawyers, and judges. One staff member works in the archives, which are not well organized due to lack of space, and difficult to search. No one is able to browse the archives, and retrieval of materials from the archives is only possible through request for a specific document. By all practical measure, the Parliamentary archives are essentially a closed collection of government records.

**Fig. 9.5: Parliamentary Law Library**



#### *9.2.4 Supreme Court Law Library*<sup>163</sup>

The law library at the Supreme Court of Rwanda is located on the top floor of the six-story Supreme Court building in what is commonly known as a complex of justice sector buildings located in the same enclosed space in Kigali. Located across the street from the Parliament building, the Supreme Court is within a 100-meter walking distance to both the Ministry of Justice and the National Public Prosecution Authority, both of which have law libraries accessible to members of the Supreme Court.

The Supreme Court library has one staff person – Prisca Uwimana, who has no formal education in law or librarianship. The library is housed in a small room, which primarily serves as a conference space with a large table in the room, and only a dozen bookshelves with library materials available for use. Ms. Uwimana indicated that the library’s collection is “very poor” with only approximately 1,000 books. The library also keeps track of personal books in possession of the justices of the Court, which totals 1,319. Ms. Uwimana stated that it is easier for justices to use the books “in their personal collections” rather than rely on the materials in the Supreme Court’s library. The library does maintain copies of the Official Journal, and also facilitates the distribution of copies of the Official Journal to all members of the Court. There is currently no budget for acquisitions, and the Supreme Court library has had no acquisitions funding for the past three years.

The Supreme Court library is open to all users, however, if used at all by persons outside the Court, it is used by students and lawyers. There is virtually no use of the library by the general public. Ms. Uwimana stated that despite its small collection, she believes that the library is very

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<sup>163</sup> Information in this section from an interview with Prisca Uwimana, a librarian with the Supreme Court of Rwanda, on June 18, 2013, notes and audio recording on file with author.

important to the work of the Court. She stated that when requests for legal materials are made that the library cannot fill, she contacts other law libraries in Rwanda to seek materials.

**Fig. 9.6: Supreme Court Law Library**



#### *9.2.5 NPPA Law Library*<sup>164</sup>

The National Public Prosecution Authority (NPPA) is the chief law enforcement office in the Rwandan justice sector, representing the Government as prosecuting authority in the courts. Located next to the Supreme Court in the capital Kigali, it has a moderate-sized room on the building's second floor reserved as a library. The library is run by Jane Kembabazi, who has worked in this role for three years despite no formal training in law or library science. The library is open to the public, but most often the users of the library are lawyers with the NPPA.

The majority of items in the collection are texts related to law and government publications, including the Official Gazette and other government reports. The NPPA Law Library has no budget to acquire items in the collection, and has not added to the collection in the past three years. The most recent acquisitions to the collection have been donations of books from a

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<sup>164</sup> Information in this section from interviews with Jean-Damascène Habimana, Secretary General of the National Public Prosecution Authority and Jane Kembabazi, librarian with the NPPA on June 18, 2013, notes and audio recording on file with author.

USAID project working in Rwanda. Though the Law Library at NPPA does not subscribe to electronic resources, it has access to those subscribed to by the libraries at NUR, and are frequently searched by Ms. Kembabazi to find information for prosecutors.

Ms. Kembabazi stated that she believes libraries are important to the work of the NPPA. This sentiment was also shared by the Secretary General of the NPPA, Jean-Damascène Habimana. He stated that law libraries are important, and specifically are needed to meet the increasing demand for access to electronic materials and legal information online.

**Fig. 9.7: NPPA Library & Librarian**



**Fig. 9.8: NPPA Library Reading Area**



#### 9.2.6 *Ministry of Justice Law Library*<sup>165</sup>

The Ministry of Justice is primarily responsible to coordinating legislation and legal counsel to the Government of Rwanda, and is a key member of the justice sector. It is located next to the Supreme Court in the capital of Kigali, and houses a library on its ground floor. The library has one staff member, Alphonse Ndeze, who has no formal training in law or library science. The library is open to the public, but most often only used by members of the Ministry of Justice, or those from other nearby government offices seeking library materials. Moreover, those members of the public who use the law library do so mostly for internet access or to use newspapers for job searches, or to practice reading with English-language periodicals.

There are approximately 3,000 items in the library's collection. Primary law consists of all copies of the Official Journal, as well as historical copies of the colonial administrative code that was in force prior to independence. The library has not had any funds for acquisitions; however, 120 books were donated in 2011 from a USAID-funded project in Rwanda, which were added to the collection. There are two computers with internet access that are open to the public; however, the library does not have access to any subscription databases or other legal material other than what is available on the open web. Items in the library catalog are searched using a paper copy of the library catalog or searching the electronic equivalent of the same using a Microsoft Excel document.

The Law Library at the Ministry of Justice also houses historical legal and public documents related to property ownership and citizenship. These documents date to early Belgian colonial rule, as early as 1932. Access to these documents, however, was limited, and seemingly not organized in any fashion.

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<sup>165</sup> Information in this section from an interview with Alphonse Ndeze, a librarian with the Ministry of Justice on June 24, 2013, notes and audio recording on file with author.



**Fig. 9.9: Law Library at Ministry of Justice**



#### *9.2.7 KBA Law Library*<sup>166</sup>

The Kigali Bar Association (KBA) is a national organization of lawyers in Rwanda. Membership is required for all practicing lawyers, except those working for the Government, NGOs, or as corporate counsel, who are not eligible. Mr. Mugabe stated that, at the time of the interview, that there were approximately 660 members in the KBA, with another 100 expected to join within the next two months. The KBA is located in an office – essentially a large house – in the Kicukiru neighborhood of the capital Kigali.

The Executive Director of the KBA, Victor Mugabe, indicated that there is a small space reserved as a law library at the KBA offices, though it is “insufficient.” He also stated that all KBA members are required by regulation to have a “personal library of key laws,” including procedural laws, integration treaty with the East African Community, and the East African Community common protocol. At the KBA offices, there is currently no staff maintaining the law library, which is essentially a small room lined with shelves. The library contains many copies of the Official Journal, as well as legal texts and treatises that were donated over time to

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<sup>166</sup> Information in this section from interviews with Victor Mugabe, Executive Director of the Kigali Bar Association, on June 19, 2013, notes and audio recording on file with author.

the organization. There is no budget in place for acquiring new materials. Of note, despite an air conditioner in the room the conditions were damp, and dank. It was pointed out to Mr. Mugabe that several of the items in the library had visible mold and would have to be cleaned, if not discarded completely.

Despite the relatively small size and poor condition of the law library at the KBA, Mr. Mugabe indicated that law libraries are of significant importance to serve lawyers, and the public, in Rwanda. He stated that a combined effort of all members of the justice sector would be necessary to achieve a goal of improving conditions of law libraries in Rwanda. He also indicated that online access to legal information was important, and would soon become if not already the primary mode of legal research by lawyers of the KBA.

**Fig. 9.10: Items in the KBA Law Library**



#### *9.2.8 U.N. ICTR Law Library*<sup>167</sup>

Perhaps the most impressive, and best-funded law library in Rwanda is the library of the United Nations International Criminal Tribunal for Rwanda (ICTR). Formally known as the

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<sup>167</sup> Information in this section from interviews with Mathias Sebaprazi, a library assistant, and Innocent Kamanzi, Information Officer with the U.N. ICTR Information and Documentation Centre on June 19, 2013, notes and audio recording on file with author.



ICTR Information and Documentation Centre,<sup>168</sup> it is located in the Kyovu neighborhood of Kigali, and is open to the public. In fact, one of the missions of the library is to serve as an outreach center and public resource about the ICTR. The library received fifty to eighty visitors per day, which includes local schoolchildren who use the library's reading room as after-school study space. The library has two full-time staff members: Mathias Sebaprazi, a library assistant, and Innocent Kamanzi, Information Officer and Outreach Program Coordinator at the Centre. Neither Mr. Sebaprazi nor Mr. Kamanzi have formal education in library science or librarianship.

The library has more than 5,000 monographs, subscribes to periodicals such as local and regional newspapers and magazines, and has access to several research resources online. Mr. Sebaprazi stated that among the library's users are law students from all of Rwanda's law schools, professors, lawyers, journalists, and general members of the public. Mr. Kamanzi stated that in addition to providing general library assistance, research assistance is given to judges, prosecutors, and other members of the justice sector. The library is primarily funded by a mandate from the U.N. ICTR, with additional sporadic funding from foreign donors. Mr. Kamanzi stated that there is no specific plan for the library when the mandate of the ICTR ends, however, it is likely that control of the law library and outreach center will be given to the Government of Rwanda.

Mr. Kamanzi stated that in Rwanda there is "a need for the rule of law and a need for access to laws, and many do not know where to find it." Despite law libraries being open to the public, including the ICTR Law Library, Mr. Kamanzi stated that there is a deficit of citizens knowing where and how to access the law.

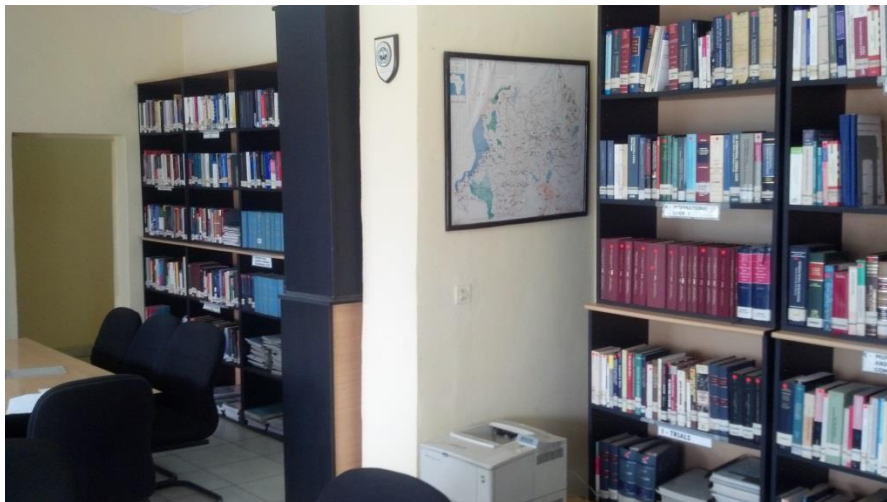
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<sup>168</sup> About the ICTR Library, ICTR Website, <http://www.unictr.org/tabid/180/default.aspx> (last visited Dec. 3, 2013).

**Fig. 9.11: Outside the ICTR Law Library**



**Fig. 9.12: Two rooms inside the ICTR Library**



### *9.2.9 Non-Law Libraries*

In addition to the eight law libraries noted above, there are two other libraries in Kigali that serve users of legal information. Specifically, these are the university libraries at the Université Libre de Kigali (ULK) and the Independent Institute of Lay Adventists of Kigali (INILAK). Both these institutions have faculties of law, but no law libraries on campus. The library at INILAK is impressive with more than 45,000 items in the library's collection. This includes a small section of legal materials. Robert Ruryahebwa, Dean of the faculty of law at INILAK,

stated that the legal materials in the law library are insufficient to support the legal scholarship needs of students and professors. He indicated that students are often directed to online resources as well as other libraries, including the nearby ICTR Law Library and the law library at the Ministry of Justice.<sup>169</sup>

The university library at ULK also supports its faculty of law with a small collection of legal and law-related materials in the library. The Dean of the faculty of law at ULK stated that the library is “poor in the number of books” it has to support legal research and study.<sup>170</sup> He stated that other law libraries are needed to supplement the legal collection at ULK. Additionally, however, a series of computer labs and online research programs are being used to supplement the lack of legal materials in the university library. In total ULK boasts more than 2000 computers and offers wireless internet access in its main library and administrative building. This includes access to several databases, some of which offer legal information used for research by law students and professors.<sup>171</sup> Nonetheless, primary and secondary legal materials are best found at one of Rwanda’s law libraries, as acknowledged by both institutions.

### *9.3 Perceptions of Law Libraries in Rwanda*

All those interviewed at law libraries in Rwanda indicated that their institutions, in general, served an important need to legal communities in Rwanda. General skepticism would say that these are statements of self-interest, highlighting the importance of institutions by those who rely on those same institutions for employment. In addition, however, high ranking officials in several justice sector ministries also highlighted the importance of law libraries. For instance,

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<sup>169</sup> Interview with Robert Turyahebwa, Dean, Faculty of Law at INILAK on June 19, 2013, notes and audio recording on file with author.

<sup>170</sup> Interview with Titien Haburugisha, Dean, Faculty of Law at ULK on June 19, 2013, notes and audio recording on file with author.

<sup>171</sup> *Id.*

Régis Rukundakuvuga, Inspector General of the Supreme Court of Rwanda, indicated that law libraries serve an important role in legal society in Rwanda.<sup>172</sup> The Secretary General of the NPPA, essentially the presidentially-appointed head of the agency, stated in no uncertain terms the importance of law libraries in Rwanda.<sup>173</sup> The Rector of the ILPD also highlighted the importance of law libraries in Rwanda, and specifically related their relationship to the rule of law.<sup>174</sup> Finally, all law faculty deans as well as the head of the KBA noted the importance of law libraries to students and lawyers, as well as the entire legal community and civil society as a whole.

In addition to librarians and high-ranking officials in the justice sector and legal education, lawyers surveyed highlighted the importance of law libraries to their work, and overall society. In a survey of 60 lawyers of various backgrounds in Rwanda,<sup>175</sup> 100% of respondents surveyed stated that they think law libraries are important to legal research in Rwanda. All respondents also indicated that the internet is important to legal research, and 96% of respondents indicated that law libraries are good places to learn about internet legal research.<sup>176</sup> Less than 10% of respondents, however, view law libraries as places for instruction on research skills or methodology.<sup>177</sup>

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<sup>172</sup> Interview with Régis Rukundakuvuga, Inspector General, Supreme Court of Rwanda on June 24, 2013, notes and audio recording on file with author.

<sup>173</sup> Interview with Habimana, *supra* note 164.

<sup>174</sup> Interview with Johnson, *supra* note 161.

<sup>175</sup> A survey was conducted online and promoted for three months from June 2013 through August 2013, with the assistance of a research assistant hired to solicit survey responses. Ironically, bureaucratic restrictions and a history of authoritarian rule proved to be significant limiters to obtaining survey responses. For instance, permission was required from the Chief Justice of the Supreme Court before judges at any level could be contacted. Members of the Kigali Bar Association could also only be reached with the KBA's permission. Also, due to the time of year, law schools were not in session, and law students were notoriously difficult to survey. The survey responses, however, are representative in that there is consistency in responses, and indicates commonality, at least in the view of libraries and sources of legal information.

<sup>176</sup> *Id.* at Questions 13, 14.

<sup>177</sup> *Id.* at Question 6.

#### *9.4 Conclusions: Law Libraries Supporting Democracy in Rwanda*

Law libraries *have the potential* to fulfill the role of supporting the access principle of democracy in Rwanda. Though few in number, the eight law libraries in Rwanda largely have at the bare minimum of information needed – laws and access to other government information as provided to libraries or available online. Additionally, some law libraries have more extensive collections of secondary material useful for the study of law and comparison of Rwandan law to other legal systems. What is helpful to making the case for Rwandan law libraries is the near universal perception from those in the Rwandan legal community that access to legal information is important to the rule of law in Rwanda, and law libraries are fundamental to this process. Perception, however, is not reality, and in the case of Rwanda its law libraries do not have the capacity to fulfill their democratic mandate in the transitional society. There are several important reasons why law libraries cannot yet promote the access principle of democracy in Rwanda.

First, there is no meaningful public access to Rwandan's law libraries. That all law libraries in Rwanda claim to be open to the public highlights the ability of citizens to access legal and government information. What is not promising, however, is the categorical lack of public patrons using law libraries in Rwanda. Several factors may be the cause of this, from low literacy rates, lack of citizen interest, or fear of perceived criticism of government. Most law library administrators admit, however, that public access to their institutions is not well promoted. Therefore, it is hard to hypothesize without further study precisely why law libraries do not attract higher numbers of public patrons. Nonetheless, access is not meaningful unless the citizenry is aware of the access.

Second, law libraries in Rwanda do not provide the expertise in user services needed to support other areas of democracy. As noted above, law libraries support the rule of law through librarians with expertise in the collection and use of legal materials. In Rwanda, no librarians or library staff has formal (or informal) legal training. Moreover, only one of the eight libraries has a librarian with formal training in librarianship. While some administrators have proven to be proficient in their positions, this is not the same as providing expertise to lawyers, judges, and others in legal society.

Third, there is an overall lack of government commitment in supporting access to legal information in Rwanda. This is evident in the lack of funding of all public law libraries, which are effectively de-prioritized within their respective institutions. Indeed, the law library with the best collection and service in Rwanda is funded by an external source—the United Nations. Regardless of the transparency of the Government of Rwanda, or its access to information laws, accessibility to laws can be promoted by re-investing in its law libraries. Until this occurs, and law libraries can build collections and offer reference and research assistance by those with knowledge of the law, law libraries cannot uphold the access principle of democracy.

What is certain after investigation into Rwanda's law libraries is that there is significant political will among those in the justice sector to promote the role of law libraries, and the role they can play to support the rule of law in Rwanda. With greater attention, both from foreign donors and domestic policymakers, law libraries could one day emerge in Rwanda as supporters of the access principle of democracy, as they have in other democratic societies.

## 10. OVERALL CONCLUSIONS

Democratic transition is a gradual process, and something that takes concerted effort from a combined set of government institutions. Libraries in general, and law libraries in particular, can have minimal impact, if any, on promoting transparency in governments. Arguably, law libraries should not participate at all in most situations when holding government actors accountable. What is clear, however, is the connection between law libraries and the access principle of democracy. It is in this way, especially in emerging democracies, that libraries can emerge as one of many institutions that promote democracy.

In Rwanda, a USAID-funded justice sector project from 2010 to 2012 began exploring the possibility of a national law library, located in Kigali, which would support the legal information access needs of an entire nation. With this vision in mind, law libraries in Rwanda nearly completed a consortium agreement which would have created a central library catalog and means for sharing resources across the country. While this failed, the mere attempt highlights the recognition of the role law libraries can play in transitional states to promote access to laws and government information.

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