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Walking the Talk: An Exploration of Pathways in Implementation of the 2013 Marrakesh Treaty - A Case Study of Uganda

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WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN IMPLEMENTATION OF THE 2013 MARRAKESH TREATY – A CASE STUDY OF UGANDA

*Anthony C.K. Kakooza*¹

ABSTRACT

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, is a WIPO administered treaty on copyright that was adopted in Marrakesh, Morocco, on 27th June 2013. The year 2023 therefore marks 10 years since its adoption. It is therefore an ideal time to do some stock taking as to how effective the treaty has been, thus far, in creating avenues through which blind or visually impaired persons can have easier access to published works.

This article looks at the implementation of the Marrakesh Treaty specifically in Uganda where it was ratified and domesticated in 2018. The article explores the regulatory landscape in Uganda in matters related to access to education and the right to research for blind or visually impaired persons. In evaluating the relevant legislations in this area and the shortfalls therein, the article delves into other jurisdictions and analyzes how they have been able to navigate through the challenges affecting the right to research for blind and visually impaired persons. Lessons learnt from successfully maneuvering through such challenges are used to inform the direction that Uganda should take in the implementation of the Marrakesh treaty where similar challenges abide.

The article relies heavily upon interviews from various stakeholders to portray the extent to which Uganda is walking its talk in fulfilling its obligations as a Contracting State of the Marrakesh treaty. By synchronizing the views generated from the field research, together with secondary information from scholarly work, the article fronts proposals as to how Uganda can do much better in practicing what its legislation is preaching.

¹ Dr. Anthony C.K. Kakooza is a lecturer in the School of Law at Makerere University. This article is the result of a study proposal presented at the Annual meeting of the Global Expert Network on Copyright User Rights: The Right to research in International Copyright on April 20 – 22, 2022 at the American University Washington College of Law. The Author is appreciative and indebted to the Program on Information Justice and Intellectual Property (PIJIP) for its funding and support. He also acknowledges and appreciates the helpful comments from Prof. Chidi Oguamanam, University of Ottawa, leading up to this work. Heartfelt gratitude also goes out to Ms. Rachel Zalwango, Makerere University, who was a Research Assistant on this project.

ABSTRACT	1
INTRODUCTION	3
I. THE PRECURSOR	3
A. <i>Background</i>	3
B. <i>The Problem Statement</i>	5
C. <i>Study Objectives</i>	5
D. <i>Research Methodology</i>	6
II. THE RIGHT TO RESEARCH FOR VISUALLY IMPAIRED PERSONS IN UGANDA: AN ANALYSIS OF THE LEGAL FRAMEWORK	8
A. <i>Persons with Disabilities Act, No. 3 of 2020</i>	8
B. <i>The Copyright and Neighbouring Rights Act, 2006</i>	9
C. <i>The writing on the wall: Legislative stipulations versus reality</i> ... 11	
III. AN ANALYSIS OF BEST PRACTICES.....	17
A. <i>On Handling Expenses Related to Access of Information</i>	17
B. <i>On Handling Discriminative Provisions in the Domestic Legislation</i>	19
C. <i>On Building Up Capacity Among Stakeholders</i>	21
IV. PROPOSALS FOR IMPLEMENTATION OF THE MARRAKESH TREATY IN UGANDA 22	
A. <i>Limitations and Exceptions Under Technology Measures</i>	22
B. <i>Regulating for the Interests of the Blind, Visually Impaired, or otherwise Print Disabled</i>	22
C. <i>Re-Thinking Government Contractual Terms with Book Publishers</i> 23	
D. <i>Advocacy Among Publishing Houses</i>	23
E. <i>Facilitating Research Centers with the Necessary Material for Visually Impaired Persons</i>	24
CONCLUSION	25

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

INTRODUCTION

The Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled (2013), was formally adopted on June 27th, 2013. It is arguably one of the most successful international treaties from the World Intellectual Property Organization (WIPO) basing on the fact that it quickly reached the goal of ratification or accession by twenty eligible parties only three years later – on June 30th, 2016. It entered into force for those twenty parties on September 30th, 2016.² On July 23rd 2018, Uganda became the 38th Country to ratify and domesticate the treaty.

As with any other international instrument, country obligations are expected to go beyond ratification and entry into force. Evidence of practical action in the implementation of the Treaty's underlying principles is necessary to ensure that the objectives of the Treaty are being fulfilled at the domestic level. The Marrakesh Treaty's singular objective is for an increase in access to books, magazines and other printed materials for people with print disabilities. This is through creating a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired, and otherwise print disabled (VIPs)³. This paper therefore sets out to paint a picture as to how far Uganda has gone in playing its part, as a Contracting State, towards fulfilment of this objective, since its ratification of the Treaty as well as the challenges faced along the way.

The paper is split up into four Parts. Part 1 is the precursor to the study paper. It sets the ball rolling by providing the study background; the problem to be explored; the objectives of the study; and the research methodology that was employed in pursuing and fulfilling those objectives. Part 2 follows the path of the objectives by identifying the key legislative provisions under Ugandan domestic law that speak into the right to research for persons who are blind, visually impaired, or otherwise print disabled. Part 3 then investigates best practices from elsewhere that can be used as impetus on improving the implementation of the objectives of the Marrakesh Treaty in Uganda. Part 4 draws from the lessons learned in the previous part, to come up with proposals as to how Uganda can do a better job at implementing its obligations under the Marrakesh Treaty. The conclusion of the study is then provided after the 4th part of the paper.

I. THE PRECURSOR

A. Background

² See: https://www.wipo.int/marrakesh_treaty/en/ (last accessed February 3, 2023)

³ See: <https://www.wipo.int/treaties/en/ip/marrakesh/> (last accessed February 3, 2023)

The National Objectives and Directive Principles of State Policy are provided for in the 1995 Constitution of the Republic of Uganda. A number of these objectives and principles resonate with the objectives of the Marrakesh Treaty, in particular regard to access to education. For instance, under its social and economic objectives, it provides as follows:

Objective XIV. General social and economic objectives.

The State shall endeavour to fulfill the fundamental rights of Ugandans to social justice and economic development and shall, in particular, ensure that –

(a) . . .

(b) all Ugandans enjoy rights and opportunities and access to education, . . .

Objective XVI. Recognition of the dignity of persons with disabilities.

Society and the State shall recognize the right of persons with disabilities to respect and human dignity.

Objective XVIII. Educational objectives.

(ii) The State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.

These State objectives highlight the obligations that the government of Uganda placed on itself to guarantee for equal and appropriate measures to be put in place for access to necessities, inclusive of education for all persons, inclusive of disabled persons. In the same vein, Article 35 of the 1995 Constitution provides for the right to respect and human dignity for persons with disabilities.

It is on the backdrop of the position portrayed by Uganda's grand norm that we can assert the existence of a strong legal framework which is supportive of the smooth implementation of the Marrakesh Treaty in Uganda. However, looking beyond the constitutional provisions, putting the Marrakesh Treaty into practice can only be visualized through national policies, domestic legislation and the felt impact among interested parties. Uganda's copyright legislation stands out as the key focus in this perspective. This paper thus analyzes specific provisions within the Copyright and Neighbouring Rights Act of 2006 as well as other legislations in place, that are meant to provide easier access to educational materials for persons who are blind or visually impaired.

It can be said that there is a justifiable will through a legal framework in place to guarantee the right of access to educational materials for persons who are blind, visually impaired or otherwise print disabled. The key issue worth investigating, however, is as to whether Uganda has been able to walk its talk

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

by implementing the constitutional objectives and legislative framework that it put in place.

B. The Problem Statement

The Marrakesh Treaty bears a human rights perspective and was conceived in line with the human rights principles in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)⁴. These same principles are reflected in the Ugandan legal framework, particularly the 1995 Constitution of the Republic of Uganda through its National Objectives and Article 35 of the Constitution; as well as the 2006 Uganda Copyright and Neighbouring Rights Act. The overall picture is such that there should be unrestricted and indiscriminate access to education and research for all persons in the country, inclusive of persons living with disabilities.

However, an analysis of the current status in the country reveals that the present infrastructure is wanting with respect to the enjoyment of the right to research for persons who are blind or visually impaired. For instance, there is hardly any infrastructure or research materials in the country catering for persons living with disabilities or facilitating their right to research, neither is there any sufficient awareness among copyright owners of the need to exercise the given authority under the copyright law to cater for persons living with disabilities. This is especially the case with book publishers in the publication and distribution of their works, to the effect that very few publications in the country are placed in accessible format copies for blind and visually impaired persons. As a result of all this, persons with such disabilities hardly have the opportunity to exercise their right to research.

This paper therefore explores mechanisms through which practical measures can be established in Uganda as a way of going an extra mile beyond ratification and domestication of the Marrakesh Treaty. This is so as to guarantee implementation of the right to research for persons who are blind, visually impaired or otherwise print disabled.

C. Study Objectives

This paper set out to achieve the following objectives:

- a) To identify the legislative frameworks in Uganda that facilitate the right to research for persons who are blind, visually impaired person or otherwise print disabled.
- b) To explore best practices that can point towards improving on the right

⁴ See: World Intellectual Property Organization (WIPO), 2016: Main Provisions and Benefits of the Marrakesh Treaty (2013) at p. 2

to research for VIPs at the domestic level.

c) To make proposals for a more practical implementation of the Marrakesh treaty in Uganda.

D. Research Methodology

The paper utilized both a qualitative and quantitative research methodology in the conduct of the research. Desk research on the ratification and implementation of the Marrakesh Treaty was analyzed to bring out the extent to which this is applicable in Uganda. This was particularly in drawing out best practices as well as proposals for a more effective implementation of the Marrakesh Treaty, in fulfillment of the study objectives.

Considering that this paper mainly serves the purpose of highlighting how far Uganda has walked its talk on implementation of the Marrakesh Treaty, field research was conducted to gauge the views of various group clusters as to how the right to research amongst blind or visually impaired persons is handled in Uganda. Two sets of field research were conducted. These relied generally on cluster sampling under which, purposive and convenient sampling techniques were used to identify and generate views from key subjects with an appreciation of the right to research for blind or visually impaired persons. Cluster sampling is a technique which involves breaking down the target population into clusters or groups that are of relevance to the research study⁵. Purposive sampling was also relied upon because this technique was helpful in identifying subjects with the specific characteristics required in generating the necessary information in this study⁶. As for Convenient Sampling, reliance on this technique was because it enabled the researcher to identify and reach out to well-known and easily accessible subjects.⁷

During the first field study, a survey form was prepared with two statements requiring positive or negative responses. This form was then uploaded into an online survey platform called *JotForm* after which it was distributed via *WhatsApp*, to a few selected clusters, seeking their responses to the survey.

The *JotForm* was sent out to WhatsApp groups of the following clusters:

1. Copyright enthusiasts in Uganda: This is a WhatsApp group that brings together book authors and publishers. It has two hundred and

⁵ See: Lauren Thomas (2020, revised 2023): *Cluster Sampling – A Simple Step-by-Step Guide with Examples* <https://www.scribbr.com/methodology/cluster-sampling/> (last accessed March 20, 2023)

⁶ Kassiani Nikolopoulou (2022, revised 2023): *What is Purposive Sampling? Definition and Examples* <https://www.scribbr.com/methodology/purposive-sampling/> (last accessed March 20, 2023)

⁷ Convenience Sampling: Definition, Advantages and examples. <https://www.questionpro.com/blog/convenience-sampling/> (last accessed March 20, 2023)

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

fifty-seven (257) members.

2. IP Cluster group: This is a WhatsApp group that is for Intellectual Property legal practitioners that are members of the Uganda Law Society, Uganda's Bar Association. It has a membership of one hundred (100) lawyers.
3. Makerere University School of Law Lecturers: This WhatsApp group is for all faculty members of the School of Law at Makerere University, Uganda's premier law school, where the researcher is a lecturer and current Acting Head of the Commercial Law Department. The group membership is of forty-one (41) persons.
4. Uganda Christian University School of Law: The membership of this WhatsApp group is of ninety-three (93) persons. The researcher is an Adjunct Law Professor at this University.

The objective of distributing the survey forms to these four clusters served the purpose of generating a balanced response from book publishers, writers or book authors as well as intellectual property lecturers and legal practitioners. Members of the four WhatsApp groups normally engage in interesting and intellectually stimulating discourse concerning matters related to intellectual property law. It was therefore hoped that this study would generate equally interesting opinions through the social media survey within a short period of time.

Prior to, as well as during the conduct of the field research, desk research was conducted in addressing the objectives of the study. This brought out core gaps which justified and guided the direction of the field research with a view towards addressing such gaps. The study objectives, as relayed below, highlight the findings and underlying gaps that this study set out to address.

Although the survey was spread out to four clusters with a combined membership of 491 persons, out of this number, the survey generated only 39 responses in total which equates to 7.9% of the total number of subjects. Part of the objective of conducting this survey, was to generate opinion on the questions posed in the survey, but of equal importance to this study, was the objective of gathering quantitative data as to how many subjects preferred one viewpoint as against another. As such, with reference to the latter, the survey was therefore not considered as statistically significant and

necessitated a more focused field research.⁸

In undertaking the second field study, we again used purposive sampling in setting out to investigate opinions from key subjects as to the following questions:

- a) What are some of the limitations facing Visually Impaired Persons (VIPs) in trying to engage in research, including reading of material that is helpful in their research? How have they been able to overcome these limitations?
- b) Do you think Publishing Houses give consideration to VIPs? If so, what is the basis of your answer, and if not, what do you suggest should be done in making things better?
- c) Do you think that Publishing Houses should be regulated to ensure that they address the interests of VIPs while publishing academic material? How best can this be done?
- d) How do you suggest that Government should support VIPs in making it easier for them to engage in research?

The responses generated from these interview questions, were synchronized with desk research with a view towards fulfilling the objectives of the study.

II. THE RIGHT TO RESEARCH FOR VISUALLY IMPAIRED PERSONS IN UGANDA: AN ANALYSIS OF THE LEGAL FRAMEWORK

The 1995 Constitution set the pace in providing a pathway for the right to research for blind or visually impaired persons in Uganda. Article 35 of the Constitution gives persons with disabilities a right to respect and human dignity. It also imposes a duty on the State and Society to take appropriate measures to ensure that persons with disabilities realize their full mental and physical potential. Ideally, this means that the State has an obligation to ensure that there is an infrastructure and support system in place that enables persons with disabilities to, among other things, enjoy access to educational material. A number of domestic legislations were enacted to facilitate the fulfilment of this State obligation as analyzed below.

A. *Persons with Disabilities Act, No. 3 of 2020*

This Act was enacted two years after Uganda ratified the Marrakesh Treaty. It provides for the respect and promotion of the fundamental and other human rights and freedoms of persons with disabilities. Section 3(2) stipulates as follows:

⁸ The first survey using JotForm was conducted in March 2022 while the second field research was conducted in July 2022.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

The Government and all persons in Uganda shall respect, uphold and promote the fundamental and other human rights and freedoms of persons with disabilities enshrined in the Constitution.

The Ugandan Government and all persons in the country, are therefore obligated to ensure that persons with disabilities enjoy the same privileges as other non-disabled persons. In as far as enjoyment of the right to research for blind persons and VIPs is concerned, section 6 of this Act provides for non-discrimination in the provision of education services. Under section 6(3)(c), an Institution of learning is said to discriminate against a learner with a disability if it denies or limits access of a learner with a disability, to the available facilities and services. This goes to show that if an educational or research institution does not have the available material that can be used to facilitate the enjoyment of the right to research for a blind or VIP, it would be discriminating against such a person as well as denying such person the enjoyment of his or her fundamental rights and freedoms.

Furthermore, the Government is obligated, under section 6(5) to ensure that Institutions that are owned or aided by the Government, under which a person with disabilities is enrolled, should provide sign language services, learning instructional materials and assistive devices which are suitable for such learners. This is in line with clause 1 of Article 10 in the Marrakesh treaty which obligates Contracting Parties to undertake to adopt the measures necessary to ensure the application of the Treaty. It is therefore for Contracting parties to engage any legal means possible that will reflect the application of the treaty in their respective domestic settings. It is therefore evident that the Persons with Disabilities Act reflects a government position of facilitating the implementation of the Marrakesh treaty. However, in as far as guaranteeing the right to research for blind and VIPs is concerned, this law has to be in harmony with the Copyright and Neighbouring Rights Act.

B. The Copyright and Neighbouring Rights Act, 2006

A study that was published in 2020, examines patterns and trends of accessible format-enabling provisions in the copyright laws of the World Intellectual Property Organization (WIPO) Member States⁹. This is partly premised on Article 4 of the Marrakesh Treaty which provides for 'National Law Limitations and Exceptions Regarding Accessible Format Copies'. Paragraph 1(a) states:

⁹ Caroline B. Ncube, Blake E. Reid and Desmond O. Oriakhogba, *Beyond the Marrakesh VIP Treaty: Typology of copyright access-enabling provisions for persons with disabilities*, The Journal of World Intellectual Property, 23, 149-165 (2020).

Contracting Parties shall 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 . . . , to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make accessible in the alternative format.

The 2020 study is quite informative in highlighting countries that have gone extra miles with copyright related legislations that provide for access to printed material through Braille. In addressing Uganda, the study focused on section 15 of the Copyright and Neighbouring Rights Act of 2006. Under the said section 15, which provides for fair use of works, subsection (1)(k) makes an exception to infringement, of any work transcribed into braille for educational purposes of persons with disabilities.

It states:

Sec. 15(1) The fair use of a protected work in its original language or in a translation shall not be an infringement of the right of the author and shall not require the consent of the owner of the copyright where

–

(k) any work is transcribed into braille or sign language for educational purpose of persons with disabilities.

It is evident, therefore, that even prior to the existence of the Marrakesh Treaty, the Ugandan copyright regime, as developed in 2006, had already considered the rights of persons living with disabilities.

The consideration for persons living with disabilities, under this Act, goes beyond section 15. Under section 9(i), which covers economic rights, it provides for the copyright owner's exclusive right or right of authorization to other persons to reproduce transcription into braille which is accessible to blind persons; while under section 14, which covers transfer of copyright, subsection (1)(d) provides for the transfer of economic rights in the braille translation, to any braille production unit in Uganda. What this means is that any reproduction of works into braille, can only be done by the owner of the copyright or through authorization by such owner. If such braille production is to be done by another entity, such entity requires authorization from the copyright owner in order to claim an interest in the economic rights that ensue from such production. Either way, these provisions highlight the authority yielded by a copyright owner over the exercise of the right to research by blind or visually impaired persons.

Notably, a gap that is evident from the 2020 Study, is that it does not address observations from the field as to how the right to research amongst blind or visually impaired persons in Uganda is being implemented. This study therefore set out to fill up that gap, as is illustrated below.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

C. The writing on the wall: Legislative stipulations versus reality

The legal framework, presented through the 1995 Constitutional provisions; the Persons with Disabilities Act of 2020 and the Copyright and Neighbouring Rights Act of 2006, portrays a picture of Uganda as a country that respects the right to research for blind and visually impaired persons, albeit with some levels of imperfection. Nonetheless, implementation of the legal framework portrays a different picture of the reality as is discussed below:

i) Access to research material

It has been reported that an estimated 90% of all written materials that are published worldwide cannot be accessed in a format that meets the needs of individuals who are blind or have a print disability¹⁰. This is particularly prevalent in Uganda. In going out to identify the existing limitations in Uganda on the right to research for persons that are blind or visually impaired, it was established that despite the law, blind or visually impaired persons are not availed the necessary material that can make it possible for them to exercise their right to research. According to Dr. Geoffrey Wabulembo, an eye health medical specialist, visually impaired persons hardly have access to magnifying glasses or magnification in print when conducting research¹¹. He adds further that when it comes to opportunities for conducting research, during the recruitment process, visually impaired persons are left out¹². This is contrary to article 35 of the 1995 Uganda Constitution as highlighted above.

The limitation of the necessary material to facilitate research for blind or visually impaired persons, is further emphasized by Benon Ndaziboneye, a blind person, who points out that there is inadequate hard printed material in the accessible format for blind and visually impaired persons which encumbers on their ability to engage in research.¹³ To compound this further, he explains that a visually impaired researcher relies on the guidance and explanations of a sighted guide who may not grasp or look out for what the

¹⁰ Report of the Commerce Committee, International Treaty Examination of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (New Zealand), cited in: Daniel Onyango Odhiambo *'Marrakesh Treaty: Education Gateway For The visually Impaired Students In Kenya'* WIPO-WTO Colloquium Papers, 2018, at p. 91

¹¹ Interview conducted with Dr. Geoffrey Wabulembo, Medical Director, Eye Health, Light of the World Organization, July 2022.

¹² Ibid.

¹³ Interview conducted with Mr. Benon Christopher Ndaziboneye, CEO, Africa Institute of Adaptive Technology, July 2022.

researcher is pursuing.¹⁴ Although the services of a sighted guide are necessary when it comes to the alignment, editing or compilation of data using system software that is not accessible to VIPs, they are also deemed to be quite expensive and therefore not accessible by the ordinary VIP researcher¹⁵. It therefore follows that due to the expense in using their services for such activities, as well as their limited capacity in articulating the research being conducted, VIPs feel constrained in the reliance of sighted guides.¹⁶

This goes to show that visually impaired researchers have an insufficient or inadequate supportive mechanism of skilled personnel to help them in gathering and interpreting their research. The significance of this limitation, in the right to research, is further explained by Dr. Samuel Simunyu who hails from the publishing industry. He points out that visually impaired persons are inhibited in the choice of research topics that they can engage in and are forced to steer away from field research that involves empirical methods such as visual observation.¹⁷ Similarly, according to a 2021 report from the National Union of Disabled Persons of Uganda, it is stated that there are hardly any teaching aids for the blind which makes it difficult for children with disabilities to get quality education, resulting into high rates of school drop outs among children with disabilities¹⁸. The absence of skilled personnel that can understand the available material for VIPs as well as be able to effectively communicate with them, is a major factor that is hampering the full enjoyment of the right to research among VIPs.

Discriminative tendencies also hinder the enjoyment of the right to research for VIPs in Uganda. The Preamble to the Marrakesh Treaty draws a connection to the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society. This thus imposes an obligation on Contracting States to adhere to these principles. In 2007, the Ugandan government established, through legislation, an Equal Opportunities Commission which, among other duties, serves the purpose of monitoring and ensuring that policies and laws are compliant with equal opportunities and affirmative action in favor of groups marginalized on the basis of a number of factors inclusive of disability.¹⁹ Regardless of this existing provision under the law, Michael Mukwana advances the view that

¹⁴ Ibid.

¹⁵ Interview with Michael Mukwana, Assistant Lecturer and Director, Braille Publications, Kyambogo University. July 2022.

¹⁶ Observations made in an interview with Beatrice Guzu, Secretary General of the National Council for Disability. July 2022.

¹⁷ Dr. Samuel Simunyu, Managing Editor, Makerere University Press. Was interviewed in July 2022.

¹⁸ National Union of Disabled Persons of Uganda: Joint submission on Universal Periodic Review for Uganda (2021), See: <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session12/UG/JS5-JointSubmission5-eng.pdf> (last accessed January 20, 2022)

¹⁹ Section 14(1) of the Equal Opportunities Commission Act, No.2 of 2007, Laws of Uganda.

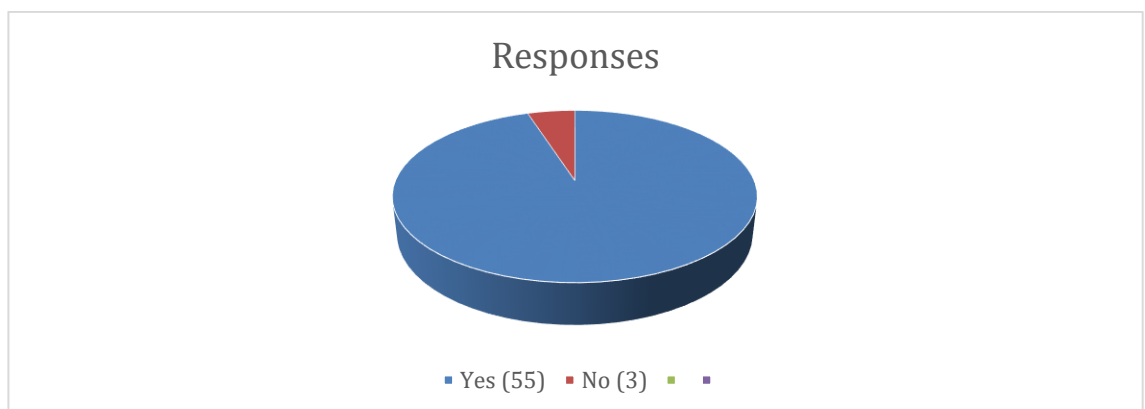
WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

societal attitudes towards persons with visual impairment deters VIPs from engaging in meaningful research due to the discrimination they face while undertaking field research²⁰.

ii) Publishing Houses

The Limitations and Exceptions regarding accessible format copies as stipulated in Article 4 of the Marrakesh Treaty also apply to Publishing Houses. This provision has been domesticated into the Ugandan Copyright and Neighbouring Rights Act, particularly through section 9 which provides for the right of reproduction into braille, as well as section 14 which covers transfers into braille production. The stipulation from these two sections, is to the effect that blind and visually impaired persons should always be considered with braille production of published works. This has been seen to happen in a few instances. By way of example, on the 30th of September 2020, the Uganda Law Reform Commission, a statutory body conferred with the mandate to revise and reform the laws of Uganda, launched an eventually successful project of transcribing the 1995 Uganda Constitution into braille. Nonetheless, transcription of copyright material into braille is still a rarity in Uganda, especially among publishing houses.

This study set out to highlight the relationship between publishing houses and their support for the right to research for VIPs in Uganda. A survey form was sent out to clusters of subjects that have an appreciation of the right to research for blind and visually impaired persons. The form required positive or negative responses to the statement: *'Textbook publishers largely ignore Visually Impaired Persons by not giving consideration towards textbook transcription into braille in Uganda.'* 95% of the survey responses were positive (YES) and 5% were negative (NO) as illustrated below:



Basis for answer: 51 Responses- 8 empty

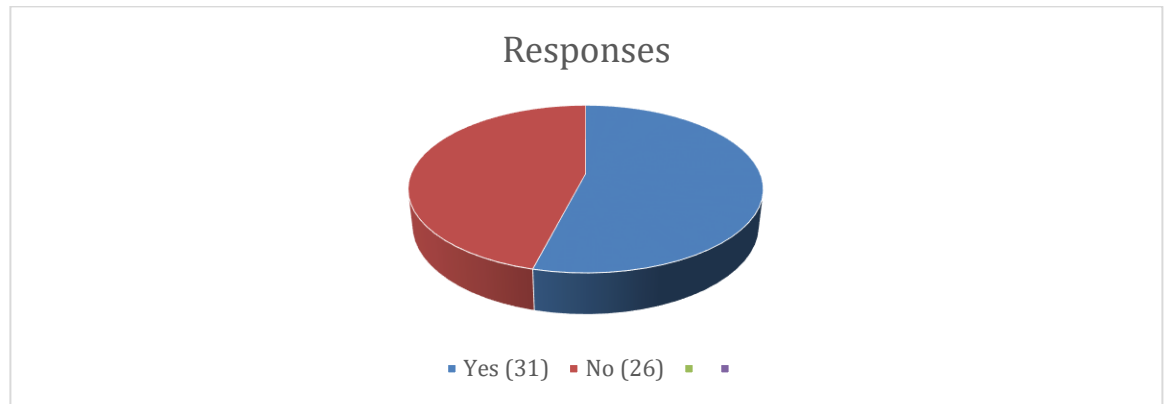
²⁰ Op cit Supra fn 14.

I have not come across any that has consideration for the blind
I have been in the library for over 5 years and I have witnessed it myself. There is clearly no consideration for visually impaired persons.
Many of our local publishers do not know how important it is to serve this group [VIPs]. And some are aware, but they don't have the funds to buy such materials and equipment for an output.
I say this because I've never seen any textbook having two versions; that is one for the visually impaired and another for those without the issue, maybe there is but not in the same location of the libraries.
Government contracts for textbook supplies have a clause where publishers grant the right of transcription into braille to government.
They imagine everyone is okay
I have never seen a book that has braille. They are usually ignored which makes it difficult for them to read on their own; many depend on people which may be dangerous because some people may not give right information.

A clear observation from this survey, was that Publishing Houses in Uganda hardly give any consideration to blind persons and visually impaired persons in the production of books in the country.

A follow up survey question, therefore, was as to whether publishers should be compelled under law to transcribe their textbooks into braille. 54% of the responses were in favor of this position while 46% were against it.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA



Basis for answer: 52 responses, 7 empty
This will be too much of a burden. Who will bear the costs?
It would be fair for all users in both public and private libraries and it benefits all users.
Yes, its [sic] important so that they do not feel discriminated or left out as they read.
Without such initiatives being compelled by the law, the visually impaired may not receive the support they need in accessing books in braille. However, the financial viability of translating books into braille should be well assessed for [...]
This is to make sure that the blind or visually impaired colleagues are given a significant representation and taken into consideration.
The numbers [sic] of students requiring braille may not make commercial sense to a textbook publisher. It's the reason government was taking responsibility for transcription. Secondly, transcription technology was not widespread.
If there is need then they have to but if there is no need then it should be out of one's wish think, [sic] about the cost issue.

As highlighted earlier, section 6 of the Persons with Disabilities Act, 2020, stipulates against discriminating over persons with disabilities in the provision of education services. Sub-section 9 of section 6 is to the effect that a person who willfully prevents a child with a disability from attaining education commits an offence and is liable, on conviction to a fine not exceeding twenty currency points or imprisonment for a term not exceeding

six months or both²¹. The drafting of this provision appears to have been focused on persons who directly deny children their access to education, as opposed to a publishing house which does not give any consideration to a disabled person (whether a child or not) in the publication of research material. As such, it can be argued that even though the inconsideration exhibited by publishing houses is discriminative of blind and visually impaired persons and therefore a reflection of a violation of their rights, the compulsion of the law under Section 6 of the Persons with Disabilities Act, does not apply to Publishing Houses. This therefore still leaves the question as to whether Publishing houses should be compelled to give more consideration to blind persons and VIPs in the same spirit of the law.

Follow-up face to face interviews were held with another cluster of people over a related issue. The key question(s) that was posed was: *'Do you think Publishing Houses give consideration to visually impaired persons?'*

Dr. Geoffrey Wabulembo, working with the Ugandan branch office of *Light for the World*, a Not-For-Profit International Organization that focuses on economic empowerment and child eye health, believes that Publishing Houses generally do not consider VIPs during publication of books.²² He adds that, in any case, the few braille versions of published books are as a result of either support or funding from organizations that understand the interests of VIPs, or they are as a result of additional lobbying or advocacy that targets book publishers²³.

The perspective of publishing houses varies on this issue. For instance, on the one hand, the Law Development Centre Publisher rationalized that consideration is not given to VIPs because publishing is a business while transcription into braille is very expensive and yet the volume of the market in this category is unknown.²⁴ It is therefore considered a risky business venture and many publishers choose not to venture into it. It was further explained that ignorance of the details surrounding transcription into braille, also deters publishers from engaging into such products²⁵. On the other hand, representatives from a renown private publishing company conceded that in most instances, except for matters related to strict contractual obligations on production of soft copy material, they had not invested heavily in production

²¹ Under Schedule 1 of the Act, a currency point is equivalent to twenty thousand Uganda Shillings (approximately USD 5.3)

²² Supra note 10

²³ Ibid.

²⁴ Interview with Joel Ssenabulya, Publishing Manager, Law Development Centre. Conducted in July 2022. Other interviewees expressed similar sentiments. These are: Dr. Abdul Busulwa, a VIP and Lecturer at Kyambogo University in Kampala (Ug.); and, Dr. Samuel Siminyu, the Managing Editor of the Makerere University Press. Dr. Busulwa and Dr. Siminyu both reason that it is more of the online publishing houses and distributors such as American Publishing House, Amazon.com and Book Share, which have bothered to address the research needs of VIPs.

²⁵ Ibid.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

of braille material for VIPs and blind persons²⁶. Although they strongly agreed to the fact that this is a costly venture with an unpredictable market, they pointed out further that since the issue of production of braille material has never been raised with the publishers, there has been no compulsion to give it any consideration.²⁷

Benon Ndaziboneye also alludes to some Publishing Houses having considered the production of braille material due to their awareness of the stipulations under the Marrakesh Treaty²⁸. This, he asserts, is evidenced by instances where Publishing Houses (such as Fountain Publishers) have been giving soft copy materials, as and when needed, to VIPs for their own transcription. This is in conformity with section 9(i) of the Copyright and Neighbouring Rights Act under which the owner of copyright material can authorize other persons to reproduce transcription into braille which is accessible to blind persons.

The field research therefore highlights the fact that there is inadequate implementation of a favorable position on the right to research for blind persons and VIPs as stipulated in the Copyright and Neighbouring Rights Act of Uganda. Uganda needs to explore a more favorable approach towards ensuring that blind persons and VIPs get to enjoy their right to research beyond what is in print. An analysis as to how other Contracting States have implemented the Marrakesh Treaty is necessary in addressing this issue.

III. AN ANALYSIS OF BEST PRACTICES

A. On Handling Expenses Related to Access of Information

The government of Uganda clearly exhibits a will to enable blind persons and VIPs to enjoy the right to research, save for one impediment such as the costs involved in supporting the necessary infrastructure. In other jurisdictions, Public Private Partnership (PPP) arrangements have been utilized in addressing the cost factor. In a study conducted by Susan Strba, a concerted effort from public and private stakeholders, working together through a Public-Private Partnership, has proved successful as a way of overcoming similar challenges related to costs²⁹. In her study, she compares different approaches to realizing the Sustainable Development Goals through

²⁶ Interviews in July 2022 with Tom Tibajuka, Publishing Manager, Fountain Publishers, and Mr. Julius Ocwinyo, Writer & Associate Editor, Fountain Publishers.

²⁷ Ibid.

²⁸ Interview in June 2022, with Benon C. Ndaziboneye, Chief Executive Officer, Africa Institute of Adaptive Technology, a Not-for-profit Organization based in Kampala.

²⁹ Susan I. Strba, *The Marrakesh Treaty, Public-Private Partnerships, and Access to Copyrighted Works by Visually Impaired Persons*, In M. Chon, P. Roffe and A. Abdel-Latif (Eds.), *The Cambridge Handbook of Public-Private Partnerships, Intellectual Property Governance and Sustainable Development* (pp. 176-198).

access to information and learning, especially by persons who are blind, visually impaired, or otherwise print disabled. The study further highlights ways in which the Marrakesh treaty can stimulate partnership amongst contracting States and other stakeholders in establishing such access to information.

Susan Strba features the Trusted Intermediary Global Accessible Resources (TIGAR), which is a global library of books in accessible formats that supports institutions serving the needs of the VIP community³⁰. Participation in TIGAR is entirely free of charge.³¹ This is of great advantage to impoverished countries such as Uganda. The TIGAR works with participating institutions in making it easier for them to search internationally for books in accessible formats and to exchange them across borders³². The South African Library for the Blind (SALB) is one of the beneficiaries of this partnership. As of 2016, it had borrowed over six hundred titles within a period of six months.³³ Article 5 of the Marrakesh Treaty provides for cross-border exchange of accessible format copies. It is through the provisions of this article that the work of SALB, for instance, was made possible.

Impoverished countries such as Uganda can thus pick from the South African experience and rally the library advocacy groups in the country such as the Consortium of Uganda University Libraries (CUUL) to reach out to and partner with TIGAR with a view towards creating effective ways in which blind persons and VIPs can be assisted with access to research material. Similarly, Dr. Abdul Busulwa suggests that the government should subsidize publication costs for braille and related material, as well as in the purchase of expensive technology utilized by VIPs.³⁴ PPP arrangements would be an effective measure for such a suggestion.

As such, Public – Private partnerships of this nature can embrace various strategies that would make it easier for blind or visually impaired persons in Uganda to access research material. This is inclusive of importation of such material in an accessible format for blind and visually impaired persons. Such an initiative would be in line with Article 6 of the Marrakesh Treaty. This provides for the importation of accessible format copies. In ensuring that the national law of a Contracting State follows this principle, the provision states as follows:

To the extent that the national law or a Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import

³⁰ Ibid at p. 184-187

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Op cit supra note 23.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

an accessible format copy for the benefit of beneficiary persons,
without the authorization of the right holder.

Domesticating a provision of this nature would make it possible for organizations such as TIGAR to partner with local organizations in Uganda and work towards importation of research material in accessible format copies, without the need for obtaining authorization from the copyright owners.

Other forms of Public-Private Partnerships are also necessary in ensuring that the right to research is effective for blind and visually impaired persons. For instance, community initiatives have been undertaken in the past by Diplomatic Missions in Uganda such as the South Korean Embassy, in aiding towards access to literature by blind and visually impaired persons³⁵. In October 2021, the South Korean Embassy in Uganda donated braille printing machines to the Uganda National Association for the Blind (UNAB)³⁶. According to Mr. Francis Kinuubi, the Board Chairperson of UNAB, the organization was able to use the donated material to transcribe primary (elementary) school textbooks into braille for 27 primary schools across the country³⁷.

However, what stands out on the issue of expenses related to access to information by blind or visually impaired persons, is more about the statutory obligation under Uganda's copyright law, to seek permission from copyright owners, than it is about making braille material available by those that need it. Such an obligation can be argued to be discriminatory, and efforts should be employed to address this, basing on lessons learnt from other countries.

B. On Handling Discriminative Provisions in the Domestic Legislation
The Ugandan Copyright and Neighbouring Rights Act of 2006 does not provide easy access to braille material in the same way that a non-blind person would have access to research material that does not belong to her. A similar provision exists under the South African Copyright law. The Pretoria High Court in South Africa came up with a ruling to the effect that the Copyright Act of South Africa is unconstitutional to the extent that it unfairly discriminates against people living with visual and print disabilities as it effectively prevents them from accessing materials under copyright. In *BlindSA v. Minister of Trade, Industry and Competition (and others)* CCT320/21 ([2022] ZACC 33), the legal challenge to the Copyright Act was based on the fact that there is a legal monopoly to authors over the use of their

35 Stephen Otage, Light at end of tunnel for visually impaired. See Daily Monitor Newspaper, Friday, October 8, 2021, www.monitor.co.ug

36 *ibid*

37 *ibid*

works and no provision is given to VIPs for accessible format shifting. Ideally this means that blind persons and VIPs must go through the tireless burden of seeking consent from a copyright holder in order to convert any required work into a format that is accessible to them. This is the same position with section 9(i) of Uganda's Copyright and Neighbouring Rights Act as alluded to earlier.

SECTION27, which was the petitioner in this case on behalf of BlindSA, argued that people living without disabilities do not bear the same burden and thus, the Copyright Act unfairly discriminates against people with disabilities on the grounds of their disability. SECTION27 argued in favor of reading in an exception to copyright that facilitates accessible format shifting until Parliament finalizes the South Africa Copyright Amendment Bill. The Pretoria High Court agreed with the arguments of the Petitioner and declared the Copyright Act as unconstitutional.

Much earlier on, in September of 1996, a similar amendment was successfully negotiated for in the United States Copyright Act. Section 108A was introduced into the Act, effectively removing the permission requirement from copyright owners for nondramatic literary works reproduced by certain entities in specialized formats for the blind and other persons with disabilities.

This is a learning lesson for Uganda considering that there is also no provision for accessible format shifting under the Ugandan Copyright and Neighbouring Rights Act. It is the suggestion that an argument can be built up around section 9(i) of the Copyright and Neighbouring Rights Act not being in conformity with article 35 of the Ugandan Constitution which provides for the respect and human dignity for persons with disabilities.

As the Ugandan government reflects on amending its Copyright and Neighbouring Rights Act, it should consider providing for accessible format copying as it amends section 9(i) of the Act. Guidance can be obtained from article 2 of the Marrakesh Treaty which defines "accessible format copy" to mean the following –

A copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. 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.

Beatrice Guzu supports full implementation of the Marrakesh Treaty domestically. She suggests that the Copyright and Neighbouring Rights Act should be amended to fully embrace the Marrakesh Treaty in such areas where it necessitates such amendments.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

C. On Building Up Capacity Among Stakeholders

It has been observed that blind persons and VIPs face a challenge of poorly skilled personnel in aiding with access to research or in the conduct of research itself. In Susan Strba's study relating to the use of Public Private Partnerships in enabling access to copyrighted works by VIPs, she positions the Accessible Books Consortium (ABC), a multi-stakeholder partnership of fifteen institutions including WIPO, which represents the interests of VIPs.³⁸ The ABC conducts capacity building by partnering with public and private partners to collaborate on diverse projects related to building up technical skills or personnel in developing and least developed countries in the production and distribution of books in accessible formats for blind persons and VIPs³⁹.

In the same vein, Benon Ndaziboneye emphasizes the importance of government support towards the training of blind persons and VIPs in the use of information and communication technologies (ICT) for adaptive purposes⁴⁰. He further suggests that the government should invest in provision of the ICT material to institutions of learning starting from primary or elementary school to the highest level of education; as well as establishment of a government fund that caters for such training and purchase of the necessary equipment⁴¹.

Christopher Muganga, in this regard, suggests that the government should consider expanding the role of UNISE at Kyambogo University with a view towards incorporating interests of blind persons and VIPs into all National Institutions of higher education.⁴²

Government agencies; the publishing industry, inclusive of Fountain Publishers; and other stakeholders, have decried the dearth of skilled personnel that would otherwise come in to offer support in the right to research and the use of material for braille as well as in the conduct of field research, among other factors. The capacity building project of the ABC in this regard, is therefore an avenue through which this challenge can be addressed in catering for the needs and suggestions from various stakeholders.

³⁸ Op cit, supra note 28 at p. 183, 186-187

³⁹ ibid

⁴⁰ Op cit supra fn 12

⁴¹ Ibid.

⁴² Christopher Muganga is the Acting Deputy Director of the National Curriculum Development Centre. He was interviewed in July 2022. The Uganda National Institute of Special Education (UNISE) is a higher institution of learning which, among other objectives, caters for special needs education and rehabilitation, research in disability and related areas. See: <https://archive.crin.org/en/library/organisations/uganda-national-institute-special-education.html> (last accessed August 1, 2023)

The right to research is a quick means of facilitating education and thus a means towards full participation in life's activities. Generating an understanding as to how various jurisdictions have gone about implementing the principles enshrined in the Marrakesh Treaty, offers us a number of pointers that can be raised as proposals for a more effective implementation of the Treaty in Uganda.

IV. PROPOSALS FOR IMPLEMENTATION OF THE MARRAKESH TREATY IN UGANDA

A. Limitations and Exceptions Under Technology Measures

Uganda ratified the Marrakesh Treaty in 2018 but more needs to be done to ensure full implementation of the Treaty in Uganda. For instance, article 7 of the Treaty provides for obligations concerning Technological measures. It stipulates to the effect that Contracting Parties should take appropriate measures to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, such legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in the Treaty.

In this regard, Uganda currently does not have any domestic legislation in place that addresses technological protection measures. As such, any amendments to the copyright regime in Uganda that would consider Digital Rights Management or any other form of Technological protection measures, should be in line with Article 7 of the Marrakesh treaty. In an interview with interested stakeholders, on an open discussion on this issue, Mr. Ndaziboneye suggested that persons with visual impairment have to adapt to digital technology and to the application of various forms of software that can be used to translate available material into accessible format⁴³. Utilization of such technology by the blind and visually impaired, would be most effective if there are no legislative restrictions under copyright or any other law over matters related to ownership and authorization.

B. Regulating for the Interests of the Blind, Visually Impaired, or otherwise Print Disabled

This study teased around with the idea of compelling publishing houses, through legislation, to compulsorily provide accessible format copies of works that cater for the blind and visually impaired persons. This is premised on the fact, as highlighted earlier in this study, that publishing houses have been, and in most respects continue to disregard the rights and interests of blind persons and VIPs. The issue to think about, in this sense, would be whether publishing houses require further compulsion than what is already

⁴³ Op cit, fn 12 supra.

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

provided for in the law, to ensure that they give consideration to the blind and VIPs. As such, one has to look into what compulsion entails and how far such compulsion should go.

It is apparent that the provisions against anti-discriminative practices under the Persons with Disabilities Act of 2020, do not directly address the work of Publishing Houses. The current regulatory landscape cannot be fully relied upon in offering an implementation pathway that caters for the interests of the blind and visually impaired persons.

It is therefore recommended that publishing houses can be coerced further into addressing this obligation, for instance, through issuance of tax waivers or incentives in the production of materials for blind persons and VIPs. This is so as to make the practice more attractive and profitable for them.

C. Re-Thinking Government Contractual Terms with Book Publishers

The Government of Uganda uses its capitation grant to finance the purchase of textbooks and other teaching and learning material from Publishers⁴⁴. It is therefore the major purchaser of academic material from publishing houses which it then distributes to public institutions and government aided institutions. It therefore follows that another coercive measure that can be employed is to ensure that clauses are incorporated into the procurement or purchase contracts that cater for the interests of blind persons or VIPs. If Publishing Houses realize that the Government is keen on purchasing accessible format copies published by them, this will encourage them to engage in the production and making accessible of such copies. The spiral effect is that this will also channel schools into training more teachers and facilitators that comprehend the utilization of braille and other material that is relevant to blind and visually impaired learners.

D. Advocacy Among Publishing Houses

It is apparent that Publishing Houses hardly give any consideration to production of material in braille partly because they are not aware about the need for accessible formats in braille. Joel Ssenabulya, a publishing Manager, acknowledged during the interview that it had never occurred to him that persons with visual impairment needed to have the same access to research material as persons who have no problems with their sight⁴⁵. This therefore

⁴⁴ Government of Uganda: Ministry of Education and Sports, Planning, Budgeting and Implementation Guidelines for Local Governments for the Education and Sports Sector, FY 2021 – 2022, Para. 5.1.1., p.17. See: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.education.go.ug/wp-content/uploads/2022/03/FINAL-GUIDELINES-submitted.pdf](https://www.education.go.ug/wp-content/uploads/2022/03/FINAL-GUIDELINES-submitted.pdf) (last accessed August 29, 2023)

⁴⁵ Op cit, fn 23 supra.

calls for advocacy and effective dissemination of such information. Dr. Wabulembo is emphatic about such advocacy and adds that publishers should also be incentivized with a view towards motivating them to give more consideration to blind and visually impaired persons⁴⁶. He notes further that advocacy also entails making Publishing Houses aware as to the size of the market for braille material to appreciate how much production material would be necessary in this regard⁴⁷. He suggests that one way of addressing this is by the government having a database on the number of blind and visually impaired persons that are in the country⁴⁸. This can be through establishment of a Central Registration System that takes record of such data and thus provides a basis for the level of implementation needed in addressing their needs under the Marrakesh Treaty⁴⁹. He further argues that sensitization about the needs of the blind and visually impaired persons is better than placing more emphasis on enforcement of regulatory provisions⁵⁰.

Other interviewees, such as Mr. Ndaziboneye and Dr. Abdul Busulwa, agree on the importance of advocacy among publishers⁵¹. Mr. Ndaziboneye, for instance, proposes that government research institutions should lead the drive towards enabling the publishing industry to appreciate the position of blind and visually impaired persons⁵².

E. Facilitating Research Centers with the Necessary Material for Visually Impaired Persons

The Government of Uganda needs to prioritize facilitating Universities and other research institutions with research material and infrastructure that are of benefit to the blind and visually impaired persons. Kyambogo University, which is a public University, stands out as the only Institution of Higher Education in the country that caters for the needs of blind and visually impaired persons. At the Faculty of Special Needs and Rehabilitation in Kyambogo University, students are imparted with skills in braille, sign language and other related skills⁵³.

However, government support towards implementation of the Marrakesh Treaty at the domestic level should go beyond amendment of the copyright and other legislations. Much as this is necessary, it still brings us back to the question of implementing whichever legislation is in place. Edwin Abuya and Jane Githinji, in a study conducted on access to University Education by learners with physical disabilities, argue that provision of the right

⁴⁶ Op cit, fn 10 supra.

⁴⁷ ibid

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Op cit fn 12 supra.

⁵² Ibid.

⁵³ See: <https://kyu.ac.ug/faculty-of-special-needs-rehabilitation/> (last accessed August 26, 2023)

WALKING THE TALK: AN EXPLORATION OF PATHWAYS IN
IMPLEMENTATION OF THE 2012 MARRAKESH TREATY: A CASE STUDY OF
UGANDA

infrastructure for all persons in a research Institution, is of fundamental importance in ensuring equal treatment to all persons, inclusive of disabled persons⁵⁴.

The proposal therefore is that libraries and other facilities within research institutions, should have the necessary infrastructure that supports blind and visually impaired persons to engage in research with ease. In the same instance, Beatrice Guzu, recommends that public libraries, universities and research centers should have particular locations dedicated to persons with visual impairments⁵⁵. This is to enable them to use their gadgets freely without being inconvenienced or inconveniencing others.⁵⁶

CONCLUSION

The Government of Uganda, as one of the first African countries to ratify the Marrakesh treaty, clearly exhibits the will to improve the rights of disabled persons in the country. However, stopping at addressing the regulatory framework is insufficient in fulfilling this objective. Focus should also be placed upon an accountability system that draws up a monitoring and evaluation roadmap over a given period. This would effectively capture the interests of all the stakeholders on matters related to the right to research for blind and visually impaired persons; the machinery necessary to guarantee full implementation; and potential sources of funding, to mention but a few. Uganda can, in this way, become the case study for other Marrakesh Treaty Contracting States to look at and evaluate how well they too are doing post-ratification of the Marrakesh treaty and what more needs to be done to fulfill the reality that was set out in the signing of the treaty. It therefore becomes important for the Contracting States to appreciate that it is not enough to simply ratify the treaty, it is also important to walk the talk.

⁵⁴ Edwin O. Abuya & Jane W. Githinji, Access to University Education by Learners with Physical Disabilities: Combating the Barriers, 27 BUFF. HUM. RTS. L. REV. 1 (2021). Available at: <https://digitalcommons.law.buffalo.edu/bhrlr/vol27/iss1/1> (last accessed August 29, 2023)

⁵⁵ Op cit, fn 15 supra.

⁵⁶ Ibid.