

Print-Disabled Persons' Right to Access to Copyrighted Works in Ethiopia: An Appraisal of Ethiopian Copyright Law in Light of the Marrakesh Treaty

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Abstract

Print-disabled persons face barriers to access the accessible format of copyrighted materials in their day-to-day life due to copyright law restraints. Since copyright laws provide to the owners of a work an exclusive economic right including the right to reproduction, distribution, adaptation, and making available to the public, print-disabled persons face difficulties in getting the accessible format of works. This results in the violation of various human rights including the right to access to information, the right to read, the right to education, the right to participate in cultural life, the right to enjoy the benefits of scientific progress, and the right to employment. With the view of establishing normative standards, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print- Disabled was adopted in June 2013. The primary goal of this Treaty is to facilitate the accessibility of copyrighted works for print-disabled persons in an accessible format by eliminating copyright law barriers. The Treaty realizes the significance of the international copyright system and intends to ensure that the limitations and exceptions in national copyright laws allow print-disabled persons access to published works. Ethiopia has ratified this Treaty on March 13, 2020, to improve access to copyrighted works for print-disabled persons in the country. This article, thus, intends to make a critical appraisal of the preparedness of the national copyright law regime for the effective implementation of the Treaty. The study employs doctrinal legal research and focuses on identification and analysis of the national copyright law regime in light of the Marrakesh Treaty. Finally, the study concludes that the existing national copyright law of Ethiopia is inadequate in realizing the obligations stated under the Marrakesh Treaty. This article, therefore, recommends the amendment of the national copyright law to make it comprehensive and enhance the effective implementation of the Marrakesh Treaty in Ethiopia.

Keywords: Print-disabled persons, Human right, Copyrighted work, Accessible format, Copyright exceptions or limitations

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Introduction

Print-disabled persons cannot access printed works unless they are available in accessible formats such as braille, audio, large print, or accessible electronic format.¹ As the copyright law gives an exclusive economic right to the owners of work, the availability of the accessible format of the work relies on the willingness of the owner.² Print-disabled persons cannot reproduce, distribute, or make available the accessible format of the copyrighted work unless the owner permits. Unfortunately, most owners are unable or unwilling to make available the accessible format of their work.³

As a result, the world is facing a 'global book famine',⁴ which denies hundreds of millions of print-disabled persons access to basic information and knowledge across the board.⁵ According to the 2015 World Health Organization (WHO) report, there are around 300 million print-disabled persons in the world, 90% of whom live in developing countries.⁶ Studies indicate that in developed countries only 7% of books published were made available in an accessible format to print-disabled persons while less than 1% of published books were available in less developed nations.⁷ This could result in the violation of the human rights of print-disabled persons such as the principles of non-discrimination and equality, the right to access to information, read, culture, and enjoy the benefits of scientific progress, education, and employment.

To rectify this problem, the international community has come up with an international instrument called the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise

¹ Brook Baker, Challenges Facing A Proposed WIPO Treaty for Persons Who Are Blind or Print-Disabled, Paper Presented at Law and Society Association Annual Meeting, (2013), P. 3.

² *Id.*, P.39.

³ *Id.*, P.38.

⁴ The term 'Book famine' is an expression used to describe the low number of books and other copyrighted material that is accessible to print-disabled persons throughout the globe (Lida Ayoubi, The Interface of Copyright and Human Rights: Access to Copyright Works for the Visually Impaired, Ph.D. Thesis, Victoria University, Wellington, (2015), P.3, available at <http://restrictedarchive.vuw.ac.nz/handle/123456789/9059> accessed on May 20, 2020.

⁵ *Id.*, P.3.

⁶ United Nations Development Program (UNDP), Our Right to Knowledge: Legal Reviews for the Ratification of the Marrakesh Treaty for Persons with Print Disabilities in Asia and the Pacific, Annual Report, (2015), P.7.

⁷ World Blind Union (WBU), Press Release for WIPO Book Treaty, (2013), available at <http://www.worldblindunion.org/English/news/Pages/June-17-Press-Release-for-WIPO-Book-Treaty.aspx> accessed on May 20, 2020.

Print-Disabled (hereinafter, Marrakesh Treaty).⁸ The primary goal of this Treaty is to facilitate the accessibility of copyrighted works for print-disabled persons by eliminating copyright law barriers, i.e. providing copyright exceptions and limitations for a print-disabled person.⁹ Ethiopia has also ratified this Treaty on March 13, 2020, with the view of improving access to copyrighted works of print-disabled persons in the country.¹⁰ Upon ratification of the Treaty, a country is expected to implement the Treaty through its national copyright law. However, it has not been examined whether the national copyright law of Ethiopia suits for the effective implementation of the Treaty in the country. This article, therefore, seeks to assess whether the Ethiopian copyright law fits for implementing the Marrakesh Treaty in the country.

The article contains three sections. The first section, in general, deals with the relationship between the human rights of print-disabled persons and copyright law. It gives a highlight on some of the human rights of print-disabled persons and how they could be affected by copyright law. The second section provides a general overview of the Marrakesh Treaty. It tries to articulate the Treaty's objective, historical development, and definitions of relevant terms provided therein. This section also tries to explore the major obligations imposed on the contracting parties by the Marrakesh Treaty. The last section focuses on the analysis of the Ethiopian policy and legal landscapes concerning print-disabled persons and the adequacy of the existing Ethiopian Copyright Law for implementing the Treaty. It particularly assesses the existing exceptions or limitations whether they are sufficient to enable print-disabled persons to access the accessible format of the copyrighted work in Ethiopia.

1. Human Rights of Print-Disabled Persons and Copyright Law

Human rights are fundamental liberties that human beings are entitled to by the sheer fact of being human.¹¹ The main features of these rights, as they are acknowledged by the 1993 Vienna Declaration and Program of Action, include

⁸ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print-Disabled, World Intellectual Property Organization, Treaty series, (2013), Vol. 218, (hereinafter, Marrakesh Treaty).

⁹ *Id.*, Preamble Para. 4.

¹⁰ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print-Disabled Ratification Proclamation, Proclamation No. 1181/2020, *Federal Negarit Gazette*, (2020).

¹¹ Magdalena Sepulveda et al, *Human Rights Hand Book*, 2nd ed., University for Peace, (2004), p.6 available at <https://www.worldcat.org/title/human-rights-reference-handbook/oclc/58044058> accessed on May 22, 2020.

universality, indivisibility, interdependence, and interrelatedness.¹² The violation of one right results in the breach of other human rights. Likewise, the realization of one right results in the realization of all other human rights. Human rights are also the inborn rights of every individual based on the innate self-worth and equal dignity of all human beings.¹³ These fundamental freedoms cannot be waived or taken away.¹⁴ Although the primary responsibility bearers are states, human rights also levy responsibility on non-state actors.¹⁵ Human rights are also grounded in the protection of personhood, which is seen in terms of the person's autonomy, the conception of a good life and being able to pursue it, and the freedom from the interference of others.¹⁶ Thus, human rights such as civil and political, economic, social, and cultural rights and other rights emanate from this idea of personhood.¹⁷

For this reason, the rights of print-disabled persons emanate from this general idea of human rights. The rights of print-disabled persons are not a distinct or special set of rights. Rather, they reiterate that people with disabilities, print-disabled persons, are entitled to the respect of their inherent dignity and of all human rights and fundamental freedoms on an equal basis with others.¹⁸ Despite this, many human rights of print-disabled persons are infringed due to legal restraints imposed by copyright law. Copyright law usually prohibits individuals, including print-disabled persons, to reproduce, distribute, and share the copyrighted work unless the copyright holder permits.¹⁹ By doing so, it particularly inhibits print-disabled persons to access the accessible format of the copyrighted works. This, in turn, would lead to the violation of the right to access to information, the right to read, the right to education, the right to participate in cultural life, the right to enjoy the benefits of scientific progress,

¹² Vienna Declaration and Program of Action, United Nations General Assembly, (1993), Art. 5 (hereinafter, Vienna Declaration and Program of Action).

¹³ Office of the United Nations High Commissioner for Human Rights, Frequently Asked Questions on A Human Rights-Based Approach to Development Cooperation, (2006), P.1, available at <https://www.ohchr.org/Documents/Publications/FAQen.pdf>, accessed on May 22, 2020.

¹⁴ *Id.*, P. 1.

¹⁵ Geneva Academy of International Humanitarian Law and Human Rights, Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council, Academy in-Brief No. 7, (2016), p.21.

¹⁶ Sepulveda *et al*, *supra* note 11, p.6.

¹⁷ *Id.*

¹⁸ Convention on the Rights of Persons with Disabilities (CRPD), UN General Assembly, Treaty Series, Vol. 2515, (2007), Art. 1 (hereinafter, CRPD), same comment on commas available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>, accessed on May 24, 2020.

¹⁹ Rami Olwan, The Ratification and Implementation of the Marrakesh Treaty for Visually Impaired Persons in the Arab Gulf States, *The Journal of World Intellectual Property*, Vol. 20, (2017), pp. 178-205, p. 179.

and the right to employment, among others. This also causes the violation of other human rights and principles as human rights are interrelated, interdependent, and indivisible.²⁰ Below, an attempt is made to explore the major human rights of print-disabled persons and principles that could be directly affected by copyright law.

1.1. The Principle of Non-discrimination

The principle of non-discrimination is a significant principle recognized by various human rights instruments such as the Universal Declaration of Human Rights (UDHR),²¹ International Covenant on Civil and Political Rights (ICCPR)²² International Covenant on Economic, Social and Cultural Rights (ICESCR),²³ and the African Charter on Human and Peoples' Rights (ACHPR).²⁴ These instruments state that the rights guaranteed should be enjoyed by every human being irrespective of any status such as "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²⁵ Thus, the principle of non-discrimination is a vital element of human rights law. The principle of non-discrimination and other human rights are also guaranteed in the Convention that is specific to persons with disabilities, the Convention on the Rights of Persons With Disabilities (CRPD). This Convention explicitly prohibits discrimination on the ground of disability.²⁶ It defined discrimination as:

*any distinction, exclusion or restriction based on disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.*²⁷

²⁰ Vienna Declaration and Program of Action, Art. 5.

²¹ Universal Declaration of Human Rights (UDHR), United Nations General Assembly, (1948), Art. 2 (hereinafter, UDHR).

²² International Covenant on Civil and Political Rights (ICCPR), United Nations, Treaty Series, (1966), Vol. 999, 171 and Vol. 1057, Art. 2/1. (hereinafter, ICCPR).

²³ International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations, Art. 2/2.

²⁴ African Charter on Human and Peoples' Rights (ACHPR), Organization of African Unity, (1982), Art. 2 (hereinafter, ACHPR).

²⁵ UDHR, Art. 2.

²⁶ CRPD, Art. 5/2.

²⁷ *Id.*, Art. 2.

Hence, according to the principle of non-discrimination, differential treatment on the ground of disability in the enjoyment of human rights is not allowed. The provision prohibits both direct and indirect discrimination. Direct discrimination is treating a person less favorably who is in a similar situation with another individual based on a prohibited ground.²⁸ This form of discrimination could also occur if there are “detrimental acts or omissions based on prohibited grounds where there is no comparable similar situation.”²⁹ Conversely, “indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of rights in the covenant as distinguished by prohibited grounds of discrimination.”³⁰ Even if it does not have the purpose of making a distinction between individuals, the final effect of a certain act may be discrimination. This is considered indirect discrimination. If a state adopts a copyright law with the view of limiting the human rights of print-disabled persons, it would be direct discrimination. Whereas, even if there is no intent to discriminate, copyright laws that provide general limitations and exceptions without considering the status of print-disabled persons are indirectly discriminatory for they limit access to the accessible format of copyrighted works for print-disabled persons.

Hence, the lack of access to copyrighted works by print-disabled persons amounts to a violation of the principle of non-discrimination and several other human rights. If a print-disabled person is unable to access copyright-protected material due to his/her disability, it is possible to say that there is unjustified differential treatment.³¹ This uneven treatment is not in line with the principle of non-discrimination because it denies print-disabled persons the equal enjoyment of human rights.³² In this regard, the Marrakesh Treaty stipulates the principle of non-discrimination in its preamble, among others.³³

1.2. The Right to Access to Information

Access to information is a fundamental human right as well as a prerequisite to realize all other human rights of print-disabled persons. The right to access to

²⁸ United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2 of the ICESCR), (2009), Para. 10/a.

²⁹ *Id.*

³⁰ *Id.*, para. 10/b.

³¹ Lida ayoubi, Deciphering the Right to Read under International Human Rights Law: A Normative Framework for Equal Access, *Wisconsin International Law Journal*, Vol. 36, No. 3, (2019), p. 13.

³² *Id.*

³³ Marrakesh Treaty, Preamble, Para. 1.

information is guaranteed under various human rights instruments, including UDHR³⁴ and ICCPR³⁵, CRPD³⁶, ACHPR³⁷, and national constitutions including the Constitution of the Federal Democratic Republic of Ethiopia.³⁸ According to these provisions, everyone has the right to access information which includes the right to seek, receive, and impart information and ideas of all kinds.³⁹ The right to access information has been given special emphasis in the CRPD due to its significance to persons with disabilities.⁴⁰ Article 21 of the CRPD states:

states parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities promptly and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes, and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

³⁴ UDHR, Art. 19.

³⁵ ICCPR, Art. 19/2.

³⁶ CRPD, Art. 21.

³⁷ ACHPR, Art. 9.

³⁸ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazeta*, (1995), Art. 29/2 (hereinafter, FDRE Constitution).

³⁹ ICCPR, Art. 19/2.

⁴⁰ Sylvana Lakkis et al, Lebanon: Disability and Access to Information, Country Report, (2015), p. 6.

(e) *Recognizing and promoting the use of sign languages.*⁴¹

This provision shows that print-disabled persons may need accessible formats to seek, receive, and impart information and ideas and they have a right to receive information inaccessible modes and formats. Despite the recognition of the right to access information of print-disabled persons by various human rights instruments, this right is infringed due to lack of accessible published materials and copyright law prohibitions to reproduce, adapt, distribute, and to make available for the public. This violation of the right to access information of print-disabled persons would also lead to the violation of several other human rights. Print-disabled persons need to have access to copyrighted works to take part, *inter alia*, in education, participate in cultural life, and enjoy the right to employment.⁴²

1.3. The Right to Read

The right to read is not explicitly provided in any human rights instruments. It is a right that can be inferred from other rights guaranteed by international human rights instruments.⁴³ It is not enlightening to state the importance of reading. Reading is one of the main mechanisms that we know about the past, and understand the present. Moreover, through reading, pleasure is derived; great ideas are expressed; knowledge is transferred and language is learned.⁴⁴ Thus, all the above mentioned fundamental human rights cannot be enjoyed without access to written words. It is possible to argue that on the human rights of print-disabled persons such as the right to access to information, the right to education, the right to culture, and the right to employment, there is an implied right to read.⁴⁵ In cognizance of this, the CRPD requires state parties to “adopt all appropriate legislative, administrative and other measures to ensure accessible information to persons with disabilities.”⁴⁶ It also requires contracting parties to adopt necessary steps to guarantee to persons with disabilities access on an equal basis with others to information and communications.⁴⁷

⁴¹ CRPD, Art. 21.

⁴² Lakkis et al, *supra* note 40, p. 6.

⁴³ Abigail Rekas, Tracking the Progress of the Proposed WIPO Treaty on Exceptions and Limitations to Copyright to Benefit Persons with Print Disabilities, *European Yearbook of Disability Law*, Vol. 4, (2013), pp. 45-72, p. 3.

⁴⁴ *Id.*, p. 4.

⁴⁵ *Id.*

⁴⁶ CRPD, Art. 4/a & h.

⁴⁷ *Id.*, Art. 9.

1.4. The Right to Culture and Scientific Progress

Cultural rights, like other human rights, are important to realize human dignity and maintaining positive societal relations. UDHR recognizes the right to take part in cultural life and scientific progress. It stipulates that every individual has the right to take part in the cultural life of society and share from the benefit of scientific progress.⁴⁸ The right to participate in cultural life and to enjoy the benefit of scientific progress is also guaranteed under ICESCR.⁴⁹ Culture in ICESCR includes “ways of life, language, oral and written literature, music and song, non-verbal communication, methods of production or technology, and the arts.”⁵⁰ According to General Comment 21 of CESCR on the right to culture, one of the preconditions to effectively enjoy the right to culture is accessibility.⁵¹ For this reason, the General Comment urges states to provide and facilitate access to culture to persons with disabilities in particular. Moreover, states are required to recognize the right to have access to cultural materials in an accessible format for persons with disabilities.⁵²

The CRPD also provides the right to the cultural life of persons with disabilities and obligates member states to take steps to enable persons with disabilities to access cultural materials in an accessible format.⁵³ Most importantly, the Convention realizes that copyright laws may prohibit persons with disabilities from accessing cultural materials. Accordingly, it asks states to make sure that their copyright laws “do not constitute an unreasonable or discriminatory barrier to access by a person with disabilities to cultural materials.”⁵⁴ Hence, access to copyrighted works by print-disabled persons in accessible format has immense importance to enjoy the right to culture fully. In addition, the lack of access to copyright works negatively affects the right to enjoy the benefits of scientific progress of print-disabled persons. Since one of the ways that scientific knowledge is transferred through the publication of books, journals, and other copyright-protected materials, the absence of these materials in accessible

⁴⁸ UDHR., Art. 27.

⁴⁹ ICESCR., Art. 15.

⁵⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21: the Right to Everyone to Take Part in Cultural Life (Art. 15, para. 1a of the ICESCR), (2009), Para. 13.

⁵¹ *Id.*, para. 16(b).

⁵² *Id.*, para. 31.

⁵³ CRPD, Art. 30/1(a).

⁵⁴ *Id.*, Art. 30/3.

format will be a violation of their right to enjoy the benefits of scientific progress.⁵⁵

1.5. The Right to Education

The right to education is a fundamental human right recognized by various human rights instruments such as UDHR,⁵⁶ ICESCR,⁵⁷ CRC,⁵⁸ CRPD,⁵⁹ and ACHPR.⁶⁰ Especially, CRPD is the main human rights instrument that spells out the implementation of the right to education for persons with disabilities. It provides for inclusive education under article 24.⁶¹ Moreover, the provision states that persons with disabilities should access education in the most appropriate “modes and means of communication.”⁶² If the modes and means are suitable, print-disabled persons will be able to effectively involve and contribute to the academic and social development of their society.⁶³ Because the educational content is transferred through copyrighted materials, the most appropriate mode and means of communicating those materials for print-disabled persons is by making available those works in an accessible format.⁶⁴

The right to education also belongs to economic, social, and cultural rights and it is vital for a person’s human dignity and enhancing respect for human rights and fundamental freedoms.⁶⁵ Education is doubly essential to realize the human rights of persons with disabilities and to help their development. Besides, the right to education of print-disabled persons is crucial for states because when a person with a disability grows personally and professionally as a result of education, it reflects the wellbeing of the state.⁶⁶ Nonetheless, the right to education of print-disabled persons would not be realized without accessible published materials. They will not have equal opportunity with others in education without effective access to copyright-protected materials. This barrier to access published materials leads to the infringement of the right to education of print-disabled persons by limiting their access to textbooks and other

⁵⁵ Ayoubi, *supra* note 31, (2019), p. 36.

⁵⁶ UDHR, Art. 26

⁵⁷ ICESCR, Art. 13.

⁵⁸ CRC, Art. 28.

⁵⁹ CRPD, Art. 24.

⁶⁰ ACHPR, Art. 17.

⁶¹ CRPD, Art. 24.

⁶² *Id.*, Art. 24/3.

⁶³ Ayoubi, *supra* note 31, (2019), p. 25.

⁶⁴ *Id.*

⁶⁵ UDHR, Art. 26/2.

⁶⁶ Ayoubi, *supra* note 4, (2015), p. 52.

published educational resources. Therefore, to respect the right to education of print-disabled persons, countries must ensure that their copyright law regime is print-disability-friendly.

1.6. The Right to Employment

The right to employment is expressly recognized under UDHR. It states “[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”⁶⁷ The ICESCR guarantees the right of every person to engage in a work he/she freely chooses.⁶⁸ It further requires contracting parties to take necessary steps including “technical and vocational guidance and training programmes, policies, and techniques” to protect the right.⁶⁹ Thus, both of the instruments recognize the right to work to all individuals including persons with disabilities. The CRPD provides for the right to work and employment of persons with disabilities under article 27. The provision prohibits discrimination in employment based on disability and requires state parties to provide reasonable accommodation in the workplace to persons with disabilities.⁷⁰ Access to copyright works in an accessible format is crucial to seek employment or to improve one’s working condition. However, it is worth noting that despite the recognition of the right to work of persons with disabilities in the above human rights instruments, without access to copyrighted works, print-disabled persons will not attain the requisite skills and qualifications to access employment in the open labor market. Accordingly, lack of access to copyright works violates print-disabled persons’ right to work in an open and inclusive labor market.

2. General Overview of the Marrakesh Treaty

The struggle to eliminate the lack of access to copyrighted material by print-disabled persons has been ongoing for many years.⁷¹ In 1985, the World Intellectual Property Organization (WIPO) conducted a study on copyright problems and came up with a recommendation for the adoption of an international instrument to address the issue of access to copyrighted materials

⁶⁷ UDHR, Art. 27.

⁶⁸ ICESCR, Art. 6/1.

⁶⁹ *Id.*, Art. 6/2.

⁷⁰ CRPD, Art. 27.

⁷¹ Olga Bezbozhna, *The Marrakesh Treaty for Persons with Visual Impairment: The Intersection between Copy Right and Human Rights*, Master Thesis, Lund University Faculty of Law, (2014), p.1.

by print-disabled persons.⁷² A representative from Chile demanded the inclusion of exceptions and limitations to copyright and related rights in the agenda of the Standing Committee on Copyright and Related Rights (SCCR) in 2004.⁷³ The request was accepted and the following sessions were partly dedicated to the discussion of copyright limitations and exceptions for education, libraries, and persons with disabilities.⁷⁴

Besides, in 2007, WIPO conducted another study and considered the situation of copyright limitations and exceptions in many countries.⁷⁵ The study affirmed earlier research findings concerning the lack of access to copyright materials to print-disabilities. Afterward, in 2009, Brazil, Ecuador, and Paraguay, along with the World Blind Union, formally introduced a treaty proposal.⁷⁶ The proposed treaty was seen as an example of addressing other issues presented at the initial proposal of Chile.⁷⁷ Later, in 2013, after extensive dialogues and debates, it resulted in the adoption of the Marrakesh Treaty under the auspices of WIPO.⁷⁸ The purpose of the Treaty is to improve access to copyrighted works of print-disabled persons via copyright limitations and exceptions and thereby removing the book famine.⁷⁹ As it is clearly stated in the preamble, the Treaty recalls the principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society as proclaimed in UDHR and CRPD.⁸⁰ The policy objective of the Treaty is, therefore, to craft a legal system in which print-disabled persons could have equal rights and protection on an equal footing with others.

Moreover, the Treaty attempts to provide the definitions of different terms on its definitional part which have paramount importance to appreciate the scope of the application and beneficiaries of the Treaty. By defining such terms, the Treaty specifically tries to clarify: who intended to enjoy the copyright limitations and exceptions outlined in the Treaty (the beneficiary person); what works are subject to the copyright exceptions and limitations provided in the Treaty (the works); in what formats such works can be adapted (accessible

⁷² Ayoubi, *supra* note 4, (2015), p. 146.

⁷³ *Id.*

⁷⁴ *Id.*, p. 147.

⁷⁵ Judith Sullivan, Study on Copyright Limitations and Exceptions for the Visually Impaired, (2007) available at https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696 accessed on May 26.

⁷⁶ Baker, *supra* note 1, P. 2.

⁷⁷ Ayoubi, *supra* note 4, (2015) P. 147.

⁷⁸ Lida Ayoubi, Human Rights Principles in the WIPO Marrakesh Treaty: Driving Change in Copyright Law from within, *Queen Mary Journal of Intellectual Property*, (2019), P. 2.

⁷⁹ Marrakesh Treaty, Preamble, Para. 12.

⁸⁰ *Id.*

formats); and who are allowed to assist a beneficiary person to access the accessible format of a copyrighted work (authorized entity). The Treaty defines the term 'beneficiary person' as:

*a person who is blind; has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability, and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities.*⁸¹

The Treaty adopted a broad definition of the 'beneficiary person', taking into account a wider range of difficulties that people may experience when they wish to access information and could be more helpful to people with any disability.⁸² This definition helps us to determine the beneficiaries of the accessible format of a copyrighted work. Although the focus of the Treaty is people with print disabilities, it does not prevent the adoption of copyright exceptions for the benefit of people with other disabilities.⁸³

The Treaty also defines works covered in it as, "literary and artistic works in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media."⁸⁴ This form may cover text-based works and notations such as books, e-books, audiobooks, newspapers, journals, and musical scores, as well as related illustrations and images.⁸⁵ Although the definition in the Treaty includes textual works embedded in audiovisual works such as educational multimedia DVDs and Audio-visual, works such as films are not covered.⁸⁶

Moreover, the Treaty provides the meaning of the term 'accessible format

⁸¹ *Id.*, Art. 3.

⁸² Ti-Li Chen, Copyright Exceptions for Visually Impaired Persons: The WIPO Treaty to Facilitate Access to Published Works by Visually Impaired Persons, The Master thesis, Centre for Commercial Law Studies (CCLS) Queen Mary, University of London, (2019), p. 35.

⁸³ Marrakesh Treaty, Art.12 (2).

⁸⁴ *Id.*, Art. 2(a).

⁸⁵ Jessica Coates et al, Getting Started: Implementing the Marrakesh Treaty for Persons with Print Disabilities: A Practical Guide for Librarian, (2018), p 10.

⁸⁶ Carlo Scollo Lavizzari, A WIPO Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, A Guide for Publishers and their Trade Association in Membership with the IPA, (2013), p. 13.

copy’ as a copy of a work in a form that gives the beneficiary “access as feasibly and comfortably as a person without visual impairment or other print disability.”⁸⁷ Accordingly, the term ‘accessible format copy’ means any work reproduced in an alternative manner or form that beneficiaries can acquaint with themselves. For example, “braille code, enlarged print, electronic and aural versions of a book can be cited as an accessible format copy.”⁸⁸ The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons.⁸⁹

Fortunately, the Marrakesh Treaty is aware of the vital role that governmental and non-governmental organizations could play in providing persons with print disabilities with access to accessible format copies. Accordingly, the Treaty allows these organizations, authorized entities, to perform certain acts, otherwise prohibited under copyright law, to assist print-disabled persons. Specifically, the Treaty defines an ‘authorized entity’ as:

*an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis and also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.*⁹⁰

According to the definition in the Treaty, ‘authorized entities’ are supposed to follow some conditions concerning the use of the work. For example, they need to make sure that only those individuals considered as beneficiaries enjoy access to alternative format copies.⁹¹ Furthermore, the Treaty does not entail an organization to satisfy any formalities or undertake specific procedures to achieve recognition as an authorized entity. However, the Treaty does not bar such measures and thus gives member states the leeway to create such procedures at the national level.

⁸⁷ Marrakesh Treaty, Art. 2 (b).

⁸⁸ Prawnicze Białostockie, The New Provisions on Access to Protected Works for Visually Impaired Persons - One Small Step for Copyright, One Giant Leap for People With Disabilities, (2018), p. 162.

⁸⁹ Marrakesh Treaty, Art. 2 (b).

⁹⁰ *Id.*, Art. 2(c).

⁹¹ *Id.*, Art. 2(c).

2.1. Major Obligations of Contracting Parties of the Marrakesh Treaty

2.1.1. Obligation to Provide Copyright Limitations and Exceptions for Print-Disabled Persons in the National Copyright Law

The central obligation of contracting parties in the Marrakesh Treaty is to provide limitations or exceptions⁹² for the exclusive economic right of the owner for print-disabled persons in their national copyright law.⁹³ The Treaty calls for contracting parties to incorporate exceptions or limitations for print-disabled persons in their domestic copyright law so that they can access an accessible format of a copyrighted work even against the will of the owner. Particularly, it obliges ratifying states to include in their copyright law limitations or exceptions to the owner's right of reproduction, distribution, and the right to make available to the public.⁹⁴ In principle, the owner obtains an exclusive economic right including reproduction, adaptation, distribution, and public performance right among others.⁹⁵ The right of reproduction denotes the right to copy the whole or substantial part of the work in any form or manner including scanning, photocopying, and audio taping.⁹⁶ The owner's right of adaptation signifies the right to prepare derivative works from the preexisting copyrighted works.⁹⁷ Adaptation right includes "translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted."⁹⁸ The right of distribution and public performance refers to the owner's right to spread or distribute the work in the market, and broadcast or communicate to the public at large respectively.⁹⁹ Unless the owner authorizes, no one can exercise these rights over the copyrighted work.

⁹² The distinction between 'limitations' and 'exceptions' is "somewhat murky and the two terms are often used interchangeably. 'Exceptions' are probably best understood as outright exemptions from copyright liability. 'Limitations' is a term that includes compulsory or statutory licenses creating a liability rule, so that acts are permissible but subject to an obligation to pay for the use." (Samuelson, Justifications for Copyright Limitations and Exceptions, in Ruth L. Okediji (Ed.), *Copyright Law in an Age of Limitations and Exceptions*, (pp. 12-59), 1st ed., Cambridge University Press, (2017), p. 12.

⁹³ Laurence R. Helfer et al, *Facilitating Access to Books for Print-Disabled Individuals*, The World Blind Union Guide to the Marrakesh Treaty, (2016), p. 103.

⁹⁴ Marrakesh Treaty, Art. 4/1.

⁹⁵ Anjaneya Reddy NM and Lalitha Aswath, Understanding Copyright Laws: Infringement, Protection, and Exceptions, *International Journal of Research in Library Science*, Vol.2, No. 1, (2016), pp. 48-53, p. 49.

⁹⁶ Stim Richard, *Copyright Law*, 1st ed., Delmar Health Care Publishing, (2000), P. 42.

⁹⁷ *Id.*, P. 42.

⁹⁸ *Id.*, P. 27.

⁹⁹ *Id.*, P. 42-43.

The Marrakesh Treaty, however, mandatorily requires contracting states to limit the rights of the owner by domestic national copyright law for the benefit of print-disabled persons. It specifically requires contracting parties to:

*provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitations or exceptions provided in national law should permit changes needed to make the work accessible in an alternative format.*¹⁰⁰

The Treaty also praises states to adopt voluntary limitations or exceptions for print-disabled persons on the owner's right of public performance. It, however, doesn't stipulate mandatory rules regarding what the exceptions and limitations that a national copyright law incorporates should look like.¹⁰¹ The Treaty simply recommends two ways of limiting the exclusive economic right of the owner in favor of print-disabled persons. The first way is contracting parties can provide the copyright limitation or exception in their domestic law by empowering authorized entities to:

*make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to the beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps "...".*¹⁰²

The Treaty reminds contracting states to realize the rights of print-disabled persons by permitting authorized entities that work on the area to reproduce, adapt, and distribute the copyrighted work for the benefit of print-disabled persons without the authorization of the owner. By allowing authorized entities to make necessary modifications of the work to make an accessible format to print-disabled person, to convey or obtain such accessible format to or from other authorized entity in domestic or abroad, and distribute it to the beneficiaries; a country can implement its obligation to incorporate limitations

¹⁰⁰ Marrakesh Treaty, Art. 4/1.

¹⁰¹ International Publishers Association, *A WIPO Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities*, IPA Guide to the Marrakesh Treaty, (2013), p. 20.

¹⁰² Marrakesh Treaty, Art. 4/2 (b).

or exceptions in its domestic copyright law. This permission, however, may be awarded only upon the fulfillment of some major conditions stated in the Treaty. These are: the authorized entity must have lawful access to the original work or copy of the work, the change to the work does not modify the work other than the change needed to make the work in an accessible format, the changed accessible format is exclusively distributed to the allowed beneficiaries, and the activities are made on a non-profit basis.¹⁰³ The copyright exceptions or limitations can also be made by permitting to:

*[a] beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, [to] make an accessible format copy of a work for the personal use of the beneficiary person or otherwise [to] assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.*¹⁰⁴

Once the domestic law entitles the beneficiary or their representatives such as caretakers and caregivers to make the accessible format of the work without the authorization of the right holder, print-disabled persons will have access to the copyrighted works. Nonetheless, to make an accessible copy of the work, the beneficiary person should obtain the work lawfully. By doing so, contracting states can realize the human rights of print-disabled persons, including the right to education, cultural rights, the right to develop, and the right to get knowledge.

Besides, the Treaty allows contracting parties to adopt their ways of copyright limitation or exceptions, so long as it enables print-disabled persons to access published works.¹⁰⁵ Contracting parties are free to apply their methods of copyright limitations or exceptions or those methods specified in the Treaty or a combination of the two.¹⁰⁶ What matters is the effect of the copyright limitation or exception making copyrighted works accessible to print-disabled persons; the method of copyright limitations or exceptions doesn't matter. They can use judicial, administrative, or regulatory methods of determinations of copyright limitations or exceptions.¹⁰⁷ Contracting parties, nevertheless, may come up with their conditions for a beneficiary to exercise the limitations or exceptions provided in the national law. The Treaty, for example, leaves for the contracting

¹⁰³ *Id.*, Art. 4/2(a).

¹⁰⁴ *Id.*, Art. 4/2(b).

¹⁰⁵ *Id.*, Art. 4/3.

¹⁰⁶ *Id.*, Art. 4/3 & 10/3.

¹⁰⁷ *Id.*, Art. 10/3.

states to adopt a commercial availability test in their domestic copyright law.¹⁰⁸ The only duty is to notify other contracting states of the adoption of such a requirement in the domestic copyright law.¹⁰⁹ The commercial availability test means that changing the work into accessible formats and distributing it is allowed only when a beneficiary is unable to get the accessible format with reasonable terms in the market.¹¹⁰ It is possible only when the work is not available in the market in an accessible format or reasonable price. As of October 30, 2019, only three countries namely Argentina, Japan, and Canada have adopted the commercially available test in their national copyright law.¹¹¹ Moreover, the Treaty gives contracting parties discretion to determine in their domestic law whether the beneficiary should get the accessible format for free or upon paying remuneration.¹¹² It is optional for state parties to require beneficiaries or authorized entities to pay royalty or license fees to the owner to reproduce, adapt, distribute, or make available in an accessible format.¹¹³ This requirement, however, is criticized as complex and challenging for developing and least developed countries.¹¹⁴

2.1.2. Obligation to Provide Exception to Anti-Circumvention Laws

To prevent the infringement of their copyright, it is common that the right holders of a copyrighted work to apply technological protective measures (hereinafter TPMs).¹¹⁵ Right holders or publishers may use TPMs to protect their work from unauthorized access.¹¹⁶ Mostly, publishers are reluctant to make available copyrighted publications in accessible electronic form fearing that they

¹⁰⁸ *Id.*, Art. 4/4.

¹⁰⁹ Caroline B. Ncube et al, Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-Enabling Provisions for Person with Disabilities, *The Journal of World Intellectual Property*, (2020), pp. 1-17, p. 8.

¹¹⁰ Jingyi Li and Niloufer Selvadurai, Facilitating Access to Published Works for Persons with a Print Disability: Amending Australian Copyright Laws to Ensure Compliance with the Marrakesh Treat, *Monash University Law Review*, Vol. 43, No. 3, P. 623.

¹¹¹ Ncube et al, *supra* note 109, p. 8.

¹¹² Marrakesh Treaty, Art. 4/5.

¹¹³ Helfer et al, *supra* note 93, (2016), p.123.

¹¹⁴ Ncube et al, *supra* note 109, p.8.

¹¹⁵ Urs Gasser, Legal Frameworks and Technological Protection of Digital Content: Moving Forward towards a Best Practice Model, Fordham Intellectual Property, *Media and Entertainment Law Journal*, vol.,17, No.,1, (2006), PP. 40-113, p. 4. Available at <https://dash.harvard.edu/bitstream/handle/1/13548615/World%20Anti-Circumvention%20Legislation.pdf;jsessionid=89179CC03B78EA449E96FA4CB21216A3?sequence=1> accessed on July 10/2020.

¹¹⁶ Jerry Jie Hua, Implementation of the Marrakesh Treaty for Visually Impaired Persons into the Chinese Copyright Law, *China, and WTO Review*, p.9.

may lose their commercial income.¹¹⁷ The TPMs could be disabling the pdf reader, making the e-books non-downloadable, making digitalized works non-accessible, and inhibiting copying the material even after lawful access.¹¹⁸ Such means of protecting the copyright are recognized under the domestic and international copyright laws.¹¹⁹ For example, the WIPO copyright Treaty demands contracting states to provide sufficient protection and to give appropriate remedies against the circumvention of the copyright of right holders.¹²⁰ Such TPMs, however, have negative externality on the rights of print-disabled persons. Even if, the primary mission of TPMs is to protect the rights of the owners, incidentally, it may hinder print-disabled persons to access the work.

To avoid such a problem, the Marrakesh Treaty requires the contracting parties to ensure that their anti-circumvention law “does not prevent [print-disabled persons] from enjoying the limitations and exceptions provided for in the Treaty.”¹²¹ The anti-circumvention law of contracting states shall not apply to the reproduction, adaptation, distribution, and making available for the benefit of print-disabled persons if conditions for the limitations or exceptions meet. To state it otherwise, circumvention is allowed if it is for the benefit of print-disabled persons. Here, the term circumvention is used to refer to “avoiding, bypassing, removing, deactivating, or impairing a technological measure.”¹²² This provision can be implemented in two ways. First, it can be enforced by giving authorized entities to circumvent technologically protected works without the authorization of the right holder.¹²³ Second, it can be enforced by empowering the authorized entities to ask the owner to make his work without TPMs.¹²⁴ Authorized entities, however, could adopt anti-circumvention TPMs once they reproduce, distribute, or make available to the beneficiaries.¹²⁵ This is to limit the chance of reproduction by other non-print-disabled persons.

¹¹⁷ Samuel Macharia et al, *Exploiting the Marrakesh Treaty to Obviate Copyright-Related Challenges on Access to Information by Visually Impaired People in Academic Libraries*, Library Management, Emerad Publishing, (2020), p. 6.

¹¹⁸ International Publishers Association, *supra* note 101, p.25.

¹¹⁹ Diplomatic Conference for Visual Impaired Persons, Marrakesh Treaty Implementation Guide South Africa, Briefing Paper Version 2, (2015), p.11.

¹²⁰ WIPO Copyright Treaty, World Intellectual Property Organization, Treaty series(1996), Vol. 226, Art.11.

¹²¹ Marrakesh Treaty, Art. 7.

¹²² Jingyi Li, Facilitating Access to Digital Content for the Print-Disabled: The Need to Expand Exemptions Copyright Laws, *Intellectual Property Journal*, Vol. 27, (2015), PP. 356-384, P.366.

¹²³ Chen, *supra* note 82, p. 84.

¹²⁴ *Id.*

¹²⁵ International Publishers Association, *supra* note 101, p.25.

2.1.3. Obligation to Cooperate to Facilitate Cross-Border Exchange

The mere recognition of the possibility of transforming the copyrighted work, without the authorization of the owner, into an accessible format is not sufficient to realize the rights of print-disabled persons. The process of changing the work into an accessible format is expensive.¹²⁶ Print-disabled persons may not afford to cover the cost to be incurred in changing copyrighted works into an accessible format or they may not have access to technologies at all. Even it is very costly and challenging for authorized entities to convert the format let alone for print-disabled persons. Especially, this problem is common in developing countries where most people live under the poverty line. To curtail the problem, the Treaty imposes an obligation on contracting parties to allow and facilitate the exportation and importation of the accessible format for the exclusive benefit of beneficiaries_print-disabled persons.¹²⁷ It requires the domestic copyright law exceptions or limitations of contracting states to allow the distribution or making available the accessible format by an “authorized entity to a beneficiary person or an authorized entity in another contracting party.”¹²⁸ The Treaty, however, allows the exportation of accessible formats of a copyrighted work only by authorized entities; beneficiary persons can’t do that.¹²⁹

Contracting parties can use their ways of fulfilling this obligation. The Treaty shows a non-mandatory way of implementing this obligation. It recommends that contracting parties can implement this obligation by permitting authorized entities in their jurisdiction to distribute and make available for the exclusive use of the beneficiary in another contracting country through the authorized entity of another contracting party or directly to the beneficiary.¹³⁰ Additionally, the Treaty makes it mandatory for contracting parties to allow beneficiaries, their agents, or authorized entities to import accessible formats, to the extent of exceptions or limitations in the national domestic law, from another jurisdiction without the permission of the right holder.¹³¹ Furthermore, contracting parties are obligated to share information so that authorized entities can be known to each other.¹³² By allowing the cross-border exchange of accessible formats, the Treaty endeavors to deal with the following problems. First, it aims to rectify the

¹²⁶ Marketa Trimble, *The Marrakesh Puzzle*, University of Nevada, Las Vegas -- William S. Boyd School of Law, Vol. 4, (2014), p.9.

¹²⁷ Marrakesh Treaty, Art. 5/1 & 6.

¹²⁸ *Id.*, Art. 5/1.

¹²⁹ Bezbozhna, *supra* note 71, P. 36.

¹³⁰ Marrakesh Treaty, Art. 5/2.

¹³¹ *Id.*, Art. 6.

¹³² *Id.*, Art. 9.

problems of the inaccessibility of the accessible formats to print-disabled persons in countries of poor technology and finance.¹³³ If a country ratifies the Treaty, print-disabled persons of that country can easily access relevant copies from foreign countries.¹³⁴ Second, the Treaty strives to share its benefits with all countries regardless of socioeconomic development differences.¹³⁵ By doing so, the Treaty tries to avoid “inefficiency and duplication of investment in the production of accessible formats.”¹³⁶ It avoids the problem of replication of changing the work into accessible forms in different countries and authorized entities.

2.1.4. Obligation to Respect the Privacy of Beneficiaries

In addition to the aforementioned obligations, the Treaty imposed on the state parties to respect the privacy of the beneficiary person. It compels state parties to “protect the privacy of beneficiary persons on an equal basis with others” in implementing the exceptions and limitations.¹³⁷ While distributing or making available the copyrighted works to print-disabled persons, there may be a record of the identity or other profiles of the beneficiary. This may be performed to ensure that the work is handed out exclusively for beneficiary persons. In such a case, the contracting parties shall endeavor to protect the privacy of beneficiaries.

3. The Legal and Policy Frameworks for Print-Disabled Persons in Ethiopia

In Ethiopia, there is no specific law or policy designed to address the issue of access to copyrighted works for print-disabled persons. Although there are laws and policies, to a limited extent cater to persons with disabilities, they are not designed to address the issue of access to published works to print-disabled persons in a specific manner. Yet, one can argue for the recognition of print-disabled persons' right to access to copyrighted work by interpreting the policy and legal regime that applies to all disabled persons, or persons in general. For example, the FDRE constitution, under its non-discrimination clause, prohibits all forms of discrimination on the enjoyment of human rights on grounds of

¹³³ Helfer *et al*, *supra* note 93, (2016), p.131.

¹³⁴ Bram Van Wiele, The Ratification and Implementation of the Marrakesh Treaty: A Look at the Future of South African Copyright Law, Master's Thesis, University of Cape Town Faculty of Law School for Advanced Legal Studies, (2014), P.26.

¹³⁵ Helfer *et al*, *supra* note 93, (2016), p.131.

¹³⁶ *Id.*, p.132.

¹³⁷ Marrakesh Treaty, Art. 8.

“race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth, or other status.”¹³⁸ Although the provision failed to prohibit discrimination on the ground of print disability, they can be benefited from this article based on the emerging interpretation of the phrase ‘other status’ under the international human rights law. Based on this provision, one can argue that it is discriminatory when print-disabled persons are unable to access copyrighted works due to their disability. Besides, the FDRE constitution, as explained before, entitles every individual’s right to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any media of his choice.”¹³⁹ Hence, print-disabled persons can exercise this right only when they have access to the accessible format of copyrighted works. Thus, though the constitution lacks a direct stipulation as to print-disabled persons’ right to access copyrighted work, still, one can argue by interpreting such provisions.

Looking into other laws of the country, we will find a very important proclamation specifically designed to guarantee the rights of persons with disabilities in the employment sphere. It is the proclamation concerning the rights to employment for persons with disabilities, Proclamation No.568/2008.¹⁴⁰ This Proclamation plays a significant role in shaping the societies’ perception of disability. A close reading of the preamble of the Proclamation shows that the law is aimed at changing negative societal attitudes towards disability including print disabilities.¹⁴¹ Moreover, it makes laws, practices, customs, attitudes, and other discriminatory situations that limit equal opportunities for PWDs null and void¹⁴². Therefore, though the Proclamation lacks stipulation about the accessibility of copyrighted works for print-disabled persons, it indirectly addresses it by prohibiting discrimination that could limit the equal opportunity of persons with disabilities. This is because access to copyright works is crucial to realize the right to employment of print-disabled persons.

Besides, persons with disabilities are given due emphasis on the Second National Action Plan (2016-2020) on human rights.¹⁴³ This plan of action

¹³⁸ FDRE Constitution, Art. 25.

¹³⁹ *Id.*, Art. 19/2.

¹⁴⁰ Right to Employment of Persons with Disability Proclamation, Proclamation No. 568/2008, *Federal Negarit Gazette*, (2008).

¹⁴¹ *Id.*, Preamble, Para. 1.

¹⁴² *Id.*, Art. 5/1.

¹⁴³ The Federal Democratic Republic of Ethiopia, the Second National Plan of Action on Human Rights 2016-2020, p.165-172.

highlights several undertakings that need to be done to ensure the rights of PWDs including “accessibility, inclusive education, assistive devices, awareness-raising and mainstreaming of disability issues in curriculum of higher education institutions, particularly curriculum of legal education”.¹⁴⁴ Since inclusive education would be ineffective without access to copyrighted works tailored to the particular needs of PWDs, it is possible to argue that the action plan indirectly demands the accessibility of copyrighted materials for print-disabled persons. Furthermore, the National Action Plan (2012-2021) for persons with disabilities is adapted to enhance the promotion and protection of the rights of PWDs in Ethiopia. This action plan declares the aspiration of creating conditions that enable PWDs to full inclusion in society.¹⁴⁵ Particularly, it emphasizes that it was prepared to promote, protect, and ensure the full and equal enjoyment of fundamental rights, public services, opportunities for education and work, and the full participation in family, community, and national life by all PWDs in Ethiopia.¹⁴⁶ Generally, the action plan is designed to remove barriers to equality of opportunity and to bring the full participation of PWDs into society.¹⁴⁷ The National Plan of Action outlines thirteen specific priorities for action including education and training, culture, sport and recreation, and research and information. Therefore, we can observe that, in one way or the other, the issue of access to copyrighted works of print-disabled persons is addressed.

Exploring the education policy of the country, although there is education and training policy document adopted in 1994, except section 2.2.3, it does not make an explicit reference to the education needs of PWDs. In the referred section, the policy states that one of the specific objectives is “to enable both the handicapped and the gifted learn in accordance with their potential and needs.”¹⁴⁸ Still, this policy is criticized for lack of accuracy and detail.¹⁴⁹ Besides, when we look at the national ICT Policy, one of its guiding principles ensuring unhindered access to ICT for persons with disabilities.¹⁵⁰ The policy also affirms that special training programs shall be developed for PWDs to

¹⁴⁴ *Id.*

¹⁴⁵ The Federal Democratic Republic of Ethiopia Ministry of Labor and Social Affairs (MOLSA), The National Plan of Action of Persons With Disabilities (2012-2021), p.13.

¹⁴⁶ *Id.*, p.11.

¹⁴⁷ *Id.*

¹⁴⁸ The Federal Democratic Republic of Ethiopia, Ministry of Education, Education and Training Policy, 1st ed., (1994), Section 2.1.3.

¹⁴⁹ Sunayna Bahadoer et al, Mainstreaming Disability: Literature Study on the Laws and Policies Regarding the Rights of PWDs in Ethiopia, India, and Kenya, p. 45.

¹⁵⁰ The Federal Democratic Republic of Ethiopia, The National Information and Communication Technology Policy and Strategy, (2009), p.4.

address social inequalities.¹⁵¹ Thus, it is possible to say that the ICT policy is disability, friendly. More importantly, the tax law of the country attempts to facilitate the accessibility of an accessible format of a published work for print-disabled persons by exempting the “import and supplies of talking books (in cassettes or other forms of recording) specifically designed for the blind or severely handicapped” from VAT payment.¹⁵² By and large, although the issue of access to published works for print-disabled persons is not addressed directly in the Ethiopian legal system, it is possible to conclude that it is guaranteed indirectly under the FDRE Constitution and other relevant national laws and policies.

3.1. Analysis of the Ethiopian Copyright Law in Light of the Marrakesh Treaty

Copyright law, in principle, grants some exclusive economic rights to the owner intending to encourage further innovation.¹⁵³ The copyright law of many countries bestows an exclusive right to reproduction, adaptation, distribution, public performance, and display to the owner of the work.¹⁵⁴ Similarly, the Ethiopian Copyright Proclamation gives some exclusive economic rights to owners of a copyrighted work. It confers the owner of a work an exclusive economic rights of reproduction, translation, adaptation, arrangement or other transformation of the work, distribution, importation of original or copies of the work, public display of the original or a copy of the work, the performance of the work, broadcasting of the work and other communication of the work to the public.¹⁵⁵

Nonetheless, the Proclamation lays down some general exceptions and limitations to the exclusive economic rights of the owner of copyright intending to balance the interests of the public and the right holder.¹⁵⁶ It fails, however, to provide special copyright exceptions and limitations for print-disable persons.

¹⁵¹ *Id.*, p.16.

¹⁵² Council of Minister, Value Added Tax Regulation, Regulation No. 79/2002, (2002), Art. 33.

¹⁵³ The USA Department of Commerce Internet Policy Task Force, Copyright Policy, Creativity, and Innovation in the Digital Economy, (2013), P.5 available at <https://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf> accessed on June 12/2020.

¹⁵⁴ Teklu Hunde, Protection and Enforcement of Public Performance Right Under Ethiopian Law, LL.M Thesis, College of Law and Governance Studies, Addis Ababa University, (2013), p. 4 available at <http://etd.aau.edu.et/bitstream/handle/123456789/19210/Teklu%20Hunde.pdf?sequence=1&isAllowed=y> accessed on June 12/2020.

¹⁵⁵ Copyright and Neighbouring Rights Protection, Proclamation No. 410/2004, *Federal Negarit Gazette*, (2004), art. 7 (hereinafter, Proclamation No. 410/2004).

¹⁵⁶ *Id.*, Art. 9-19.

Though the existing copyright law fails to have special provisions for print-disabled persons, they are still beneficiaries of the general exceptions and limitations designed for every individual in general. It is not, however, clear whether these general exceptions and limitations of copyright are adequate to implement the obligations in the Marrakesh Treaty in Ethiopia, and in particular, to attain the interests of print-disabled persons recognized in the Treaty. The aim of this section is, therefore, to entertain these exceptions and limitations whether they are appropriate to realize the rights of print-disabled persons in the Marrakesh Treaty or not.

3.1.1. Copyright Limitations and Exceptions in the Ethiopian Copyright Law

3.1.1.1. Reproduction for Personal Purposes

As indicated above, in principle, the Ethiopian copyright law grants, among others, an exclusive economic right of reproduction to the owner of the work. Despite this, the Proclamation attempts to protect the interests of the public by limiting the exclusive economic right of the owner by providing exceptions and limitations. Among others, it allows a “private reproduction of a published work in a single copy by a physical person exclusively for his own personal purpose.”¹⁵⁷ Accordingly, a person can reproduce the published work without the authorization of the owner if it is exclusively for his benefit. Here, reproduction refers to ‘the making of one or more copies of a work or sound recording in any manner or form, including any permanent or temporary storage of work or sound recording in electronic form.’¹⁵⁸ Using this exception, readers, researchers, scholars, and any other persons can access information and knowledge by reproducing the published work without the consent of the owner.

This exception doesn’t, however, fully address the special needs of print-disabled persons. According to this exception, the reproduction is required to be made by the beneficiary himself. The expression “by a physical person exclusively for his own personal purpose” clearly shows that the reproduction should be made by the beneficiary himself. It does not warrant the reproduction of the published work for personal use by a third party. Nevertheless, in some cases, a print-disabled person may not be able to reproduce the work in his capacity. For example, he may be accompanied by other physical disabilities,

¹⁵⁷ *Id.*, Art. 7/1.

¹⁵⁸ *Id.*, Art. 2/25.

due to which he will not be able to reproduce the work by himself or he may not afford to cover the cost of reproduction. In such cases, a print-disabled person may need another third party who can support him in reproducing the work for his personal use. To avoid such a problem, the Treaty recommends for, though it is not mandatory, contracting parties to implement the rights of the print-disabled persons by allowing, *inter alia*, the reproduction of the work by their representative including caregivers or caretakers.¹⁵⁹ Hence, to realize a print-disabled person's right to access knowledge and information, the Ethiopian copyright law shall allow a representative of print-disabled persons to reproduce the work for the print-disabled persons.

Moreover, this exception is allowed only for physical persons. Nevertheless, since the reproduction, changing the work into an accessible format, is very expensive, individuals may not afford it. This problem can be alleviated by allowing non-profit organizations that are working on a print-disabled person to reproduce the published work. In addition to reproduction, legal persons shall also be allowed to distribute and make available the work to the beneficiaries. By doing so, print-disabled persons will be able to have access to the accessible format of the copyrighted work. Furthermore, the Proclamation allows only reproduction of the work; it doesn't permit, for example, the adaptation of a work without the authorization of the owner. However, in most cases, to make published works accessible to print-disabled persons, the reproduction may not be sufficient; rather, it requires adaptation of a work.¹⁶⁰ As it is defined earlier, reproduction allows only the making of one or more copies of a work in any manner or form. That is, reproduction will not allow, for example, modifying the copyrighted work to make it accessible to print-disabled persons. In certain cases, however, to change the work into an accessible format, it may become necessary to translate, dramatize, fictionalize, motion picture version, sound recording, abridgment, or condensation. Even the Treaty calls for contracting parties to allow in their copyright law exceptions and limitation the "changes needed to make the work accessible in the alternative format" _the adaptation of the work.¹⁶¹ Therefore, as the reproduction exception may not be adequate to realize the rights of the print-disabled persons, an adaptation of the work shall also be recognized as an exemption to the exclusive economic right of the owner.

¹⁵⁹ *Id.*, Art. 4/2 (b).

¹⁶⁰ Wiele, *supra* note 134, P.38.

¹⁶¹ Marrakesh Treaty, Art. 1/a.

3.1.1.2. Reproduction for Teaching Purpose

Intending to encourage education, the Proclamation allows the reproduction of a published work or sound recording by any person for teaching purposes.¹⁶² The owner can't inhibit the reproduction of the work for teaching purposes unless the reproduction surpasses the fair practice and the extent justified by the purpose.¹⁶³ This exception is very decisive to facilitate the accessibility of academic copyrighted works for teaching and scientific discourses. It helps to attain the individuals' right to education, right to access to information, right to employment, right to culture and scientific progress, right to read, right to development, freedom of expression, and other related rights. A person can also reproduce the work for the benefit of print-disabled persons, to teach them. This exception is, however, limited only for teaching purposes. Through this exception, one can't reproduce a work for leisure or any purpose other than teaching. A person can't reproduce a work to enable print-disabled persons to read non-academic materials, for example. Moreover, this exception is limited to the reproduction of the work; it doesn't state anything about an adaptation of a work. As mentioned above, adaptation is inevitable to make copyrighted works accessible to print-disabled persons. A teacher, for example, shall be allowed to adapt the copyrighted work so that print-disabled persons can access the accessible format of the work. Therefore, the Proclamation needs to allow, first, the reproduction of any materials, regardless of its purpose, so long as it is made for the exclusive benefit of the print-disabled persons. Second, this exception shall even be extended to the extent of adaptation of the work even for teaching.

3.1.1.3. Reproduction by Libraries, Archives, and Other Similar Institutions

The other pertinent copyright exception recognized in the Ethiopian copyright law is a reproduction by libraries, archives, and other similar institutions. The Proclamation permits "a reproduction of a work by a library, archive, memorial hall, museum, or similar institutions whose activity directly or indirectly is not for gain."¹⁶⁴ This exception is not without prerequisites. A reproduction of a work by a library, archive, memorial hall, museum, or similar institutions is allowed provided that, among others:

¹⁶² Proclamation No. 410/2004, Art. 1.

¹⁶³ *Id.*, Art. 11.

¹⁶⁴ *Id.*, Art. 12/1.

a) The copy will be used solely for study, scholarship, or private research,¹⁶⁵ b) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasion¹⁶⁶ and c) there is no available administrative organization which the educational institution is aware of, which can afford a collective license of reproduction.¹⁶⁷

This exception is allowed if it is:

a) to preserve and, if necessary to replace a copy or a copy which has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive, b) where it is impossible to obtain a copy under reasonable conditions, and c) the act of reproduction is an isolated one occurring and if repeated on separate and unrelated occasions.¹⁶⁸

When we examine this exception from the perspective of print-disabled persons' interest, it has some shortcomings. Firstly, the exception granted for these institutions is limited to the reproduction of the copyrighted work; it doesn't allow the adaptation and distribution of the copyrighted work. Reproduction may not be adequate to make materials accessible to print-disabled persons. Some print-disabled persons may demand beyond reproduction including adaptation. To make materials accessible to print-disabled persons, these institutions shall be allowed to make 'necessary changes,' adaptation, on the copyrighted work. The exception doesn't also include the distribution of materials to beneficiaries. However, reproduction is meaningless unless the reproduced work is distributed to the beneficiaries, in this case, print-disabled persons. Secondly, this exception is recognized only if it is to study, scholarship, or private research. It seems that these institutions can't reproduce, for example, copyrighted works for leisure purposes through this exception. The restriction of this exception only for study, scholarship, or private research will lessen the print-disabled persons' right to read, right to development, right to access to information, equality, and others.

Thirdly, the exception becomes effective when there is a request only by a physical person.¹⁶⁹ However, to facilitate the accessibility of copyrighted work

¹⁶⁵ *Id.*, Art. 12/2 (a).

¹⁶⁶ *Id.*, Art. 12/2 (b).

¹⁶⁷ *Id.*, Art. 12/2 (c).

¹⁶⁸ *Id.*, Art. 12/3 (a).

¹⁶⁹ *Id.*, Art. 12/2.

to print-disabilities, a legal person that works with persons with disabilities may request these institutions to reproduce provided it doesn't afford to do so. The existing copyright exception doesn't also allow the exchange of materials between or among institutions, what the Treaty calls them authorized entities, working on the print-disabled person. Fourthly, these institutions can reproduce the copyrighted work only when it is impossible to obtain a copy under reasonable conditions. This condition is equivalent to the commercial availability test. Since the Treaty gives the discretion to set the commercial availability test for national copyright laws, national copyright laws of some countries restrict the exceptions and limitations provided in the accessible format of the work available in the market.¹⁷⁰ The problem is, however, print-disabled persons may not afford to buy all copyrighted work, which is available in the market in an accessible format. As a developing country, it is very futile to think that print-disabled persons residing in Ethiopia can afford to buy the accessible formats of copyrighted works that they need to use from the market. Lastly, this exception is applicable only for those institutions working, directly or indirectly, not for gain. Based on this requirement, private universities, schools, and other related institutions can't be beneficiaries of this exception. It means that print-disabled persons who join these institutions can't have access to the accessible format of a published work.

In general, because of the above-mentioned limitations in the existing copyright law of Ethiopia, it can be concluded that Ethiopia lacks preparedness to implement the obligations imposed by the Marrakesh Treaty.

3.1.1.4. Importation and Exportation of the Accessible Format

Concerning cross-border exchange of an accessible format of a copyrighted work, the Ethiopian Copyright law allows the "importation of a copy of a work by a physical person for his own personal purposes."¹⁷¹ Using this exception, a print-disabled person can import a copy of a copyrighted work, without demanding the green light of the right holder, from abroad so long as he is going to use it exclusively for his personal use. This exception is very important for print-disabled persons to access the accessible format of a copyrighted work from abroad. Since Ethiopia lags behind in economic and technological advancement, print-disabled persons may not be able to convert a copyrighted work into accessible formats. Hence, allowing such persons to import from

¹⁷⁰ Bezbozhna, *supra* note 71, P. 33.

¹⁷¹ Proclamation No. 410/2004, Art. 15.

abroad without infringement of copyright is very critical to realize the interests of the print-disabled person in the country.

This exception is, however, inadequate to enforce the Marrakesh Treaty. On the one hand, it allows only the importation of a copy by a physical person for his personal use. It doesn't allow the importation and distribution or make available the copy by institutions. The problem is that physical persons may not be able to import a copy of a work from abroad due to financial problems or other inconveniences. As legal persons are more efficient in terms of finance and facilitation of the importation of copyrighted works from abroad, print-disabled persons can easily access copyrighted works in an accessible format if authorized entities are allowed to import, distribute or make available a copyrighted work from abroad. On the other hand, the existing Proclamation doesn't allow the exportation of copyrighted work from Ethiopia. The Treaty, nevertheless, imposes an obligation to allow and facilitate the exportation of the accessible format in addition to importation.¹⁷² According to the existing copyright law of Ethiopia, an Ethiopian print-disabled person who resides in America, for example, can't import a copy of an Amharic fiction from Ethiopia. This contravenes with the contracting party's obligation in the Marrakesh Treaty, i.e. an obligation to allow the importation and exportation of an accessible format of a copyrighted work for the exclusive benefit of a print-disabled person.

3.1.1.5. Circumvention of Technology Protected Works

As asserted earlier, the Treaty requires contracting parties to provide exceptions to their anti- Circumvention law of technology protected works to enable print-disabled persons to access the accessibility format of copyrighted work.¹⁷³ When we look at the Ethiopian case, there is no legal framework that prohibits the circumvention of technologically protected works.¹⁷⁴ Even no law prescribes a copyright owner to apply technology protection measures to prevent unauthorized access or copy. However, this doesn't mean that the copyright owner of the copyright can't use technical measures to prevent unauthorized access or copying of his work. Nothing prohibits copyright owners in Ethiopia to adopt technology protection measures to protect their rights. Currently, the

¹⁷² Laurence R. Helfer et al, Copyright Exceptions across Borders: Implementing the Marrakesh Treaty, *European Intellectual Property Review*, Vol. 42, No. 5, 2020, P.334.

¹⁷³ Marrakesh Treaty, Art. 7.

¹⁷⁴ Kinfe Micheal Yilma and Halefom Hailu Abraha, The Internet and Ethiopia's IP Law, Internet Governance and Legal Education: An Overview, *Mizan Law Review*, Vol. 9, No.1, (2015), pp. 154-174, p.162.

country is striving to build a digitalized economy, which includes facilitating copyright holders to make their work available digitally. In doing so, it is inevitable that copyright holders to use TPMs to protect their rights over the work. Practically also, innovators start to apply for TPMs to protect their digital copyright.¹⁷⁵

The problem of such measures is, however, it locks the work not to be retrieved by print-disabled persons. It restricts print-disabled persons to read such works and get knowledge, which, in turn, violates their human rights. Technology protection measures may forbid print-disabled persons to be a beneficiary of limitations or exceptions provided by the national copyright law. For example, they can't reproduce the copyrighted work for their personal use. For the same reason, authorized entities that work to facilitate the accessibility of copyrighted work to print-disabled persons can't reproduce, distribute, or make available the work for the exclusive benefit of print-disabled persons. Eventually, this creates difficulty to implement the obligation imposed in the Marrakesh Treaty and thereby to realize the human rights of print-disabled persons. Hence, to comply with the rules of the Marrakesh Treaty, Ethiopia needs to provide an exception to circumvent the technology protected copyrighted work for the benefit of print-disabled persons. Otherwise, it will be naive to think to realize the rights of print-disabled persons through other exceptions without allowing the circumvention of protected works.

3.1.1.6. Mandatory Licensing

The other copyright limitation that the Ethiopian copyright law recognizes to balance the interests of the right holder and the public is mandatory licensing by the Ethiopian Intellectual Property Office (EIPO). The Proclamation authorizes the EIPO to grant a "license to authorize the reproduction or translation or broadcasting of a published work" regardless of the consent of the owner or his heirs for the sake of public interest.¹⁷⁶ As a rule, the right to grant a license to another person, the licensee, is an exclusive economic right of the copyright owner. However, to safeguard the interests of the public, the law tries to strike a balance by applying mandatory licensing to reproduce, translate, or broadcast a copyrighted work. When we appreciate this limitation from the perspective of print-disabled persons, we can argue that it is an essential means to facilitate the

¹⁷⁵ Samuel Samiai Andrews, Globalization, Sovereignty and Ethiopia in the Age of IP Creative Jurisprudence, *The International Journal of Ethiopian Legal Studies*, Vol. 4, No. 1, (2020), p.130.

¹⁷⁶ Proclamation No. 410/2004, Art. 17/1.

accessibility of copyrighted works to the benefit of print-disabled persons. The EIPO may grant a mandatory license to educational institutions, NGOs, or other entities to reproduce, translate, or broadcast works for print-disabled persons. But it has to be noted that the owner of copyright needs to be paid a fair compensation to be determined by a regulation.¹⁷⁷

This limitation, however, has some drawbacks when we appreciate it from the perspective of print-disabled persons. Firstly, it lacks precision when to be exercised. The Proclamation empowers the EIPO to grant a mandatory license when it is for a public purpose. But it is not clear what it means by public purpose. Can, for example, reproduction for the benefit of a single print-disabled person be a public purpose? or what are the standards to say it is for the public purpose? Secondly, this limitation is not an outright limitation. Mandatory licensing becomes effective only when EIPO believes there is a need to apply the mandatory licensing on a specific work. This makes the rights of print-disabled persons to be dependent on the will of the office. It is inconvenient to require a mandatory license to reproduce, translate, or broadcast each copyrighted work for the benefit of a print-disabled person. Thirdly, through this limitation, the EIPO can't license any alteration of work.¹⁷⁸ But, in some cases, some modifications or alterations may be needed to make a work accessible to print-disabled persons. Hence, mandatory licensing is not sufficient to facilitate access to copyrighted works for print-disabled persons.

Conclusion

The corpus of human rights law recognizes several fundamental human rights and principles of print-disabled persons including the right to access to information, the right to read, the right to education, the right to participate in cultural life, the right to enjoy the benefits of scientific progress, and the right to employment. Besides, the equal enjoyment of human rights by print-disabled persons is protected through the principle of non-discrimination and equality under human rights law. Despite this fact, these rights are often violated due to copyright law barriers to access the accessible format of a copyrighted work. Copyright law denies them to access the accessible format of a work by giving the owners an exclusive economic right including the right to reproduction, distribution, adaptation, and making available to the public. To avoid such legal barriers, in June 2013, the international community adopted the Marrakesh

¹⁷⁷ *Id.*, Art. 17/2.

¹⁷⁸ *Id.*, Art. 17/3.

Treaty aiming to facilitate access to the accessible format of a copyrighted work to print-disabled persons. Ethiopia has ratified this Treaty on March 13, 2020. Though Ethiopia ratified the Treaty, it hasn't made any change in its copyright law so far. Hence, this article has made a critical appraisal of the existing Ethiopian copyright law whether it suits to implement the Marrakesh Treaty.

The article concluded that based on the existing national copyright law, Ethiopia couldn't realize the obligations imposed under the Marrakesh Treaty. That is, though the present copyright law provides exceptions or limitations applicable to all persons, including print-disabled persons, they are inadequate to address the special needs of print-disabled persons and thereby to attain the objective of the Treaty. Specifically, some of the current exceptions or limitations are not *per se* they are contingent upon some conditions. For instance, reproduction through mandatory licensing is contingent on the decision of the EIPO. Also, the existing exceptions or limitations do not incorporate all exceptions or limitations that the Treaty requires to be incorporated in the national copyright law. It doesn't, for example, permit the circumvention of technologically protected works, adaptation, and distribution of a published work, the exportation, reproduction, and distribution of a copyrighted work for the benefit of the third person. Moreover, some of the existing exceptions or limitations are restricted to some specified purposes. For example, reproduction by libraries, archives, and other similar institutions is permitted only if it is to study, scholarship, or private research. Because of such limitations in the existing copyright law of Ethiopia, it is hardly possible to facilitate access to published works for persons who are blind, visually impaired, or otherwise print-disabled.

Therefore, to implement the Treaty effectively in the country, Ethiopia needs to amend its copyright law in such a way that accords with the Treaty. The amendment should come up with inclusive copyright law rules that can facilitate the realization of the rights of print-disabled persons. It shall provide exceptions and limitations that can be exercised *per se*, and enable print-disabled persons to have access to the accessible format of copyrighted works.

