



**Ethiopian National
Association of
the Blind**



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POLICY BRIEF

Assessing Copyright Laws of Ethiopia in Light of the Right to Access Literary and Artistic Works by Persons Who Are Visually Impaired

Feteh (Justice) Activity
I N E T H I O P I A

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EXECUTIVE SUMMARY

The *Feteh* (Justice) Activity in Ethiopia is funded by the United States Agency for International Development (USAID) to provide flexible and rapid technical assistance to the Attorney General's Office (AGO), the Federal Supreme Court of Ethiopia (FSCE), appropriate committees in Parliament, and other Ethiopian institutions in the process of legal and judicial reform. This assistance includes making grants to civil society organizations (CSOs) to ensure public input to the proposed changes to Ethiopia's legal and judicial framework. Within this context, this report relates to activity 2.2.1.3 of *Feteh*'s Year 2 Work Plan, pursuant to which *Feteh* supports a local CSO, Ethiopian National Association of the Blind (ENAB) to advocate for legal reform to enhance accessibility of copyright laws and banking services to people with visual impairments.

As part of its efforts to advocate for more inclusive copyright laws for people with visual impairments, this policy brief was developed upon the completion of research undertaken by ENAB to assess the compatibility of the Ethiopian copyright law with the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled Treaty (hereafter Marrakesh VIP Treaty). The assessment provides a legal analysis, based on intensive literature review, of the inclusive features and areas for improvement of Ethiopia's existing copyright law and its impact on the right to access information by those with visual impairments. One area for improvement is that there is no mention of a 'special case' as a component of the three-step test. Second, an exception to private reproduction of published material is given only for physical persons, despite overwhelming rationale that those with visual impairments would benefit greatly from concerned organizations being able to reproduce various works. Additionally, only published works are addressed by the law, completely overlooking the wealth of non-published works. Also, the lack of clarity regarding responsibility of the state and private entities as to ensuring accessibility of works for people with visual impairment causes confusion and an overall *laissez-faire* approach.

Based on the research findings, it is recommended that concerned stakeholders including the Ethiopian government take the following measures: 1) amend/add to current copyright laws to better comply with the ratified Convention on the Rights of Persons with Disabilities (CRPD)

and Marrakesh VIP Treaty; 2) the amendment/addition should pay equal attention to addressing the limited access to non-copyrightable works; 3) support the facilitation of Bookshare®¹ in Ethiopia or facilitate the creation of similarly advanced accessibility institutions; and 4) support the development of full-fledged assistive technology, including Optical Character Recognition (OCR) technology, that supports local languages.

By taking these measures, Ethiopia will be addressing the legal impediments to expanding access to information for the visually impaired, and strengthening government efforts to harness technological innovations that could help the visually impaired have equal access to not only books but public services such as education, health and legal aid, which are critical to acquiring the capabilities to fulfill their human development potential.

Therefore, this policy brief provides a brief background of the context, focuses on the findings of the research on *Assessing Copyright Laws of Ethiopia in Light of the Right to Access Literary and Artistic Works by Persons Who Are Visually Impaired*, highlights the inclusive features and areas for improvement of Ethiopian copyright law and Marrakesh VIP Treaty for the benefit of person with print disabilities, and provides recommendations for improving access to information for the population.

¹Bookshare® is a free eBook library with almost 1 million titles in an accessible format for those who have a qualifying reading or perceptual disability, visual impairment or physical disability that affects their ability to read printed books. This is available at <https://bookshare.org>.

BACKGROUND

Visually impaired persons² consist of nearly 4 percent of the world's population. Based on the World Health Organization global data on visual impairments from 2010, the estimated number of people with visual impairment in the world is 285 million, 39 million blind and 246 million having low vision.³ Likewise, according to the 2006 survey of Ministry of Health and other stakeholders working on visual impairment, the number of persons with visual impairment living in Ethiopia was estimated to be four million, higher than the global average at nearly 6 percent of the country's total population.⁴

Since it has been estimated that human beings absorb as much as 80 percent of information about their immediate environment by means of sight,⁵ it is important to address this growing need among the population of visually impaired. A visually impaired person living in a developed country with a high standard of living has, for example, only one out of every twenty books available to them.⁶ In least-developed countries however, the availability of published books for a visually impaired person drops to only one book out of every one hundred,⁷ a state which has been referred to often as 'book famine.' The situation in Ethiopia may be even worse due to a low literacy rate among visually impaired persons, absence of access-promoting copyright laws and well-developed assistive technology supporting local languages.

²"Visual impairment" is a general term that describes a wide range of visual function, from low vision through total blindness." "Low vision is [functionally defined as] uncorrectable vision loss that interferes with daily activities while total blindness is the complete lack of light perception and form perception, and is recorded as "NLP," an abbreviation for "no light perception." Available at <https://www.afb.org/blindness-and-low-vision/eye-conditions/low-vision-and-legal-blindness-terms-and-descriptions>.

³World Health Organization, "Global Data on Visual Impairments" (2010) available at <https://www.who.int/blindness/GLOBALDATAFINALforweb.pdf>

⁴Federal Ministry of Health of Ethiopia, "National Survey on Blindness, Low Vision and Trachoma in Ethiopia" available at http://www.pbunion.org/Countriessurveyresults/Ethiopia/Ethiopian_National_Blindness_and_trachoma_survey.pdf

⁵Nick Moore, "The Information Needs of Visually Impaired People: A Review of Research for the RNIB", (2000), available at <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/moore-nick-rnib-report.pdf>

⁶ Judith Sullivan, Study on Copyright Limitations and Exceptions for the Visually Impaired, (2007) available at https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf

⁷Id.

Recognized as an international bill of human rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides specific rights and clarifications of rights with respect to information access and the right to education, and indirectly addresses the right to meaningfully participate in cultural activities and political life, enjoy an adequate standard of living, and benefit from technological and scientific advancements.⁸ Accordingly, it is the duty of the society is to bring this community, and any who are ‘print disabled,’⁹ to the mainstream by making information and resources available and accessible to them. To participate equally in society, an individual needs information on a continual basis. “The availability, accessibility and usability of information resources and services are the three major factors of social inclusion.”¹⁰ The unbiased assurance of these three factors makes a society an inclusive one, and the restricted copyright laws, technology, market conditions and inaccessible environmental conditions affect this inclusion.¹¹

In keeping with fundamental objectives of social inclusion and human rights issues, Ethiopia ratified the Marrakesh VIP Treaty with Proclamation No. 1181/2020 on March 13, 2020. The Proclamation mandates that the Ministry of Education and the Ethiopian Intellectual Property Office cooperate with other relevant organs to implement the treaty, a great step for the empowerment of people with visual impairment in Ethiopia.

CONSULTATION APPROACH

From January to April 2020, an intensive literature review was undertaken of domestic and international legislation related to copyright and rights of those with visual impairment. The review was complemented by interviews with ## respondents from members of the community with visual impairment, government, publishers and authors—detailing a wide network involved in the space.

⁸ ICESCR, Arts 11, 13 and 15

⁹“Print disabled” refers to persons who cannot access print resources because of a visual, physical, perceptual, developmental, cognitive, or learning disability. Available at <https://www2.ed.gov/about/bdscomm/list/aim/meeting/4-1-2001-teleconference/taskforce-1-print-disability.pdf>.

¹⁰Maliakkal and Ganesan, “Information Need and Seeking Behaviour of Users with Visual Impairment in Public Libraries of Chennai”, (2016) available at <http://oldlsrj.lbp.world/UploadedArticles/783.pdf>

¹¹ibid.

Respondents with visual impairment were asked to identify challenges faced due to absence of an ‘access’ law and assistive technology that supports local languages. According to them, persons with visual impairment face discrimination from accessing information on the basis of their disability. This has, in turn, impeded them from education, healthcare, employment, cultural and other socio-economic participation. Limited access to published or publicly available works can also limit, they say, the ability of people with visual impairments to perform their day-to-day tasks, make them over dependent, negatively affect their quality of life as well as their ability to interact with their surroundings.

Authors and publishers were also asked to identify challenges to make their works available for persons with visual impairment in alternative formats. According to them, they are not aware that they can make their works accessible for readers with visual impairment using alternative formats. Some are even totally ignorant whether people with visual impairment can read electronic copy of works. Moreover, albeit awareness, publishers may not be willing or able to finance the reformatting of works into accessible formats due to low rate of return.

According to respondents from government institutions, Ethiopia has not enacted a robust copyright law addressing the needs of readers with visual impairment. Thus, institutions such as libraries and universities continue to discriminate against people with visual impairment from accessing their services on an equal basis as others. Although the existing copyright law excluding the Marrakesh VIP Treaty provides L&E to reproduction for teaching or by libraries, archives and similar institutions, it cannot be considered as an ‘access law’ on its own even for its qualified beneficiaries. Relevant government institutions are devoid of professionals or staff trained in Braille or other accessible formats, which may be partly attributable to the failure in enhancing the quality of special needs education. In general, persons with visual impairment cannot, without ‘access’ legislation, benefit from the principles of non-discrimination, equal opportunity, accessibility, full and effective participation and inclusion in the socio-economic and political life of their society.

OVERVIEW OF THE INCLUSIVE FEATURES AND AREAS FOR IMPROVEMENT OF THE ETHIOPIAN COPYRIGHT LAW

The history of legal protection of copyright in Ethiopia dates back to the 1960 Civil Code, which included a fairly comprehensive protection to copyrights. The Civil Code gives legal protection to literary and artistic ownership through Articles 1647 to 1674. However, due to the fact that the Civil Code was found insufficient to protect literary and artistic works including those with neighboring rights, an amendment of it was required. Although there were many driving reasons that necessitated an amendment of the Civil Code with the Copyright and Neighboring Rights Protection Proclamation No. 410/2004 (hereunder the Proclamation), the inclusion of making works accessible in an alternative format for people with visual impairments was not one of those driving reasons. The Proclamation was the first copyright legislation to amend the Civil Code in regard to copyright protection of literary and artistic works. This law was amended with Proclamation 872/2014 to meet national and international requirements, but still, inclusion, or making works accessible in an alternative format for people with visual impairment, was not taken as one of the necessary national and international requirements. The most recent and pioneering legislative measure was taken in 2020 with the ratification of the Marrakesh VIP Treaty by the Ethiopian government.

A. Special Case

Under the current Proclamation (as amended), limitations to copyright are provided under Articles 9 through 19. However, except in relation to limitations to the exclusive right of reproduction under Article 9(2)(e), the Proclamation does not attempt to incorporate the three-step test.¹² To make matters worse, the three-step test has been apparently recognized missing a major component of it, “special case”. Therefore, in the absence of ‘special case’ as a component

¹² The three-step test was first enacted in the 1967 revision of the Berne Convention. It provides: “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works [a] in certain special cases, provided that [b] such reproduction does not conflict with a normal exploitation of the work and [c] does not unreasonably prejudice the legitimate interests of the author.” Available at https://www.wipo.int/edocs/lexdocs/treaties/en/berne/trt_berne_001en.pdf.

of the three-step test, no beneficiary can invoke his print disability against allegations of copyright violations and use the three-step test, in its fullest sense, to scape liability.

B. Private Reproduction Exception

Article 9(1) of the Proclamation states: “Notwithstanding the provisions of Article 7(1)(a) of this Proclamation, the owner of the copyright cannot forbid private reproduction of a published work in a single copy by a physical person exclusively for his own personal purposes.”¹³ This provision allows every user of copyright material to reproduce a copy of the work without being constrained by copyright considerations. However, it has been amended by Proclamation No. 872/2014. Accordingly, the amending sub-article 3 of Article 9 reads, "Private reproduction of a published work in accordance with sub-article (1) of this Article shall be allowed if that physical person is the owner of an original copy." Unfortunately, neither the pre- nor the post-amendment provision of Article 9 has enhanced the right to access of persons who are visually impaired.

First, as the specified beneficiaries of these limitations and exceptions (L&Es) are *physical persons* only, authorized entities such as ENAB, a local civil society organization dedicated to empowering the blind and visually impaired, cannot reproduce work for private consumption by persons who are blind, visually impaired or print-disabled. Second, the legislator did not contemplate, *ab-initio*, the absence of an adverse economic effect by the most destitute Ethiopians who are visually impaired on copyright owner. This is because, a far greater proportion of Ethiopians with visual impairment have low consumer buying power to purchase goods at current market prices, hence, there is little, if any, interest and power to purchase an original copy of a protected work. Third, this L&E provision fails to take into account the issue of market failure. The market may fail when buying power exists, but the work may not be available; the work might be available, but it is not accessible; there is unreliable availability or accessibility; or when digital rights management may not allow conversions to an accessible

¹³Copyright and Neighboring Rights Protection Proclamation No. 410/2004, available at <https://www.wipo.int/edocs/lexdocs/laws/en/et/et001en.pdf>

format.¹⁴Therefore, the ‘private reproduction’ exception has little, if any, benefits for persons who are visually impaired.

C. Computer Applications and Non-published Works

Additionally, as per Articles 9(2)(d) and 14, “The provision permitting ‘private reproduction of a published work in a single copy by a physical person exclusively for his own personal purposes’ do not extend to ‘reproduction’ of a computer program except . . . single copy reproduction, or adaptation of a computer program.”¹⁵Therefore, the Proclamation covers computer programs under its copyright protection, and this can be *mutatis mutandis* applicable to mobile applications. However, the L&Es to the right of reproduction under the above provision do not oblige the author to make their work screen-reader friendly, nor permit, without authorization by the rights holder, reverse-engineering or the writing of add-ons or scripts to modify and make applications screen-reader friendly. Unfortunately, the Marrakesh VIP Treaty does not cover literary and artistic works turned into computer programs or mobile applications in its definition of “works.”

As can be understood under Article 3 of the Proclamation, the L&E seem to be unnecessarily restricted to published works only; hence, strictly speaking, the Proclamation does not address works that are available to the public in any forms other than publication. Moreover, some works such as public domain works and correspondence are not covered by the proclamation nor by the treaty; and made available in alternative formats to addressees with visual impairment on an equal basis with others.

D. States and Private Entity Responsibilities

The United Nations CRPD underscores the importance of accessibility to education and to information and communication, in enabling persons with disabilities to fully enjoy all human

¹⁴Paul Harpur, “Discrimination, Copyright and Equality: Opening the E-book for the Print-disabled”, (2017); also see Wendy Gordon, “Fair Use as Market Failure: A Structural and Economic Analysis of the Betamax Case and its Predecessors”, available at <https://core.ac.uk/download/pdf/229123173.pdf>

¹⁵Copyright and Neighboring Rights Protection Proclamation No. 410/2004, *supra note 13*.

rights and fundamental freedoms.¹⁶With Ethiopia’s ratification of the CRPD in 2010, some people saw that with its ratification came the sufficiency of Article 21 to ensure equal access of information, particularly for non-copyrightable works. However, when studying the scope of paragraphs (c) and (d) of Article 21, the Convention uses a wording more elastic concerning private entities compared with paragraphs (a) and (b) concerning States.¹⁷In these paragraphs, the terms ‘urge’ and ‘encourage’ make it unclear how the State should act towards private entities to ensure the rights of people with disabilities are exercised on an equal basis with others. Of course, the terms used do not imply that States can instruct private entities and provide enforceable sanctions if they do not make their services accessible for persons with disabilities.

More so, the CRPD has its own limitations deriving from its nature as a treaty that is binding only on Contracting Parties, not also on natural and juridical persons. It is upon State Parties to bring such people to comply with treaty obligations, only through their own domestic legislation. Therefore, it may be argued that relying on the mere *encouragement* of private actors to provide information access seems unlikely to overcome the accessibility barriers faced by persons with visual impairment.

E. National Copyright Policy and Strategy

To date, Ethiopia has never had its own national copyright policy and strategy. It has only drafted, in 2013, the National Intellectual Property Policy and Strategy, the scope of which also includes ‘copyright’. The draft policy and strategy were drafted with a vision of ensuring effective use of the intellectual property system as a tool for sustainable and rapid national economic, social and cultural development and improvement of the welfare of Ethiopians. In its policy guiding principles, it states that “the policy recognizes that intellectual property measures should complement and support government policies such as those dealing with empowerment of the youth and women, meeting the needs of persons with disabilities. . .”¹⁸However, despite its

¹⁶ CRPD Preamble, Paragraph V, available at <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

¹⁷Id.

¹⁸Draft National Intellectual Property Policy and Strategy, (not published yet), can be accessed, upon request, from Ethiopian Intellectual Property Office.

attempt to include protection of the rights of people with disabilities, it has not yet been approved as a policy of intellectual policy and strategy of the country.

RECOMMENDATIONS AND INSIGHTS

Although the Ethiopian government recently approved the Marrakesh VIP Treaty to facilitate access to published works for persons with visual impairment, persons with visual impairment still do not have equal access to literary and artistic works, both copyrightable and non-copyrightable works, as other members of society. Mere ratification of the treaty is not sufficient to ensure the right to access information for persons with visual impairment. The treaty is not comprehensive to cover extensive literary works, and domestic copyright laws do not provide sufficient exceptions to the rights of people with visual impairment to access information. Therefore, despite ratification of Marrakesh VIP Treaty, persons with visual impairment in Ethiopia continue to face severe challenges to their right to access information in a suitable format. The following recommendations are made with a view to facilitate, beyond what the treaty provides, the availability of works for persons with visual impairment on an equal basis with others.

- In order to end the book famine that affects people with visual impairment disproportionately, the government should amend its copyright laws—aimed at complying with the CRPD and Marrakesh VIP Treaty. Due to the abundance of works not covered by the existing copyright law and the Marrakesh treaty, a stand-alone proclamation is preferred to amendment proclamation. Such legislative measure would remain effective however if people with visual impairment or their representatives are given the leeway to participate. Therefore, a stand-alone proclamation, such as the one drafted by ENAB, seems to be more appropriate to address all these other works.
- Although not copyrightable, works that are published or made publicly available automatically or upon request or correspondences addressed to specific addressee, are not less important than the copyrightable ones. Thus, the recommended legislative measure should pay equal attention to addressing the limited access to non-copyrightable works.
- In the United States, an authorized entity called Bookshare® enables people with standard

print reading disabilities to legally share digitally accessible books which are created by volunteers and members who submit books. Authors and publishers can also submit digital versions of the books, thus saving time and additional work for digitizing. The government should support leading organizations working in the space to play the role of Bookshare® in Ethiopia or facilitate the creation of similarly advanced accessibility institutions.

- The government should support the development of full-fledged assistive technology, including OCR technology that supports local languages. Without this essential technology, access to literary or artistic works created in local languages will remain a daunting task.