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ISSUE BRIEF FOR VIET NAM

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The Marrakesh Treaty to facilitate access to published works for persons with print disabilities for inclusive, equitable and sustainable development

KEY MESSAGES

- *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* provides an international legal framework to allow the creation, distribution, and cross-border exchange of works in accessible formats such as braille, audio, e-books or large print for print disabled persons.
- Persons with print disabilities cannot obtain knowledge effectively from print materials in the conventional way (e.g. not being able to see/read the text, hold a book, or turn pages). Therefore, accessible formats are needed, which are often unavailable particularly in developing countries.
- Lack of accessible formats restricts the fundamental human right to knowledge with serious development consequences. It excludes persons with print disabilities from achieving their full human potential, and from effectively participating in education, the labour market and cultural activities, leading to poverty, marginalisation, and social isolation.
- Viet Nam has not yet joined the Marrakesh Treaty. Viet Nam's current law covering copyright (Law on Intellectual Property) allows a specific exception for the benefit of persons with vision impairment. However, its scope needs to be broadened to comply with and fully benefit from the Marrakesh Treaty.
- The Marrakesh Treaty is an effective legal instrument that can accelerate the implementation of the Convention on the Rights of Persons with Disabilities (CRPD), which Viet Nam ratified in 2015.

BACKGROUND

The World Blind Union estimates that less than 10 percent of published books are ever made into accessible formats such as braille, audio, e-books or materials with large print. The figure falls to less than 1 percent in developing countries.¹ Lack of equitable, timely and affordable access to published works in accessible formats, referred to as a 'book famine,' prevents millions of persons with print disabilities around the world from making the most of human development potentials and opportunities.

Print disability can be caused by visual disabilities such as blindness and poor vision, developmental and learning disabilities such as dyslexia and autism, or physical disabilities such as Parkinson's disease and paralysis. Persons with print disabilities cannot obtain information effectively from print materials in the conventional way – for example, they may not be able to read the text, hold a book or turn pages. Therefore, accessible formats are needed.

The book famine can exclude persons with print disabilities from access to education, employment, health care, culture, or participation in just about any aspect of political, economic and social activities.

For example, lack of access to school textbooks in accessible formats could exclude children who are blind, partially sighted or otherwise print-disabled from receiving an adequate education, which can significantly affect their future job and earning prospects. As a consequence, over 75 percent of blind and visually-impaired persons of working age are unemployed on average, according to the World Blind Union.

All these factors contribute to extremely high rates of poverty among persons with disabilities – it is estimated that more than 80 percent of persons with disabilities live in poverty.²

According to a World Health Organization (WHO) and World Bank report,³ there are an estimated 1 billion people with disabilities in the world including persons with vision impairment, and 80 percent of them live in developing countries.⁴ As such, how countries address disability will have significant impact on achieving inclusive and sustainable societies under the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), guided by the principles of 'leaving no one behind,' and 'reaching the furthest behind first.'

THE MARRAKESH TREATY

Legal obstacles to the creation and distribution of published works in accessible formats, and their cross-border exchange have contributed to the book famine for persons with print disabilities. For example, an accessible format copy of a popular book produced for persons with print disabilities in Country A could not be shared with print disabled persons, blind people's organizations or libraries in Country B, due to lack of international legal frameworks that would allow its exchange between the countries.

As a result, the same accessible format version had to be recreated in Country B, resulting in duplication of efforts and resources. This would keep the production cost very high, which acts as a barrier to the availability.

In June 2013, member states of the World Intellectual Property Organization (WIPO), a UN agency, came together to adopt the Marrakesh Treaty, with the goal of removing

1 World Blind Union (2016). Millions of People are Denied Access to Books and Printed Materials - WBU Press Release for World Book and Copyright Day. Available at <http://www.worldblindunion.org/English/news/Pages/Millions-of-People-are-Denied-Access-to-.aspx>

2 Paragraph 23 of the 2030 Agenda for Sustainable Development. https://www.un.org/pgs/wp-content/uploads/sites/3/2015/08/120815_outcome-document-of-Summit-for-adoption-of-the-post-2015-development-agenda.pdf

3 WHO and World Bank (2011). World Report on Disability.

4 World Bank (2016). World Development Report 2016.

copyright obstacles.⁵ The Marrakesh Treaty entered into force on 30 September 2016. As of October 2018, there are 45 Contracting Parties to the Treaty,⁶ covering 70 countries.

The Marrakesh Treaty makes it legal and easier to produce and share accessible format copies both within and between countries for the use by persons with print disabilities, while striking the right balance between the protection of the rights of authors and the protection of public interests.

The Marrakesh Treaty addresses this situation by allowing so-called 'authorized entities,' such as blind people's organizations and libraries, to pool their accessible collections, thereby reducing duplication of effort and saving money – public, charitable or donor funds in many cases – and increasing the number of accessible books available.

Libraries are key to the success of the Treaty, because throughout the world libraries are one of the primary sources of braille, audio, large print and digital format materials for blind and visually impaired persons. Additionally, under the Treaty, blind people's organizations, libraries and other 'authorized entities' can legally send accessible format copies to other countries.

One significant aspect of the Marrakesh Treaty is that it includes not only people who are blind or partially sighted, but it also covers persons with other print disabilities, who are expected to increase in number because of the changing demographic and disease patterns as noted in the next section.

Ratifying or acceding to the Marrakesh Treaty would require certain changes in national copyright law, in order to comply with the Treaty's requirements. The Marrakesh Treaty contains optional provisions such as the commercial availability requirement and the remuneration requirement. The World Blind Union recommends that countries avoid adopting these optional provisions as they are in conflict with the overarching objectives of the Treaty.⁷

The commercial availability option prohibits the creation of accessible format copies if an accessible work is available on the market. The remuneration option requires the payment for creating, distributing or making available of accessible format copies, which essentially means a double payment for use of the work – a tax on the right to read. This is because the work has already been purchased or otherwise lawfully acquired, the accessible format copy is made for the sole purpose of providing equal access to the work, and the activity is undertaken on a non-profit basis.⁸

VIETNAMESE CONTEXT

While Viet Nam is a State Party to the Convention on the Rights of Persons with Disabilities (CRPD), which it ratified in 2015,⁹ the country has not yet become a Contracting Party to the Marrakesh Treaty. According to the latest Census (conducted in 2009), 7.8% of the population aged 5 years and above live with disability. Within this population, vision disabilities were found to be one of the most prevalent types

⁵ See the website of the World Intellectual Property Organization (WIPO) for details. <http://www.wipo.int/treaties/en/ip/marrakesh/>

⁶ See the above WIPO website for an updated list of Contracting Parties.

⁷ Helfer L. R et al. (2016). *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals*. Oxford University Press.

⁸ See FAQ on the Marrakesh Treaty. Available at <http://www.eifl.net/resources/implementation-marrakesh-treaty-eifl-faqs>.

⁹ See UN Treaty Collection. Available at https://treaties.un.org/Pages/ViewDetails.aspx?s-rc=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en

of disability,¹⁰ accounting for 14%.¹¹ Currently, it is estimated that there are about 7 million people with disabilities in Viet Nam, including more than 1 million people who are blind or partially sighted.¹²

Improved access to published works in accessible formats will increasingly become a critical development issue in Vietnam. Firstly, the number of persons who are blind, partially sighted, or otherwise print disabled is expected to further increase in coming decades. Viet Nam's population is ageing fast, which is likely to increase the number of the elderly with vision impairment and print disabilities. Between 2014 and 2049, the population of the elderly (60+) is projected to triple, from 9.4 million to 26.9 million.¹³

Secondly, non-communicable diseases that could cause vision impairment and other print disabilities are rising at an alarming pace, including strokes (which can cause paralysis) and diabetes (which can cause blindness or impaired vision). For example, the prevalence of diabetes has nearly doubled over the last 10 years in Viet Nam, according to WHO.¹⁴

Thirdly, as a State Party to the CRPD, Viet Nam is committed and obliged to create a disability-inclusive social environment. Improving accessibility for persons with disabilities, including with regards to information and knowledge, is an essential element for disability-inclusive societies and fulfilling the basic rights spelled out in the CRPD. Furthermore, improved access to knowledge could contribute to reducing the high poverty rate (22.3%) among the 73,000 members of the Viet Nam Blind Association, which is almost four times the national poverty rate of 5.8%.¹⁵

The right to information, knowledge and education is clearly stipulated in Viet Nam's Law on Persons with Disabilities where accessibility is defined as ensuring that "persons with disabilities have equal access to and use of public works, public transportation, information technology, cultural, sports, tourism and other services in order to fully integrate into social life."

It is further echoed in the National Action Plan for the Implementation of the 2030 Sustainable Development Agenda promulgated by the Prime Minister in 2017,¹⁶ as well as in the plan for the implementation of the CRPD approved by the Prime Minister in 2016.¹⁷ Overall, fulfilling the right to knowledge is a necessary condition to achieve social integration of persons with disabilities, a priority addressed in Viet Nam's Five-Year Socio-Economic Development Plan 2016-2020.¹⁸

Viet Nam's law covering copyright (Law on Intellectual Property) already provides a specific exception for 'transcription' of works into braille. However, to align with the

10 UNFPA (2011). People with Disabilities in Viet Nam. Key Findings from the 2009 Viet Nam Population and Housing Census. <https://vietnam.unfpa.org/en/publications/people-disabilities-viet-nam> <https://vietnam.unfpa.org/en/publications/people-disabilities-viet-nam>

11 Ministry of Labours, Invalids and Social Affairs (2009). Report on reviewing the implementation of the Ordinance on Disabled Persons of Ministry of Labours, Invalids and Social Affairs. Available at http://nccd.molisa.gov.vn/attachments/075_Baocaotongket.doc

12 Government of Viet Nam (2018). Viet Nam Initial State Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities. Available at https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/VNM/CRPD_C_VNM_1_8348_E.pdf

13 UNFPA (2016). Viet Nam Labour Force and Population Ageing. Available at https://vietnam.unfpa.org/sites/default/files/pub-pdf/Infographic_Ageing_LaborForce_Eng.pdf

14 WHO (2016). Growing burden of diabetes in Viet Nam. Available at http://www.wpro.who.int/vietnam/mediacentre/features/feature_world_health_day_2016_vietnam/en/

15 General Statistics Office of Viet Nam. https://www.gso.gov.vn/default_en.aspx?tabid=783

16 Government of Viet Nam (2017). The National Action Plan for the Implementation of the 2030 Sustainable Development Agenda. Available at http://www.un.org.vn/en/publications/doc_details/543-the-national-action-plan-for-the-implementation-of-the-2030-sustainable-development-agenda.html

17 2016 Decision No. 1100/QĐ-TTg on the Action Plan to implement the CRPD. Available at <https://thuvienphapluat.vn/van-ban/The-thao-Y-te/Quyết-dinh-1100-QĐ-TTg-ke-hoach-thuc-hien-cong-uoc-Lien-hop-quoc-quyen-nguoi-khuyet-tat-2016-315298.aspx>

18 Government of Viet Nam (2016). Five-Year Socio-Economic Development Plan 2016-2020. Available at <http://pubdocs.worldbank.org/en/839361477533488479/Vietnam-SEDP-2016-2020.pdf>

Marrakesh Treaty, this language will need to be broadened to apply to any accessible format. Additionally, the Law should be amended to include a clear importation right for authorized entities and an exportation provision to facilitate cross-border exchange of accessible format works. The Law should also be amended to ensure that the provision regarding anti-circumvention of technological measures (See footnote) does not impair the rights of beneficiary persons to accessible format works. (For more details, see *'Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific: Viet Nam Edition,'* which is listed at the end of the issue brief)

ADVANCING THE IMPLEMENTATION OF THE CRPD, SDGS, AND THE INCHEON STRATEGY

The Marrakesh Treaty is the first copyright treaty with human rights principles at its core, with specific reference to the Universal Declaration of Human Rights and the CRPD.

The widespread lack of access to published works in accessible formats goes against the spirit of and the obligations arising from the CRPD. The Marrakesh Treaty will therefore help countries directly address specific CRPD obligations, such as provisions relating to:

- access to information (Article 9);
- freedom of expression (Article 21);
- the right to education (Article 24);
- the right to participate in cultural life (Article 30.1.a); and
- ensuring “that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access.” (Article 30.3)^{19,20}

Furthermore, the Marrakesh Treaty will make significant contributions to progress toward several of the Sustainable Development Goals such as:

- SDG 1 (ending poverty)
- SDG 3 (healthy lives and well-being for all)
- SDG 4 (inclusive and equitable education)
- SDG 8 (inclusive economic growth and productive employment for all)
- SDG 10 (reducing inequalities within and between countries)
- SDG 16 (inclusive societies)
- SDG 17 (global partnership for sustainable development)

The Marrakesh Treaty will also help advance the implementation of the Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific,²¹ a set of regionally agreed disability-inclusive development goals, particularly its Goal 3 (Enhance access to the physical environment, public transportation, knowledge, information and communication) and Goal 5 (Expand early intervention and education of children with disabilities).

19 See the UN website on the Convention on the Rights of Persons with Disabilities at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

20 Helfer L. R et al. (2016). *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals*. Oxford University Press.

21 See <http://www.unescap.org/resources/incheon-strategy-%E2%80%9Cmake-right-real%E2%80%9D-persons-disabilities-asia-and-pacific>

WAYS FORWARD

According to the preamble of the CRPD, disability is the result of “interaction between persons with impairment and attitudinal and environmental barriers that hinders their full and effective participation on an equal basis with others;”²² rather than an exclusive result of the impairment.

Ratifying and implementing the Marrakesh Treaty can significantly reduce such barriers and provide an additional legal and accountability framework to advocate, protect and advance the rights of persons with disabilities. It will create opportunities to strengthen multisectoral disability responses and policy coherence at the country level with new partners such as Ministries of Commerce, intellectual property rights offices and libraries, for example. It can also open the door for government and civil society partners to benefit from new funding, programming, and collaboration opportunities.

Above all, the Marrakesh Treaty can shed light on the rights, challenges, and celebration of people who are blind, partially sighted or otherwise print disabled, which are often invisible, misunderstood, and under-addressed.

RESOURCES

- UNDP, WBUAP (2018). *Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific: Viet Nam Edition*. Available in English and Vietnamese, as well as in braille and audio formats (Vietnamese).
- EIFL. FAQ on the Marrakesh Treaty. Available at <http://www.eifl.net/resources/implementation-marrakesh-treaty-eifl-faqs>

This Issue Brief is also available in Vietnamese and accessible formats including braille & audio (in Vietnamese).

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²² Preamble of the UN Convention on the Rights of Persons with Disabilities (CRPD).