

World Blind Union



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## Our right to knowledge

**Legal reviews for the ratification of the Marrakesh Treaty for  
persons with print disabilities in Asia and the Pacific**

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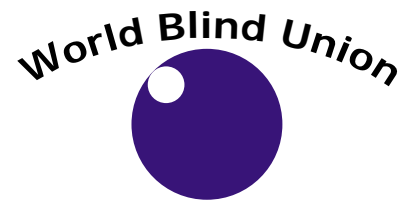
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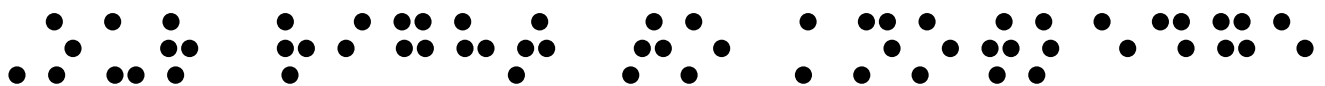
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# Foreword

Access to knowledge is a human right. It is a prerequisite for achieving full human potential and inclusive development, as it opens the door to education, employment, improved health, and social and political participation.


However, due to a lack of published works in accessible formats, the right to knowledge is often out of reach for the nearly 300 million people who are blind, visually impaired or have reading difficulties due to physical or learning disabilities. Ninety percent of these 'persons with print disabilities' are estimated to live in developing countries. The lack of equitable, timely and affordable access to written knowledge further exacerbates and perpetuates challenges and rights violations already faced by persons with disabilities. It ultimately hinders global efforts towards inclusive and equitable development.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the Marrakesh Treaty) was concluded in 2013. As of November 2015, it is yet to come into force due to the required number of ratifications or accessions not being met. Once in force, it will pave the way for removing legal barriers to accessible information and culture among print-disabled people across the world, while balancing the protection of authors' rights. It is the second international treaty specifically addressing rights of persons with disabilities, subsequent to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The Marrakesh Treaty will be a key contribution to the success of the UNCRPD, as well as the Incheon Strategy to "Make the Rights Real" for Persons with Disabilities in Asia and the Pacific, adopted at the High-Level Intergovernmental Meeting in 2012 on the Final Review of the Implementation of the Asia and Pacific Decade of Disabled Persons, 2003–2012.

The Marrakesh Treaty strongly resonates with the principle of "leaving no one behind" and the focus on "tackling exclusion and inequality", which have been advocated by the UN Secretary-General for the post-2015 development era.

This report is the result of partnerships between the United Nations Development Programme (UNDP) Bangkok Regional Hub and the World Blind Union - Asia Pacific. It is designed to provide practical guidance for governments, disability communities and development partners to facilitate policy discussions, community engagement and legal reforms for the Marrakesh Treaty. It is our collective hope that the report will contribute to bringing this historic treaty into force and to realizing the rights of persons with disabilities as a critical component of efforts in pursuit of the newly launched Sustainable Development Goals.



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# Glossary

**Accessible format copy** – The Marrakesh Treaty defines an accessible format copy as one that is in a 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.” This broad definition ensures that any format necessary can be created, which allows accommodations for multiple formats since some beneficiaries of the treaty are likely to require different formats than other beneficiaries. Accessible format copies can take different forms including braille, text-to-speech files, audio and others.

**Authorized entity** – The Marrakesh Treaty defines an authorized entity as “an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.” The Treaty allows for-profit entities to qualify as an authorized entity, provided that they are providing education or information access to beneficiary persons on a non-profit basis. It “also includes a government institution or a non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations,” even if the organization is not specifically authorized or recognized by the government to do so.

**Beneficiary person** – The Marrakesh Treaty defines a beneficiary person as one who is a) blind; b) “has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works”; or c) “is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.” This definition is broad and encompasses more than just those who are blind or visually impaired.

**Berne Convention** – The Berne Convention for the Protection of Literary and Artistic Works is an international agreement first adopted in 1886 (but subsequently revised multiple times) and provides international minimum standards on copyright. The majority of the provisions of the Berne Convention are incorporated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Currently, 168 countries are members of the Berne Convention, with additional countries incorporating many of these standards as members of the World Trade Organization (WTO).

**Convention on the Rights of Persons with Disabilities (CRPD)** – The Convention on the Rights of Persons with Disabilities is a United Nations human rights treaty that requires parties to promote, protect and ensure the human rights of persons with disabilities. It opened for signature on 30 March 2007 and came into force on 3 May 2008. The CRPD has over 150 parties. Several sections of the CRPD support ensuring access to accessible format copies and the Marrakesh Treaty is a concrete way to implement these obligations of the CRPD and promote the rights of those who are blind, visually impaired or otherwise print disabled.

**Digital Accessible Information System (DAISY)** – DAISY is a format of digital talking books widely used by those who are blind, visually impaired or otherwise print disabled. It attempts to provide the same flexibilities that standard print readers enjoy, such as navigation by chapter or page, and the ability to read or skip footnotes and sidebars. DAISY is converging with the popular EPUB format to produce an accessible mainstream multimedia book format.

**Print disability** – A print disability is broadly defined as any disability that interferes with the effective reading of printed material. It includes those who are blind or visually impaired, but also applies to those who have a reading disability such as dyslexia, or those who have a physical disability that prevents the person from holding the book, turning the pages, or focusing their eyes on the page.

**Technological Protection Measures (TPM)** – Technological protection measures are a form of digital rights management, also known as a ‘digital lock’. TPMs can hinder access to accessible formats, such as a text-to-speech function on an electronic reader. Countries that have laws that prohibit circumvention of TPMs will need to ensure that their laws have an exception or other accommodation for beneficiaries of the Marrakesh Treaty.

**Trans-Pacific Partnership Agreement (TPP)** – The Trans-Pacific Partnership Agreement is a large regional trade agreement in the Asia-Pacific region. Currently, there are twelve negotiating parties: Australia, Brunei Darussalam,

Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam. The agreement includes a comprehensive intellectual property chapter. On 5 October 2015, trade ministers from the twelve parties announced that an agreement had been reached. While the negotiating parties announced a conclusion to the agreement, the final text has not yet been released and no official release of the text was made available during the negotiations. However, various leaks of the intellectual property chapter have indicated that obligations regarding anti-circumvention of technological protection measures will be included.

Although Viet Nam is the only country in this report that is currently a negotiating party, the agreement may be expanded to include other countries in the region. Some reports indicate that the agreement is intended to eventually cover the entire Asia-Pacific region. As a result, countries that become party to the TPP must be aware of new obligations regarding anti-circumvention provisions and ensure that obligations under the Marrakesh Treaty are fulfilled even if it joins the TPP or other free trade agreements. While the negotiations have concluded, the agreement has not yet entered into force and must be approved by each country's domestic procedures.

**Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** – The TRIPS Agreement is a World Trade Organization agreement that sets forth minimum standards on intellectual property for members of the WTO. While the TRIPS Agreement includes minimum levels of protections, it also preserves a number of flexibilities in implementation. While the TRIPS Agreement provides minimum international standards, some countries have obligations to adhere to higher standards, also known as 'TRIPS-plus' standards, due to other treaties or trade agreements to which a country is a party. Countries that are considered 'least developed countries' (LDCs) have been granted several waivers, extending a grace period where their laws must comply with TRIPS. However, some LDCs have already implemented the minimum standards under TRIPS.

**WIPO Copyright Treaty (WCT)** – The WCT is an international treaty on copyright adopted by the World Intellectual Property Organization (WIPO) in 1996. It focuses on additional protections for copyright in the digital age. Among other issues, it requires parties to provide "adequate legal protection and effective legal remedies against the circumvention of technological measures that are used by authors in connection with the exercise of their rights..." Some parties have implemented this obligation by providing laws that prohibit the circumvention of technological protection measures. The Marrakesh Treaty requires that if a 'Contracting Party' is not a member of the WCT, authorized entities can export an accessible format copy only if it limits exceptions implementing the Treaty consistent with the three-step test within the copyright system.

**Works** – The Marrakesh Treaty defines works as published literary and artistic works in the form of text, notation and/or illustrations, whether published or otherwise made publicly available in any media. A footnote adds that the definition includes such works in audio form. While audiovisual works such as films do not fall within the definition of works, textual works embedded in audiovisual works (such as educational multimedia DVDs) would appear to fall within this definition.





# Executive summary

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This report is intended to facilitate policy dialogue, legal reforms and community engagement in the Asia-Pacific region with respect to efforts to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the 'Marrakesh Treaty' or 'the Treaty') and ensure that those with disabilities can realize their rights guaranteed in international law. Promoting the rights of those with disabilities is important in achieving development goals and ensuring greater equity in terms of access to information, education and employment. This report will provide important background regarding access to information and individuals with disabilities; discuss development issues; provide case studies of three countries with advanced efforts in the implementation of the Marrakesh Treaty; survey six other countries in the Asia-Pacific region; and provide legal recommendations to implement the Treaty.

Access to information, including information commonly found in written texts, is fundamental to a number of recognized human rights including the rights to take part in society, participate in cultural life, enjoy the benefits of scientific progress, exercise freedom of opinion and expression, seek and impart information, and access education and employment opportunities. These rights are espoused in numerous human rights treaties, including the Convention on the Rights of Persons with Disabilities (CRPD) which provides concrete obligations in promoting the rights of persons with print disabilities. Those with disabilities often do not have necessary access to information, leading to serious development impacts including lower rates of education and employment and higher rates of poverty. Individuals with disabilities are also particularly susceptible in times of disaster.

The right to knowledge is critical in achieving the principle of "leaving no one behind", which depends on eliminating poverty and improving education and employment, including for those with disabilities. The Sustainable Development Goals (SDGs), adopted in September 2015, build on the Millennium Development Goals and establish a new 15-year plan for global development. The SDGs provide specific recognition for those with disabilities, including empowering and promoting the social, economic and political inclusion of all. In 2014, the World Blind Union - Asia Pacific (WBUAP) issued the Hong Kong Statement, calling upon governments to ratify the Marrakesh Treaty to promote access to works of literature, culture and to educational materials.

Addressing disabilities is an important development issue because of the link between disabilities and poverty. Those with disabilities are likely to face an adverse impact on education, employment and income. Developing countries are likely to see a growth of non-communicable diseases, such as diabetes, and an aging population, both of which increase the risk and prevalence of disabilities, including print disabilities. As a result, greater access to published works in accessible formats will become even more important.

This report discusses the challenges that those with print disabilities face, particularly with respect to the 'book famine', where the vast majority of published works are not made in an accessible format. It is estimated that less than 7 percent of all books are made in accessible formats, which can take various forms, including translation into braille, audio versions, and text-to-speech technology for works available electronically. This percentage is even smaller in low-income countries.

The report explains in depth the key features of the Marrakesh Treaty and the benefits these provisions would provide for those who are print disabled. The report conducts three case studies of countries in the Asia-Pacific region with advanced efforts in ratification of the Treaty. It then studies the context of six other countries and makes recommendations regarding legal reforms that are necessary in each country to comply with the Marrakesh Treaty.

Following many years of advocacy by the World Blind Union (WBU) and allied organizations, and extensive negotiations at the World Intellectual Property Organization culminating in a diplomatic conference, the international community adopted the Marrakesh Treaty in June 2013. The Marrakesh Treaty requires Contracting Parties (that is, the countries that have ratified it) to adopt copyright exceptions that allow the creation and distribution, including cross-border exchange, of accessible format works. The key benefits of the Treaty result from the obligations to provide, under certain conditions, limitations and exceptions to allow:

- 1) the making of accessible format copies;
- 2) the domestic distribution of accessible format copies;
- 3) the export of accessible format copies (including by digital transmission); and
- 4) the import of accessible format copies (including by digital download).

Providing an exception to allow the domestic creation and distribution of accessible format works without authorization of the copyright owner should promote a greater number of works in accessible formats. Ultimately, the Marrakesh Treaty should help address the book famine by alleviating the shortage of domestically created works, and also save resources by avoiding duplication, through the enjoyment of cross-border exchange, provided that countries ratify and implement the provisions of the Treaty. Countries with smaller collections will be able to greatly benefit from existing and growing collections in other countries, particularly where a common language exists. Because the publisher typically is not selling accessible format copies in the developing country, it would not lose any revenue by virtue of the operation of the Treaty.

In providing a limitation or exception to allow the creation of accessible format works, the Marrakesh Treaty does not require Contracting Parties to limit the exception to cases where there is not a commercially available accessible format. Additionally, the Marrakesh Treaty requires Contracting Parties to adopt an exception to a circumvention prohibition to permit the creation of an accessible format copy or ensure the ability to circumvent the prohibition through other mechanisms.

The Marrakesh Treaty does not dictate how these goals are to be achieved; rather, it provides Contracting Parties with great flexibility concerning the implementation of these obligations. This flexibility allows each country to tailor its limitations and exceptions to its domestic context, taking into account, for example, its own legal traditions and support for persons with print disabilities. While detailed and robust limitations and exceptions that directly replicate the language of the Marrakesh Treaty may be appropriate in some circumstances, for many countries the context of their laws suggest that less complex amendments may be sufficient and appropriate.

Three countries studied in this report have advanced efforts in ratifying or acceding to the Marrakesh Treaty: India, Mongolia and Thailand. Other countries in the Asia-Pacific region that would like to ratify the Treaty can follow the leadership of these countries in their own efforts at implementation.

While eleven countries have ratified the Marrakesh Treaty as of 9 October 2015, the Treaty requires twenty parties before it will enter into force. It is therefore necessary for more countries to ratify and implement it. Furthermore, in order to effectively implement the Marrakesh Treaty, it is necessary to make full use of the benefits of the Treaty. Ratification of the Treaty and providing adequate implementing legislation is not enough. While this will create the necessary legal framework to address the book famine, governments and organizations must be prepared to support the creation and distribution of accessible format works, and ensure that cross-border exchange of these works takes place, particularly between countries that share a common language.

Although this report covers only the specific countries mentioned above, it would also be useful to other countries seeking to promote development, address disabilities and implement the Marrakesh Treaty. Countries committed to the recently adopted UN Sustainable Development Goals should seek to improve access to information for those with disabilities and ratify the Marrakesh Treaty.



This report also examines the practices and progress of countries with advanced efforts in ratifying the Marrakesh Treaty and suggests numerous ways of implementing the Treaty which may be instructive for other countries in their own ratification efforts. Countries covered in this report as well as other countries seeking to promote the rights of people with print disabilities will also find the section 'Summary and ways forward' useful.

**India** was the first country to ratify the Marrakesh Treaty and did so less than one year after the Treaty opened for signatures. India demonstrated its strong commitment to those with print disabilities even prior to the conclusion of the Treaty. Copyright amendments to allow for the creation and distribution of accessible formats were introduced in 2012 and provided a strong basis for implementation of the Treaty. India has worked with a number of organizations to ensure that beneficiaries of the Marrakesh Treaty can fully enjoy their rights under the Treaty and help address the book famine. India's experience demonstrates that adoption of an exception for the print disabled leads to the creation and distribution of accessible format copies. There is no indication that the exception has had an adverse impact on publishers or has been abused in any way.

**Mongolia** ratified the Marrakesh Treaty in September 2015. Mongolia's disability law demonstrates a commitment to those with visual impairments, granting those who are blind or visually impaired a legal right to be issued a free DAISY talking book player. In preparation for ratification of the Marrakesh Treaty, the Mongolian Intellectual Property Office produced a concept paper and sent the proposal to the government. Implementing legislation will be necessary to allow for cross-border exchange and to address technological protection measures. Ratification efforts in Mongolia have been supported by domestic as well as international organizations such as the Electronic Information for Libraries. The partnership between domestic and international organizations has contributed to the advanced efforts toward ratification in Mongolia.

**Thailand** has demonstrated a strong commitment to promote the rights of those with disabilities through progressive disability laws, the availability of many public and private schools at all levels that are open to students with disabilities, and special events for those who are blind or visually impaired. Implementing legislation to comply with the Marrakesh Treaty was passed in late 2014 and went into effect in August 2015. This legislation ensures that creation of accessible format copies does not infringe copyright and provides that anti-circumvention rules apply only where circumvention would infringe copyright. Thailand's strong network of organizations serving those who are blind or visually impaired, coupled with strong advocacy, has helped with ratification efforts in the country. Additionally, a Thai legislator who has been blind since birth and served as a Senator in Thailand's Parliament and as President of the Thailand Association of the Blind was elected to the Committee on the Rights of Persons with Disabilities and will serve until 2016.

Six countries in the Asia-Pacific region are covered in the remainder of the report, with an analysis of their current copyright laws and recommendations on implementing legislation that would be appropriate in the context of each country's domestic situation. These countries are Cambodia, China, Fiji, Indonesia, Nepal and Viet Nam.

**Cambodia** has signed the Marrakesh Treaty. Its blind or visually impaired represent the largest share of those with disabilities in Cambodia. The current copyright law does not have any provisions for those with print disabilities. Thus, in order to comply with and take full advantage of the Marrakesh Treaty, Cambodia's copyright law should be amended to create an exception to allow for the creation and distribution of accessible format copies and to allow the cross-border exchange of these copies. While Cambodia does not currently have provisions prohibiting the circumvention of technological protection measures, if its laws change to include anti-circumvention provisions, a new provision permitting beneficiaries to overcome these barriers would be required. Such a provision could take different forms, including a narrow provision addressing only compliance with the Marrakesh Treaty, or a broader provision allowing for circumvention in a wider range of cases.

**China** has also signed the Marrakesh Treaty. It has the world's largest population of people who are visually impaired: just over 17.3 million people. It also has a rapidly aging population and the number of people with visual impairments is therefore expected to increase. Few schools are available for those who are blind, visually impaired or otherwise print disabled and only three of China's 2,000 universities admit students who are visually impaired. The large population of individuals with print disabilities in China and their low education rate highlights the need for China to ratify and implement the Marrakesh Treaty to help alleviate the book famine.

Although China's current copyright law includes a specific exception permitting the creation of braille formats, in order to comply with the Marrakesh Treaty, the law must be amended to permit the creation and distribution of any accessible format. It should also be clarified to include a right to import and export accessible format copies as well as a provision ensuring that technological protection measures do not hinder access to accessible formats. Cross-

border exchange is a critical feature of the Marrakesh Treaty and will be of particular benefit to the large populations of Chinese speakers who live outside of China.

**Fiji** has not signed the Marrakesh Treaty. Those with disabilities in Fiji are likely to be among the poorest segment of the population. Those with disabilities face a lack of opportunities to prepare for employment or be employed, and also social stigma. In order to alleviate these problems, ratification of the Marrakesh Treaty would greatly benefit those who are blind, visually impaired or otherwise print disabled. Fiji has three major languages: English, Fijian and Hindi. Individuals with print disabilities in Fiji would therefore greatly benefit from the ability to import works from countries that share a common language with Fiji, such as the United States or India.

The fact that Fiji does not currently have any limitations or exceptions for those who are print disabled, coupled with the current structure of its copyright law, which include a number of detailed definitions, lends itself to implementation of language that closely adheres to the text of the Marrakesh Treaty. Fiji will need to include provisions allowing for the creation and distribution of accessible formats, as well as importation and exportation of accessible formats. It may also want to consider a specific provision addressing circumvention of technological protection measures.

**Indonesia** has signed the Marrakesh Treaty. While it is not clear how many people with disabilities live in Indonesia due to a lack of accurate data, the country has an aging population which will lead to a growing number of individuals who need accessible format works. Students with disabilities do not have equal access to education in Indonesia, but there are efforts to promote accessibility for individuals with visual impairments, including through the availability of accessible formats. These efforts can be strengthened through ratification and implementation of the Marrakesh Treaty.

The fact that there are more than 700 languages spoken in Indonesia creates challenges in ensuring that accessible format copies are available in the necessary languages. Here, too, ratification of the Marrakesh Treaty would greatly benefit individuals with print disabilities because it would enable the import of accessible copies from other countries that share languages and dialects spoken in Indonesia, such as China, Malaysia and the Netherlands, as well as English-speaking countries. Indonesia's copyright law includes a specific exception which allows for the creation of braille formats, but will need to be amended to comply with the Marrakesh Treaty. Its current exception must be broadened to allow for the creation and distribution of any necessary accessible format, the importation and exportation of these copies, and an explicit exception to allow the circumvention of technological protection measures.

**Nepal** has signed the Marrakesh Treaty. The rights of those with disabilities have not been fully realized in part due to the lack of appropriate accessible formats, means and technology. Only about 10 percent of school-aged children with visual impairments receive education and those who wish to attend college face additional challenges due to limited access to works in accessible formats. The low level of overall education for those who are visually impaired results in lower employment rates. While Nepali is the official language of the country, many people speak other major languages, such as English and Hindi. Higher education classes are generally taught in English and students are taught the Nepali braille system or the English braille system. However, braille has not been standardized in Nepal, leading to challenges for those with visual impairments. Those with print disabilities would therefore greatly benefit from importation of accessible format works from countries with shared common languages, such as India, which has already ratified the treaty, and the United States.

Nepal's copyright law does not include any specific exceptions to allow for the creation and distribution of accessible format copies. In order to comply with the Marrakesh Treaty, Nepal's law must be amended to permit the creation and distribution of accessible formats. It would also be useful to clarify that there is an importation right for authorized entities and include an explicit right to export. Its copyright law should also be amended to ensure that its anti-circumvention provisions do not impede beneficiary persons from gaining access to accessible format works.

**Viet Nam** has not signed the Marrakesh Treaty. According to the 2009 census, Viet Nam has a population of 6.1 million people with disabilities, 4 million of whom have a visual disability. Those with disabilities in Viet Nam suffer from lower literacy, education and employment rates compared to the general population. The braille system in Viet Nam is derived from various languages, though it closely resembles French braille. Braille formats, however, remain unaffordable for many students and one report found that more than 50 percent of visually impaired students do not have the necessary books to study. While Viet Nam's copyright law does provide a specific exception for "transcription" of works into braille, this language will need to be broadened to apply to any accessible format.

Additionally, Viet Nam's copyright 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 copyright law should also be amended to ensure the provision regarding anti-circumvention of technological measures does not impair the rights of beneficiary persons to accessible format works, particularly if the Trans-Pacific Partnership Agreement (TPP), a large regional free trade agreement currently being negotiated among twelve parties including Viet Nam, comes into force and Viet Nam is required to change its laws with respect to technological protection measures.



Chapter

1

# Background

A 2014 fact sheet by the World Health Organization estimated that 285 million people are visually impaired.<sup>1</sup> Approximately 90 percent of these visually impaired people live in developing countries.<sup>2</sup> Furthermore, as people age, many lose their vision and their rate of visual impairment increases: 82 percent of people with visual impairments are over the age of 50.<sup>3</sup>

These individuals are at a severe disadvantage compared to sighted people due to the fact the vast majority of works are not made available in an accessible format, such as braille, audio or large print. In addition to people with visual impairments, there are individuals with print disabilities who cannot effectively read because of physical, perceptual, developmental, cognitive or learning disabilities. These individuals are unable to receive information contained in most printed works.

The World Health Organization and World Bank's 2011 *World Report on Disability* noted the link between disability and poverty:

Disability is a development issue, because of its bidirectional link to poverty: disability may increase the risk of poverty, and poverty may increase the risk of disability. A growing body of empirical evidence from across the world indicates that people with disabilities and their families are more likely to experience economic and social disadvantage than those without disability.<sup>4</sup>

The report found that disability had an "adverse impact on education, employment [and] earnings" and that there were "increased expenditures related to disability."<sup>5</sup> The decreased level of education leads to reduced employment opportunities, and even when they do find employment, people with disabilities generally earn less than those without disabilities.<sup>6</sup> Thus, "[i]t is harder for people with disabilities to benefit from development and escape from poverty due to discrimination in employment, limited access to transport, and lack of access to resources to promote self-employment and livelihood activities."<sup>7</sup> Additionally, people with disabilities "may have extra costs resulting from disability – such as costs associated with medical care or assistive devices..."<sup>8</sup>

The recent growth of aging populations and increased incidence of non-communicable diseases observed in many developing countries is expected to increase the rate of disabilities: "The increase in diabetes, cardiovascular diseases (heart disease and stroke), mental disorders, cancer, and respiratory illnesses, observed in all parts of the world, will have a profound effect on disability. They are estimated to account for 66.5% of all years lived with

1 World Health Organization, Fact Sheet No. 282, *Visual Impairment and Blindness* (August 2014), available from <http://www.who.int/mediacentre/factsheets/fs282/en/>. However, a 2011 joint report by WHO and World Bank estimated a higher number of people with visual impairments. The report estimated that 314 million people are visually impaired, with 45 million of these people completely blind (*World Report on Disability* (2011), p. 172). Some statistics and estimations may vary due to differences in methodologies.

2 Ibid.

3 Ibid.

4 World Health Organization and World Bank, *World Report on Disability* (2011), p. 10.

5 Ibid., p. 47.

6 Ibid.

7 Ibid.

8 Ibid.



disability in low-income and middle-income countries.”<sup>9</sup> Further, longer life expectancy means that the number of older people, and thus the number of people with age-related visual impairments, is likely to increase.

Governments should find ways to address the expected rise in the number of people with print disabilities and the challenges those with disabilities face with respect to poverty.

## 1.1 Development goals: Leave no one behind

Promoting access to knowledge is critical to achieve the principle of “leav[ing] no one behind” as advocated for by UN Secretary-General Ban Ki-moon in his report on the post-2015 development agenda.<sup>10</sup> The Secretary-General noted that while there has been substantial progress in achieving the Millennium Development Goals, “More than a billion people still live in extreme poverty. Far too many people face serious deprivation in health and education, with progress hampered by significant inequality related to income, gender, ethnicity, disability, age and location.”<sup>11</sup>

In order to achieve the goal of leaving no one behind, the report calls for, among other things, an “eradication of poverty”<sup>12</sup> and “tackl[ing] exclusion and inequality.”<sup>13</sup> The report notes the importance of “quality education and lifelong learning”<sup>14</sup> to achieving development goals, as well as “inclusive and sustainable growth and decent employment ... Labour market policies should focus in particular on young people, women, and people with disabilities.”<sup>15</sup>

The report also states, “Goals and targets should take into account cross-cutting issues such as ... disability ... and other factors leading to inequality, human rights, demographics, migration and partnerships. The new goals should embrace the emphasis on human well-being and include the use of metrics that go beyond standard income measures, such as surveys of subjective well-being and happiness...”<sup>16</sup>

The Secretary-General’s report concludes, “[W]e must continue to listen to and involve the peoples of the world... The world’s nations must unite behind a common programme to act on those aspirations. No one must be left behind. We must continue to build a future of justice and hope, a life of dignity for all.”<sup>17</sup>

The Sustainable Development Goals (SDGs) build on the Millennium Development Goals (MDGs) and support the post-2015 development agenda with a new fifteen-year plan for global development. A working group developed a number of SDGs which were adopted at the United Nations Sustainable Development Summit on 27 September 2015. The Sustainable Development Goals include specific recognition for those with disabilities. Goal 4.a, for example, calls for education facilities “that are child, disability and gender-sensitive.”<sup>18</sup> With respect to Goal 10’s efforts to reduce inequality, the Sustainable Development Goals call to “empower and promote the social, economic and political inclusion of all irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status” by 2030.<sup>19</sup> Although the Millennium Development Goals did not include explicit mention of disability, the Sustainable Development Goals recognize the importance of advancing the rights of those with disabilities.

The report on the post-2015 development agenda and the SDGs recognizes the importance of education, employment and inclusiveness, noting that particular attention should be paid to, among other things, ensuring that persons with disabilities are afforded opportunities for development. Without accessible format works, however, persons with print disabilities are disadvantaged with respect to these opportunities.

<sup>9</sup> Ibid.

<sup>10</sup> Report of the Secretary-General: *A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015*, 68th Session, A/68/202 (26 July 2013), available from <http://www.un.org/millenniumgoals/pdf/A%20Life%20of%20Dignity%20for%20All.pdf>

<sup>11</sup> Ibid., ¶6.

<sup>12</sup> Ibid., ¶83 (which “is aggravated by discrimination, insecurity, inequality and environmental and disaster risks”).

<sup>13</sup> Ibid., ¶84 (“In order to leave no one behind and bring everyone forward, actions are needed to promote equality of opportunity. This implies inclusive economies ... as well as societies where all people can contribute and participate in national and local governance.”).

<sup>14</sup> Ibid., ¶86.

<sup>15</sup> Ibid., ¶90.

<sup>16</sup> Ibid., ¶111.

<sup>17</sup> Ibid., ¶120.

<sup>18</sup> Sustainable Development Knowledge Platform, *Open Working Group Proposal for Sustainable Development Goals*, <https://sustainabledevelopment.un.org/sdgsproposal> (last visited 3 July 2015).

<sup>19</sup> Ibid.

## 1.2 The right to knowledge and information

Access to knowledge, including information commonly found in written texts, is fundamental to the development goals noted above. The right to information underpins a number of recognized human rights including, among other things, the rights to take part in society, participate in cultural life, enjoy the benefits of scientific progress, exercise freedom of opinion and expression, seek and impart information, and access education and employment opportunities.<sup>20</sup>

These rights have been recognized in numerous international instruments including the Universal Declaration on Human Rights; the International Convention on Economic, Social, and Cultural Rights (ICESCR); the International Convention on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC); and, most recently, the Convention on the Rights of Persons with Disabilities (CRPD).

At its core, access to knowledge and information—and therefore to accessible format works for those with visual impairments or other disabilities—is a human right because such access is fundamental to attaining the numerous rights espoused in these treaties.

The right to knowledge is critical in the ability to realize fundamental rights including:

- **The right to information and to exercise freedom of opinion and expression<sup>21</sup>:** At their core, many of the human rights that would require persons with print disabilities to have works in accessible formats flow from this right. Without accessible format works, persons with disabilities may have difficulty in receiving or imparting information, particularly that which is found in text-based works, a necessity in exercising and expressing one's freedom of expression.
- **The right to take part in society<sup>22</sup>:** This right includes the ability and opportunity to participate within one's community and in a political and public life. Accessible format works are necessary to ensure that people have the information—including access to laws, regulations, news and other materials—necessary to inform decision-making, ensure dignity and promote self-reliance.
- **The right to participate in cultural life<sup>23</sup>:** This right inherently depends on access to works. Literature, news and media are fundamental aspects of culture and without accessible format works, persons with visual impairments or other disabilities may not be able to realize this right. By facilitating access to accessible format works, individuals with print disabilities are not only able to enjoy culture, but also to contribute to it, because new works often rely on the existence of old works.
- **The right to enjoy the benefits of scientific progress<sup>24</sup>:** Similar to the right to participate in cultural life, the right to enjoy the benefits of scientific progress is dependent upon access to accessible format works. Often, scientific progress is discussed or published in print format and understanding such progress can only be achieved through access to information. Additionally, because of advances in technology, accessible works exist in numerous formats, including refreshable braille systems and text-to-speech formats on electronic readers.
- **The right to education<sup>25</sup>:** Reliance on written materials places those with print disabilities at a disadvantage in realizing this right due to the fact that only a small fraction of works are available in an accessible format. Students with print disabilities may be unable to achieve the same level of education as other students because they lack equal access to course materials and are therefore unable to achieve full participation.
- **Right to employment opportunities<sup>26</sup>:** Many employment opportunities rely on being able to access written materials. For example, employment opportunities may depend on job preparation: the ability to complete training programmes or participate in continuing education programmes requiring the use of information that may be found in texts. Moreover, one must be able to read job listings to know what jobs

20 For specific provisions guaranteeing these rights in various international human rights treaties, see Appendix 3.

21 See ICCPR, Article 18.1; ICCPR, Article 19; CRC Article 13.1; CRC Article 14.1; CRC Article 17; CRPD, Article 21.

22 See CRC, Article 23.1; CRPD, Article 29; CRPD, Article 9.

23 See ICESCR, Article 15.1; CRC, Article 31; CRPD, Article 30.

24 See ICESCR, Article 15.1.

25 See ICESCR, Article 13; CRC, Article 28.1; CRC, Article 29.1; CRPD, Article 24.

26 See ICESCR, Article 6; ICESCR, Article 1.1; CRPD, Article 27.

are available, and to read a job application in order to fill it out. Without access to information, persons with disabilities are denied equal opportunities to and an equal basis for employment.

In a recent report presented to the Human Rights Council in March 2015 by the UN Special Rapporteur in the field of cultural rights, Farida Shaheed recognized the importance of copyright limitations and exceptions to a human rights framework. The report stated, “A human rights perspective also requires that the potential of copyright exceptions and limitations to promote inclusion and access to cultural works, especially for disadvantaged groups, be fully explored.”<sup>27</sup>

While access to information is a critical right that underpins many other fundamental rights, persons with disabilities often do not have such access, leading to serious human development impacts. A 2011 report by the World Health Organization found “significantly lower rates of primary school completion and fewer mean years of education than respondents without disability.”<sup>28</sup> In a 2004 study, it was estimated that in developing countries where the vast majority of persons who are blind or visually impaired live, only 2 percent of children with print disabilities receive education and no more than 5 percent will find employment.<sup>29</sup> As a result, poverty and visual impairments are closely linked. As the World Blind Union has noted:

Poverty is both a cause and a consequence of blindness. Poverty and blindness reinforce each other, contributing to increased vulnerability and exclusion. The majority of blind people find that their situation negatively affects their chances of going to school, obtaining work, and enjoying family and social life. Problematic attitudes in society and lack of opportunity are the determining factors, and not lack of ability.<sup>30</sup>

Persons who are blind or visually impaired, like other persons with disabilities, are at particular risk during disaster and conflict situations because of lack of preparation, planning, access to information, and access to rescue services.<sup>31</sup>

The World Health Organization has noted, “disaster education materials, early warnings and information given to the public during a crisis are often not presented in formats that are accessible to people with disabilities, e.g. those with impaired vision or hearing” and that some “disaster management policies and practices may result in the exclusion of people with disabilities and older people unless specific efforts are made to include them.”<sup>32</sup> Lack of access to information perpetuates cycles of poverty and prevents persons with disabilities from progressing and achieving the right to development.

## 1.3 Convention on the Rights of Persons with Disabilities

In addition to being a critical component of achieving the broad rights discussed above, the right to accessible format works is a concrete obligation under the Convention on the Rights of Persons with Disabilities. Specifically, it requires that parties ensure intellectual property does not create unreasonable barriers to access to information.

The CRPD provides concrete obligations in promoting these rights for persons with print disabilities. The CRPD had 82 signatories when it opened for signatures on 30 March 2007, earning this convention the recognition of the largest number of signatories to a UN convention on its opening day. It entered into force on 3 May 2008. The high number of signatures and quick ratification emphasized the international community’s increasing recognition of the importance of recognizing and advancing the rights of persons with disabilities.

In addition, the CRPD supports the creation and distribution of accessible format works for persons who are print disabled by explicitly recognizing intellectual property barriers. Article 21, for example, mandates:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas

27 Shaheed, Farida. UN Special Rapporteur in the field of cultural rights, *Copyright policy and the right to science and culture*, A/HRC/28/57 (24 December 2014) ¶166.

28 World Health Organization, *World Report on Disability* (2011) at Figure 7.1, available from [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1)

29 Rowland, William. *Blindness, Poverty and Development*, World Blind Union (December 2004).

30 Ibid.

31 See, e.g., United Nations, *Disability-Inclusive Disaster Risk Reduction and Situations of Risk* (13 October 2014), <http://www.un.org/disabilities/default.asp?id=1546>.

32 World Health Organization, *Disaster Risk Management Fact Sheet, Disaster Risk Management for Health: People with Disabilities and Older People*, WHO Global Platform (May 2011), [http://www.who.int/hac/events/drm\\_fact\\_sheet\\_disabilities.pdf](http://www.who.int/hac/events/drm_fact_sheet_disabilities.pdf).



on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a. Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b. Accepting and facilitating the use of sign languages, braille, augmentative and alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions...<sup>33</sup>

Article 30.3 specifically references intellectual property barriers and obligates parties to:

take all appropriate steps in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.<sup>34</sup>

Like other human rights instruments, the CRPD recognizes the importance of international cooperation.<sup>35</sup>

The CRPD also provides for an optional protocol that recognizes the competence of the Committee on the Rights of Persons with Disabilities and creates an individual complaint mechanism for violations of the Convention.

## 1.4. Disability rights in Asia and the Pacific: The Decade of Persons with Disabilities and the Incheon Strategy

In November 2012, governments in the Asia-Pacific region launched a ten-year regional strategy to promote inclusiveness of persons with disabilities in society, entitled the Decade of Persons with Disabilities 2013–2022. In creating the Decade of Persons with Disabilities, governments in the region “aim... to accelerate realization of the rights of the estimated 650 million persons with disabilities in the region, the majority of them poor, disadvantaged and discriminated against.”<sup>36</sup>

Soon after declaring this strategy, these governments adopted a specific framework for promoting the rights of persons with disabilities. Known as the Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific, this framework is based on the principles found in the CRPD including, for example, respect for inherent dignity, individual autonomy, non-discrimination, full and effective participation and inclusion in society, equality of opportunity, and accessibility.<sup>37</sup>

The Incheon Strategy contains 10 goals, 27 targets and 62 indicators with the objective of achieving these goals by 2022.<sup>38</sup> Several of the goals are highly relevant to ensuring that persons who are print disabled have access to accessible format works:

- Goal 1: Reduce poverty and enhance work and employment prospects
- Goal 2: Promote participation in political processes and in decision-making
- Goal 3: Enhance access to the physical environment, public transportation, knowledge, information and communication
- Goal 5: Expand early intervention and education of children with disabilities
- Goal 9: Accelerate the ratification and implementation of the Convention on the Rights of Persons with Disabilities and harmonization of national legislation with the Convention

33 Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 76th plen. mtg., U.N. Doc A/RES/61/106 (Dec. 13, 2006) [hereinafter CRPD], Art. 21.

34 Ibid., Article 30.3.

35 Ibid., Article 32.

36 United Nations Economic and Social Commission for Asia and the Pacific, *Asia-Pacific governments launch new Decade of disability-inclusive development*, G/58/12, (1 Nov 2012), available from <http://www.unescap.org/news/asia-pacific-governments-launch-new-decade-disability-inclusive-development>

37 Incheon Strategy, p. 15.

38 Ibid., p. 8–9.

■ Goal 10: Advance subregional, regional and interregional cooperation.<sup>39</sup>

As discussed above, employment opportunities, participation in the political process, access to knowledge and communication, and education are all critical rights dependent on the availability of accessible format works to persons with print disabilities.

In achieving these goals and ensuring that the rights of persons with disabilities are realized, the Incheon Strategy calls on governments to, for example, adopt and implement legislative and administrative measures and ensure “[p]ersons with disabilities have access to... knowledge, information and communication, in a usable manner, through universal design and assistive technologies with reasonable accommodation provided.”<sup>40</sup>

Ratification of the Marrakesh Treaty would support the goals of the Incheon Strategy. In 2014, the World Blind Union - Asia Pacific (WBUAP) issued the Hong Kong Statement which “[c]all[s] upon governments throughout the Asia-Pacific region to ratify the Marrakesh Treaty at the earliest opportunity so that persons who are blind or partially sighted or who have other print disability, have full access to works of literature, culture and to educational materials.”<sup>41</sup>

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39 Ibid.

40 Ibid., p. 7.

41 World Blind Union - Asia Pacific (WBUAP), Hong Kong Statement (24 November 2014), available from <http://www.wbuapga2014.org/upload/editor/WBUAP%20Hong%20Kong%20Statement.pdf>.





Chapter

2

# The Marrakesh Treaty

## Key points:

- Those who are blind, visually impaired or otherwise print disabled face a serious shortage of accessible format works known as a 'book famine'. It is estimated that less than 7 percent of all books are made in accessible formats, which can take various forms, including transcription into braille, audio versions, or text-to speech technology for works available electronically. This percentage is even smaller in low-income countries.
- After extensive negotiations at the World Intellectual Property Organization (WIPO), culminating in a diplomatic conference, the international community adopted the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the Marrakesh Treaty or 'Treaty') in June 2013.<sup>42</sup> (See Appendix 1 for the text of the Marrakesh Treaty)
- The Marrakesh Treaty requires Contracting Parties (that is, the countries that have ratified or acceded to it) to adopt copyright exceptions that allow the creation and distribution, including cross-border exchange, of accessible format works. The key benefits of the Treaty result from the obligations to allow under certain conditions, limitations and exceptions: 1) the making of accessible format copies; 2) the domestic distribution of accessible format copies; 3) the export of accessible format copies (including by digital transmission); and 4) the import of accessible format copies (including by digital download).
- Providing an exception to allow the domestic creation and distribution of accessible format works without authorization of the copyright owner should lead to a greater number of works in accessible formats. Ultimately, the Marrakesh Treaty should help address the book famine by alleviating the shortage of domestically created works and also save resources by avoiding duplication through the enjoyment of cross-border exchange, provided that countries ratify and implement the provisions of the Treaty. Countries with smaller collections will be able to greatly benefit from existing and growing collections in other countries, particularly where a common language exists. Because the publisher typically is not selling accessible format copies in the developing country, it would not lose any revenue by virtue of the operation of the Treaty.
- In providing a limitation or exception to allow the creation of accessible format works, the Marrakesh Treaty does not require Contracting Parties to limit the exception to cases where there are no commercially available accessible formats. Additionally, the Marrakesh Treaty requires Contracting Parties to adopt an exception to a circumvention prohibition to permit the creation of an accessible format copy or ensure the ability to circumvent the prohibition through other mechanisms.
- The Marrakesh Treaty does not dictate how these goals are to be achieved; rather, it provides Contracting Parties with great flexibility concerning the implementation of these obligations. This flexibility allows each country to tailor its limitations and exceptions to its domestic context, taking into account, for example, its

<sup>42</sup> Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted 27 June 2013, WIPO Doc. VIP/DC/8 Rev.

own legal traditions and support for persons with print disabilities. While detailed and robust limitations and exceptions that directly replicate the language of the Marrakesh Treaty may be appropriate in some circumstances, for many countries the context of their laws suggest that limited amendments may be sufficient and appropriate.

## 2.1 Background: Addressing the book famine

In order to promote access to knowledge and protect the fundamental human rights discussed above, it is essential to address barriers to accessible format works. Accessible formats can take various forms, including transcription into braille, an audio version, or text-to-speech technology for works available electronically. While these formats are necessary for the print disabled, only a small fraction of published books—estimated at less than 7 percent—are made in accessible formats.<sup>43</sup> This percentage is even smaller in low-income countries, resulting in a ‘book famine’ where persons who are print disabled have no access to the vast majority of works.<sup>44</sup>

For those works that are distributed electronically, technological protection measures may be applied that prohibit the enablement of the text-to-speech function on an electronic reader.

This lack of accessible format works is largely a function of market forces. Publishers are not willing to bear the additional cost of creating accessible format copies for the relatively small and low-income market of people with print disabilities.

While there is an obvious market failure, copyright law may prevent entities that serve the print disabled from addressing this need. The works are covered by copyright, meaning that the entities that serve the print disabled may not adapt texts into accessible formats, unless they receive permission from the copyright owner (typically the publisher) or the copyright law in their country contains an exception that permits the creation of accessible format copies.<sup>45</sup>

Even in countries with limitations and exceptions that allow entities to create and distribute copies in accessible formats, only a small fraction of existing works are adapted into accessible formats due to high production costs. In the United States, for example, the National Federation of the Blind estimates that no more than 5 percent of published works are available to the blind and print disabled.<sup>46</sup>

Moreover, even where a work exists in a particular accessible format, it may not be available in the format a particular person with a print disability needs. For example, a work may be available in an audio format, but an individual who is deaf and blind may need a braille version.

Alternatively, a work may be available as text-to-speech on a particular electronic reader, but that reader may lack general accessibility features or the individual may own a different reader where the work is not available because the file is not interoperable between readers.

Because the creation of accessible format copies requires time, effort and cost, the creation and distribution of such copies should be done as efficiently as possible so as to maximize the number of accessible works. However, countries that share a common language generally do not share accessible formats that have been created.

Again, copyright law acts as an obstacle. Even if the copyright laws of two countries contain exceptions that permit the creation of accessible copies—for example, those of Australia and the United Kingdom—those exceptions might not permit the export or import of those copies. Thus, the cost of creating an accessible format of a work must be incurred in each country where the print disabled desire to read that work. Cross-border sharing would greatly increase efficiency and allow developing countries, which may have an even smaller percentage of accessible works available nationally, to benefit from the existing formats in other countries.

43 See, World Blind Union, *Press Release – WIPO Negotiations Treaty for Blind People* (17 June 2013), available from <http://www.worldblindunion.org/English/news/Pages/JUne-17-Press-Release-for-WIPO-Book-Treaty.aspx>.

44 See, e.g., LaBarrem, Scott C., “Literacy Without Borders: The Road to Marrakesh”, *Braille Monitor* (August 2014), available from <https://nfb.org/images/nfb/publications/bm/bm13/bm1308/bm130811.htm>.

45 See, e.g., Shaheed, Farida. *Copyright policy and the right to science and culture*. (see footnote 27) ¶67 (“Disability advocates have long expressed concern that copyright law can impede the adaptation of works into format functional for people with disabilities when copyright holders fail to publish works in accessible formats, such as Braille, or allow others to do so.”)

46 National Federation for the Blind, *2015 Marrakesh Fact Sheet* (2015), <https://nfb.org/books-without-borders>.



The market failure represented by the book famine can be remedied by creating limitations and exceptions to copyright to allow the creation and distribution (including across borders) of accessible format works for persons who are print disabled. However, a 2007 World Intellectual Property Organization study found that only about one-third of countries had national copyright exceptions to this end, the majority of which were found in the developed world.<sup>47</sup>

The absence of copyright exceptions for the print disabled in two-thirds of countries led many to conclude that the most effective way to promote the adoption of exceptions in all countries, and thereby to end the book famine, was the adoption of a binding international treaty on minimum exceptions to copyright to permit the creation and distribution of accessible format works and to facilitate cross-border sharing of these formats. In 2011, the Special Rapporteur on the Right to Freedom of Expression and Opinion, Frank LaRue, urged WIPO Member States to agree to a binding treaty for persons with disabilities noting:

The digital age we now live in provides technology which could allow blind, partially sighted and other reading disabled people across the world to both receive and impart information regardless of frontiers, and therefore enjoy this human right fully.

This should be a wonderfully empowering development, helping reading disabled people to access information on an equal basis with others for the first time in history. However, the reality is starkly different. Blind and partially sighted people face a “book famine” in which the vast majority of books are never made into accessible formats like braille, audio or large print.<sup>48</sup>

After extensive negotiations at WIPO, culminating in a diplomatic conference, the international community adopted the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.<sup>49</sup> The Treaty harmonizes limitations and exceptions for the print disabled, obligating members to the Treaty to create minimum levels of exceptions to allow the creation and distribution of accessible format copies.

Fifty-one countries signed the Marrakesh Treaty on 28 June 2013, the day it opened for signature, a record number of signatures during a WIPO signing ceremony.<sup>50</sup> This signaled the commitment of the international community to overcoming the book famine and promoting the rights of the print disabled. The Marrakesh Treaty needs twenty ratifications or accessions in order to enter into force; while eighty countries have signed the treaty, eleven have ratified or acceded to it as of 9 October 2015. These countries are Argentina, El Salvador, India, Mali, Mexico, Mongolia, Paraguay, the Republic of Korea, Singapore, the United Arab Emirates and Uruguay.<sup>51</sup> Continued ratifications and accessions by other countries worldwide is critical, both in ensuring that the Marrakesh Treaty will come into force and to address barriers to accessible formats.

The UN Special Rapporteur in the field of cultural rights has recommended that states “ratify the Marrakesh Treaty... and ensure that their copyright laws contain adequate exceptions to facilitate the availability of works in formats accessible to persons with visual impairments and other disabilities, such as deafness.”<sup>52</sup>

## 2.2 Key provisions and expected benefits

The Marrakesh Treaty requires Contracting Parties (that is, the countries that have ratified it) to adopt copyright exceptions that allow the creation and distribution, including cross-border exchange, of accessible format works. The key benefits of the Treaty result from the obligations to provide, under certain conditions, limitations and exceptions to allow:

47 Sullivan, Judith. *WIPO Standing Committee on Copyright and Related Rights Study on Copyright Limitations and Exceptions for the Visually Impaired*, SCCR/15/7 (20 Feb 2007).

48 LaRue, Frank. *WIPO Standing Committee on Copyright and Related Rights Declaration from the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (16 November 2011), available from <http://tacd-ip.org/archives/480>.

49 Marrakesh Treaty (see footnote 42)

50 Balasubramaniam, Thiru. “28 June 2013: 51 Signatories to the Marrakesh Treaty, *Knowledge Ecology International*”. 28 June 2013. <http://keionline.org/node/1769> (Last visited 2 July 2013)

51 Other countries are also moving toward ratification. For example, it has been reported that the Honduran parliament has ratified the Marrakesh Treaty, though it has not yet deposited its instrument of ratification with WIPO. For the current list of signatories to the Marrakesh Treaty as well as ratifications and accessions, see WIPO, *WIPO-Administered Treaties: Contracting Parties > Marrakesh VIP Treaty*, [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=843](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=843)

52 Shaheed, Farida. UN Special Rapporteur in the field of cultural rights, *Copyright policy and the right to science and culture*, A/HRC/28/57 (24 December 2014) ¶116.

- 1) the making of accessible format copies;
- 2) the domestic distribution of accessible format copies;
- 3) the export of accessible format copies (including by digital transmission); and
- 4) the import of accessible format copies (including by digital download).

Significantly, the Marrakesh Treaty does not dictate how these goals are to be achieved; rather, it provides Contracting Parties with great flexibility concerning the implementation of these obligations. As Article 10(3) provides, “Contracting Parties may fulfill their rights and obligations under this treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof...”<sup>53</sup> This flexibility allows each country to tailor its limitations and exceptions to its domestic context, taking into account, for example, its own legal traditions and support for persons with print disabilities.

## 2.2.1 Definitions

As with any legal instrument, understanding the Marrakesh Treaty’s definitions are critical to understanding the Treaty’s scope. The most basic term is “**beneficiary person**”, the type of person the Treaty is intended to benefit.

Article 3 defines a beneficiary person as a person who is: a) blind; b) “has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works;” or c) “is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.”

Thus, the scope of who is a beneficiary person is significantly broader than blind people or even people with visual impairments. Footnote 3 further explains that the phrase “visual impairment or disability ... which cannot be improved” in Article 3(b) does not require “the use of all possible medical diagnostic procedures and treatments.” Thus, for example, any disabling visual impairment that cannot be improved by the use of corrective lenses should be understood to qualify.

The Treaty defines the type of works to which it applies. For purposes of the Treaty, “**works**” means published literary and artistic works in the form of text, notation and/or illustrations, whether published or otherwise made publicly available in any media.<sup>54</sup> Footnote 1 of the Treaty adds that this definition includes such works in audio form, such as audiobooks. Significantly, audiovisual works such as films do not fall within the definition of works, although textual works embedded in audiovisual works (such as educational multimedia DVDs) would appear to fall within the definition.

The Treaty then defines the formats into which these works can be converted. “**Accessible format copy**”<sup>55</sup> means a copy of a work in a 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.”<sup>56</sup> It further defines an accessible format copy as one “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...”<sup>57</sup>

The wording of the Marrakesh Treaty successfully avoids the ambiguity of whether an accessible format copy is a format *usable only* by a print-disabled person; “the accessible format copy is used exclusively by beneficiary persons” clearly refers to who is actually using the copy, not who is capable of using it. In this respect, the second sentence of Article 2(b) is not part of the definition of an accessible format copy, but rather a limitation on the uses of such a copy that are permitted under the Treaty. That is, the Treaty allows a Contracting Party to limit permissible distribution only to beneficiary persons or to prohibit editing or abridgment in ways beyond what the process of creating the accessible format copy requires, thereby ensuring that an author’s rights and interests are protected.

<sup>53</sup> Marrakesh Treaty (see footnote 42), Art. 10(3).

<sup>54</sup> Ibid. Art. 2(a).

<sup>55</sup> Accessible format copies can take a variety of forms including, but not limited to, DAISY format, braille, audio (such as works being read on a cassette tape, CD or digital format), or text-to-speech on an electronic reader.

<sup>56</sup> Marrakesh Treaty (see footnote 42), Art. 2(b).

<sup>57</sup> Ibid.



Finally, the Treaty defines the organization that will be making and distributing the accessible format copies as the “**authorized entity**”. An authorized entity is “an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.”<sup>58</sup> This definition permits a for-profit entity that is providing such education or information access to beneficiary persons to use the exceptions under the Marrakesh Treaty, provided that it is doing so on a non-profit basis. Footnote 2 elaborates that the phrase “entities recognized by the government” may include entities that receive financial support from the government for the purpose of providing services to beneficiary persons.

Furthermore, Article 2(c) provides that the term authorized entity “also includes a government institution or a non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations”, even if the organization is not specifically authorized or recognized by the government to do so. Thus, for example, both a specialized agency providing services to the blind and a general-service library with an institutional programme to promote accessibility would constitute authorized entities.<sup>59</sup>

## 2.2.2 Making of accessible format copies

*The Marrakesh Treaty requires an exception to allow for the creation of accessible format copies for those who are blind, visually impaired or otherwise print disabled. No permission from the rightholder is necessary. The Marrakesh Treaty **does not** require that the limitation be restricted to cases where there is no commercially available accessible format.*

Article 4(1) of the Marrakesh Treaty requires Contracting Parties to provide in their national law an exception to the right of reproduction “to facilitate the availability of works in accessible format copies for beneficiary persons.”<sup>60</sup> Allowing the creation of accessible format works without requiring permission from the rightholder will promote a greater number and range of works available for persons who are print disabled.

Contracting Parties have significant flexibility in how they meet this obligation. Article 4(2) sets forth one way a Contracting Party can comply with Article 4(1), but Article 4(3) provides that Contracting Parties “may fulfill Article 4(1) by providing other limitations or exceptions in its national law.”<sup>61</sup> Thus, while a country may use Article 4(2) as a model for drafting legislation, a country may choose other language that is better suited to its legal traditions and context.

The Article 4(2) method of compliance has two subparts. First, consistent with Article 4(2)(a), an authorized entity would be permitted to make an accessible format copy, or obtain an accessible format copy from another authorized entity, and supply the copy to a beneficiary by any means, including non-commercial lending or electronic communication.<sup>62</sup> Second, consistent with Article 4(2)(b), the beneficiary person or someone acting on their behalf may make an accessible format copy for the use of the beneficiary person.<sup>63</sup>

In providing a limitation or exception to allow the creation of accessible format works, the Marrakesh Treaty does not require Contracting Parties to limit the exception to cases where there is no commercially available accessible format.<sup>64</sup> This fact is significant. Even where an accessible format is available commercially, the work may not be

<sup>58</sup> Ibid., Art. 2(c).

<sup>59</sup> Article 2(c) specifies that an authorized entity “establishes and follows its own practices” to establish that the people it is serving are beneficiary persons; to limit its distribution of accessible format copies to beneficiary persons or authorized entities; to discourage the reproduction and distribution of unauthorized copies; and to maintain due care in, and records of, its handling of copies of works. This provision concerning the establishment of practices appears not to be an element of the definition of “authorized entity,” but serves rather as a descriptive statement: authorized entities *generally* establish and follow these types of practices. Importantly, the authorized entity establishes its *own* practices; the Treaty does not contemplate rules being established for it by the government.

<sup>60</sup> Marrakesh Treaty (see footnote 42), Art. 4(1).

<sup>61</sup> Ibid., Art. 4(3).

<sup>62</sup> Four conditions would apply to this activity: (i) the authorized entity that is the source of the copy had lawful access to the work; (ii) the work is converted to an accessible format copy, which includes any means needed to navigate information in the copy, but does not introduce changes other than those needed to make the work accessible; (iii) the accessible format copy is supplied exclusively to be used by the beneficiary persons; and (iv) the activity is undertaken on a non-profit basis.

<sup>63</sup> Marrakesh Treaty (see footnote 42), Art. 4(2)(b).

<sup>64</sup> The Marrakesh Treaty does not require a commercial availability standard. Article 4(4) uses permissive language stating that a party *may* confine exceptions to works where an accessible format cannot be obtained commercially under reasonable terms. Where a country

in the particular format necessary for a specific individual. Additionally, a work may be available on one particular electronic reader, but the file may not be interoperable between readers. If there were a requirement involving commercial availability, it could make it harder to use the exceptions that allow the creation and distribution of accessible formats, given that searches for a commercially available copy could consume time and resources.

### 2.2.3 Domestic distribution of accessible format copies

*The Marrakesh Treaty requires an exception to allow distribution of accessible formats for the blind, visually impaired or otherwise print disabled. Such distribution includes digital transmissions.*

Article 4(1) also requires Contracting Parties to provide an exception to the right of distribution and making available to the public with respect to accessible format copies for beneficiary persons.<sup>65</sup> The phrase “making available” is understood to encompass digital transmission. The exception regarding domestic distribution of accessible format copies is subject to the same flexibilities noted above.

### 2.2.4 Export of accessible format copies

*The Marrakesh Treaty requires a provision to allow authorized entities to export accessible format copies to a beneficiary person or another authorized entity. This Marrakesh Treaty does not require that export be limited to cases where there is no commercially available accessible format.*

A key objective of the Marrakesh Treaty is to permit the cross-border distribution of accessible format copies. Because of the high cost of producing accessible format copies and the relatively low demand for many individual titles, the ability to share accessible format copies across borders would benefit the print disabled in both developed and developing countries.

Persons with print disabilities can benefit from the import of existing accessible format works in other countries, greatly increasing the number of works available. For cross-border distribution to occur, it must be lawful for an accessible format copy to be exported from the country in which it is made; and it must be lawful for that copy to be imported into the country in which it will be read by a print-disabled person.

Article 5(1) provides that a Contracting Party must permit an authorized entity to distribute (or make available by digital transmission) an accessible format copy made under an exception to a beneficiary person or an authorized entity in another Contracting Party.<sup>66</sup> In other words, the domestic copyright law of a Contracting Party must allow an authorized entity to export an accessible format copy to a beneficiary person or authorized entity in another Contracting Party.

Exporting accessible format works will help solve the book famine worldwide, allowing those works that have already been adapted to an accessible format to be accessed by persons with print disabilities in other countries. Authorized entities creating accessible formats will not need to waste resources through duplication of accessible formats that already exist.

The Marrakesh Treaty provides Contracting Parties with flexibility on how to implement this obligation, including setting forth one approach. Under Article 5(2), a Contracting Party may adopt an exception in its national copyright

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does implement a commercial availability standard, Article 4(4) provides that the accessible copy must be available under terms that are reasonable for beneficiary persons in that market. Thus, in a developing country, the accessible format copy must be available at a reasonable price for a beneficiary person in that country. In addition, the Marrakesh Treaty leaves it to “national law to determine whether limitations or exceptions under this Article are subject to remuneration.” A Contracting Party may therefore choose to implement this section by adopting a statutory license or through an absolute exception.

<sup>65</sup> Marrakesh Treaty (see footnote 42), Art 4(1).

<sup>66</sup> Ibid., Art. 5(1).

law that permits an authorized entity to distribute an accessible format copy to an authorized entity or a beneficiary person in another Contracting Party.<sup>67</sup>

During the Marrakesh Treaty negotiations, some delegations proposed the inclusion of a provision in Article 5 concerning commercial availability, which would have restricted the exportation of accessible format works to cases where no accessible format were offered commercially. This provision was ultimately not included in the Treaty, allowing countries to export accessible format works regardless.

Article 5(4)(b) of the Marrakesh Treaty provides that if a Contracting Party is not a member of the WIPO Copyright Treaty (WCT), it can permit an authorized entity to export an accessible format copy only if it limits exceptions implementing the Treaty to “certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder”, known as the “three-step test”. The agreed statement regarding this article confirms that the provision does not impose a three-step test obligation beyond the scope of the Treaty’s provisions concerning exceptions for beneficiaries.

## 2.2.5 Import of accessible format copies

*The Marrakesh Treaty requires a provision to allow authorized entities or beneficiary persons to import accessible format copies. This provision will allow those who share a common language to benefit from existing accessible format copies in other countries.*

Article 6 of the Marrakesh Treaty contains a provision that is the matching bookend to Article 5. Just as Article 5 obligates Contracting Parties to permit authorized entities to export accessible format copies to authorized entities or beneficiary persons in other Contracting Parties, Article 6 obligates Contracting Parties to allow authorized entities or beneficiary persons to import accessible copies from other Contracting Parties.<sup>68</sup>

Allowing the import of accessible format copies is a critical component in improving domestic access to accessible formats. Countries can take advantage of accessible formats that already exist in other countries, provided that a common language is shared or for those with print disabilities who are learning a new language.

## 2.2.6 Relationship with technological protection measures

*The Marrakesh Treaty requires an exception to anti-circumvention provisions. This exception must permit authorized entities to make an accessible format copy or ensure the ability to circumvent a digital lock through other mechanisms. The Marrakesh Treaty does not require authorized entities to place a technological protection measure on an accessible format copy.*

Article 7 of the Marrakesh Treaty provides that when a Contracting Party prohibits circumvention of technological protection measures in its general copyright legislation, it “shall take appropriate measures, as necessary, to ensure that ... this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.”<sup>69</sup> Thus, a Contracting Party must adopt an exception to a circumvention prohibition to permit an authorized entity to make an accessible format copy or ensure the ability to circumvent the prohibition through other mechanisms, for example, by requiring the rightholder to provide the authorized entity with a key to open the digital lock.

The agreed statement to Article 7 notes that an authorized entity may choose to apply a technical protection measure to an accessible format copy, but the **Treaty does not require this practice.**

<sup>67</sup> This may occur only if “the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons.”

<sup>68</sup> Marrakesh Treaty (see footnote 42), Art. 6.

<sup>69</sup> Ibid., Art. 7.

## 2.2.7 Additional provisions

Article 8 of the Marrakesh Treaty provides that Contracting Parties “shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.”<sup>70</sup> This provision should be viewed as a floor and not a ceiling. Even in countries with few privacy protections, authorized entities should be encouraged to protect the privacy of the reading habits of the beneficiaries of the Treaty.

Article 10 of the Marrakesh Treaty underscores the flexibilities Contracting Parties have in how they implement the treaty.<sup>71</sup> Article 11, however, stresses that the flexibility to implement the Marrakesh Treaty is limited by existing treaty obligations. Particularly relevant for most countries is the Berne “three-step test”<sup>72</sup> and the formulations of the test found in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and the WIPO Copyright Treaty.

It is understood that if a Contracting Party’s implementation closely follows the provisions of the Treaty, for example its definitions and the provisions of Article 4(2), the implementation would satisfy the requirements of the three-step test.

Article 12(1) states that Contracting Parties may adopt additional copyright exceptions for the benefit of beneficiary persons “having regard to that Contracting Party’s economic situation, and its social and cultural needs, in conformity with that Contracting Party’s international rights and obligations, and in the case of a least developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.”<sup>73</sup> This provision provides benefits, for example, to least developed countries that have been granted waivers of compliance with TRIPS provisions or to developing countries that may make use of the Berne Appendix.<sup>74</sup>

Article 12(2) provides that the Treaty is without prejudice to other limitations and exceptions for those with disabilities.

## 2.2.8 Key overall benefits of the Marrakesh Treaty

Providing an exception to allow the domestic creation and distribution of accessible format works without authorization of the copyright owner should promote a greater number of works being made available to persons with print disabilities. By not requiring remuneration to the copyright owner, the Marrakesh Treaty envisions the possibility of lower costs as licence fees will not need to be paid. Furthermore, by removing any requirement that permission be sought from the copyright owner, a significant transactional cost is eliminated.

Additionally, allowing for the import and export of accessible formats, without copyright owner permission, can help avoid the duplication of time and resources in different countries. Countries with smaller collections will be able to greatly benefit from existing and growing collections in other countries, particularly where a common language exists. For example, in the Asia-Pacific region, many residents of different countries share languages such as English, Chinese, Bengali, Bahasa and Malay; works created in these languages can be shared with beneficiary persons in the countries where these languages are used. Additionally, some specialized schools for the blind and visually impaired place an emphasis on teaching English to its students; beneficiaries of the Treaty would benefit from the ability to import works from countries with large existing collections in English, such as the United States and other countries.

Ultimately, the Marrakesh Treaty should help address the book famine by alleviating the shortage of domestically created works and also save resources by avoiding duplication through the enjoyment of cross-border exchange provided that countries ratify and implement the provisions of the Treaty.

<sup>70</sup> Ibid., Art. 8.

<sup>71</sup> Article 10(2) states that “[n]othing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of the Treaty within their own legal system and practice.” Furthermore, Article 10(3) provides that “Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice.” Article 10(3) adds that these exceptions or limitations “may include judicial, administrative, or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs...”

<sup>72</sup> Berne Convention, Article 9(2) provides, “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”

<sup>73</sup> Marrakesh Treaty (see footnote 42), Art. 12.

<sup>74</sup> Cambodia and Nepal qualify as least developed countries.

Significantly, the Treaty's approach of making an exception to copyright law is the least costly means of addressing the book famine from the perspective of governments and copyright owners. Governments could enact laws requiring publishers to produce accessible format copies of the works they publish. This obviously would impose significant costs on the publishers. Alternatively, a government could undertake to create accessible format copies themselves, which would be costly for the government.

Instead, the Marrakesh Treaty simply allows authorized entities to make and distribute accessible format copies at their own expense. It further allows authorized entities and print-disabled individuals to import, including by digital download, accessible format copies created in other countries. Thus, the Marrakesh Treaty would allow an authorized entity, or a print-disabled person, in a developing country to download an accessible format copy produced by an authorized entity in a developed country. And because publishers typically do not sell accessible format copies in developing countries, they would not lose any revenue by virtue of the operation of the Treaty.

It is acknowledged that if the authorized entities in a developing country lacked funds, they would not be able to take full advantage of the Treaty because they would not have the resources to produce accessible format copies of domestically published books in local languages. Nonetheless, they would be able to assist print-disabled people to obtain accessible format copies from better-resourced authorized entities in other countries. This would represent a significant improvement over the status quo.

## 2.3 Necessary conditions for ratification and implementation

To successfully address the book famine, governments, libraries, educational institutions, and other organizations will need to take advantage of domestic provisions to deliver accessible format works to persons with disabilities. Doing so will require the development of capacity. Institutions serving the print disabled will need to be created and funded, technology purchased, and personnel trained. Such developments obviously will take time.

However, from a technical and legal point of view, there are no impediments to the immediate ratification and implementation of the Treaty. All the countries in this study are already part of the international copyright treaty system. They are already members of the Berne Convention or of the World Trade Organization (WTO), which means they are covered by the TRIPS Agreement. They already have copyright laws, and means of enforcing them, that comply with those international obligations.

The Marrakesh Treaty simply requires the adoption of an appropriate exception to these domestic copyright laws. While those working at institutions that currently serve the print disabled would need to be educated about the new exception's provisions, they would be able to begin making and distributing accessible format copies the day the exception takes effect.

Implementing legislation can take different forms. Appendix 2 to this document contains one method of implementation, which involves robust language that largely replicates language from the Marrakesh Treaty itself.

However, many countries already have some form of a copyright limitation or exception addressing those who are blind, visually impaired or otherwise print disabled. While these limitations and exceptions may not currently be sufficient to satisfy the requirements of the Marrakesh Treaty, they can form the basis for appropriate limitations and exceptions.

The context and structure of the current copyright law of each country reviewed in this document is taken into account and reflected in the recommended amendments to the laws of each country. While detailed and robust limitations and exceptions that directly replicate the language of the Marrakesh Treaty may be appropriate in some circumstances, for many countries the context of their laws suggest that less complex amendments may be sufficient and appropriate.





Chapter

3

# Summary and ways forward

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Ending the book famine is one important component in promoting the rights of those who are blind, visually impaired or otherwise print disabled and achieving the Sustainable Development Goals. Access to knowledge and information is critical in achieving the many human rights discussed above. Ratification and implementation of the Marrakesh Treaty offers a concrete way to implement certain provisions of the CRPD and translate the spirit of human rights documents into reality for those who are print disabled. While eleven countries have ratified the Marrakesh Treaty, the Treaty is not yet in force because the minimum number of twenty countries have not yet ratified it. Thus, it will be critical for countries worldwide to continue ratification efforts and ensure that the Marrakesh Treaty can enter into force.

Even after the Marrakesh Treaty enters into force, additional ratifications will be essential to address the book famine. The more countries that ratify the Treaty and effectively implement its provisions, the more successful efforts will be to ensure that those with print disabilities have access to knowledge and information. Countries that have ratified the Marrakesh Treaty with strong implementing legislation will not only be able to create and distribute accessible format works domestically, but can share them across borders with those in other countries that speak common languages.

Developing countries will be able to greatly benefit from the ability to import works from countries with larger existing collections. Because some schools for the blind and visually impaired focus on teaching English, students in these countries will benefit from the collections of accessible formats in the United States and other English-speaking countries. It is therefore important to have a large number of countries ratifying and implementing the Marrakesh Treaty.

The Marrakesh Treaty provides minimum limitations and exceptions, requiring parties to the Treaty to permit the creation and distribution of accessible formats, the ability to import works, and the ability for authorized entities to export accessible works. These requirements can be implemented in a number of ways. While some countries may find it appropriate to use language closely modeled on the actual text of the Marrakesh Treaty,<sup>75</sup> other countries may find it more appropriate to have shorter and simpler language, to be consistent with their current laws and fit into their laws' current structure.

Regardless of whether implementing legislation is constructed with more or less detailed language, it is important to understand the differences between what the Marrakesh Treaty requires and what it permits. Critically, the Marrakesh Treaty does not impose any requirements that the benefits of the treaty be restricted to cases where there is no commercially available accessible format.

Countries that introduce implementing legislation should make use of this flexibility preserved in the Marrakesh Treaty and avoid including a standard of commercial availability. Inclusion of such a standard would impair the ability to use the exceptions provided for under the Marrakesh Treaty, as it could lead to more time and resources spent on determining whether a commercially available accessible format exists. Additionally, the availability of an accessible copy in one format may not be the format that is needed by the individual that needs access to the particular work. For example, not all beneficiaries of the Marrakesh Treaty read braille.

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<sup>75</sup> See Appendix 2 for a model statute based on language from the text of the Marrakesh Treaty.

Additionally, an accessible format file on one electronic reader may not be interoperable with the electronic reader used by the individual in need of the work. Thus, it is unnecessary to create additional hurdles to the creation and distribution of accessible formats. Parties to the Marrakesh Treaty should avoid implementing new standards of commercial availability into their laws, without serious consideration of the harms that such provisions would cause.

Meanwhile, while some authorized entities may want to place technological protection measures on formats that they distribute, the Marrakesh Treaty does not impose such an obligation.

While the recommendations in the report reflect the current status of each country's laws, particularly with respect to anti-circumvention provisions and technological protection measures, it is important to recognize that free trade agreements and other treaties may require changes to domestic laws that could have impacts on the Marrakesh Treaty. Provisions in these agreements and treaties regarding intellectual property often go beyond what is required by the TRIPS Agreement or other international treaties such as the Berne Convention or the WCT.

A number of countries analysed in this report—as well as others in the Asia-Pacific region—do not currently have anti-circumvention provisions or, where they do, they may be ambiguously worded in ways that could be seen as complying with the Marrakesh Treaty. However, provisions in free trade agreements—such as the currently negotiated Trans-Pacific Partnership Agreement or the Regional Comprehensive Economic Partnership—or other treaties could require more stringent adoption of anti-circumvention measures.

In these cases, parties to the Marrakesh Treaty will have to take care to ensure that anti-circumvention provisions do not impair the rights granted under the Treaty. A provision that explicitly permits circumvention for the creation of an accessible format copy would satisfy the obligation of the Marrakesh Treaty, though some countries may prefer a broader exception that permits circumvention for legitimate purposes that are allowed under the domestic law.

Providing the ability to circumvent technological protection measures is critical in ensuring that digital copies of works, including works that are born digital, do not pose additional barriers to the creation and distribution of accessible formats. It may be advisable for countries to include an explicit provision permitting circumvention of technological protection measures, even where they do not have existing obligations regarding anti-circumvention measures, to ensure that their laws will remain compliant with the Marrakesh Treaty, even if they later join an agreement imposing anti-circumvention obligations.

In signing agreements regarding intellectual property protection that goes beyond what is required by international law, countries should ensure that the provisions do not hamper access to affordable assistive technologies and devices for the blind, such as braille, printers, digital readers and other devices. While the recommendations in this report are intended to guide implementation of the Marrakesh Treaty given the current status of each country's domestic laws, additional provisions may be necessary should the country's current copyright laws change.

Ratification of the Marrakesh Treaty and implementing legislation to comply with the requirements of the Treaty are important first steps in creating an appropriate legal framework, but effective implementation requires that beneficiaries and authorized entities make use of the legislation. Organizations that serve the blind, visually impaired or otherwise print disabled must take advantage of the benefits of the Marrakesh Treaty to create and distribute accessible format works, including distribution across borders. Countries that share common languages can particularly benefit from the ability to import and export accessible format works. Duplication of efforts and resources to create accessible format works can be greatly reduced if the Marrakesh Treaty is implemented.

Realizing the right to knowledge of persons with print disabilities and ending the book famine constitute key elements for achieving inclusive, sustainable and equitable development. The Marrakesh Treaty will be an effective instrument to guide governments, community organizations and development partners to pursue the spirit and principle of "leaving no one behind" firmly enshrined in the Sustainable Development Goals.

The remainder of this report provides case studies of three countries in Asia with advanced efforts in implementing the Marrakesh Treaty: India and Mongolia, which have ratified the Treaty, and Thailand, which has passed implementing legislation. It evaluates the contexts in which these countries have had early success in implementing the Marrakesh Treaty, which other countries may wish to replicate in their own ratification efforts.

The report then examines six individual countries and provides background information about disability rights and laws in the country and an overview of its copyright law. Specific recommendations are made for each country reviewed, given their existing laws and domestic contexts, with tables that show the current language of copyright law in the left column, and recommended amendments to the current law in the right column.



While these laws are specific to the country reviewed, other countries with similar existing laws may wish to replicate these recommended amendments. Additionally, Appendix 2 provides a model statute based on the text of the Marrakesh Treaty which some countries may wish to rely upon in drafting their own implementing legislation, depending on the context of their existing laws.

# Chapter

# 4

# Case studies of three countries with advanced efforts

Several countries in the Asia-Pacific region have moved swiftly to promote the rights of the print disabled through the Marrakesh Treaty. India, for example, was the first country to ratify the Marrakesh Treaty. Mongolia signed the Treaty on the opening day for signatures and ratified the Treaty in September 2015. Thailand is also moving toward accession to the Treaty, with implementing legislation passed that reportedly went into effect in August 2015.

## 4.1 India

### Key points:

- India quickly ratified both the Convention on the Rights of Persons with Disabilities and the Marrakesh Treaty. It was the first country to ratify the Treaty, demonstrating its strong commitment to those with print disabilities.
- Copyright amendments were made in India even prior to the conclusion of the Marrakesh Treaty in an effort to promote the rights of those with disabilities and allow for the creation and distribution of accessible formats. These amendments introduced in 2012 in many ways reflected some of the earlier discussions of the Treaty and therefore provided a strong basis for its implementation.
- India has worked with a number of organizations to ensure that beneficiaries of the Treaty can fully enjoy their rights under it and help address the book famine.
- India's experience demonstrates that adoption of an exception for the print disabled leads to the creation and distribution of accessible format copies. There is no indication that the exception has had an adverse impact on publishers or has been abused in any way.

### 4.1.1 Background

India has demonstrated a commitment to disability rights through its quick ratifications of treaties that benefit those with disabilities as well as through its national legislation. India signed the Convention on the Rights of Persons With Disabilities when it opened for signature on 30 March 2007 and quickly ratified it on 1 October 2007. Additionally, India has the distinction of being the first country to ratify the Marrakesh Treaty, which it did on 24 June 2014.<sup>76</sup> Occurring within one year of the signing ceremony, this ratification represented the fastest ratification for a WIPO-administered treaty, demonstrating India's strong commitment to promoting the rights of those with print disabilities.

<sup>76</sup> WIPO, 'India is First to Ratify "Marrakesh Treaty" Easing Access to Books for People Who are Visually Impaired', Geneva (30 June 2014), PR/2014/761, [http://www.wipo.int/pressroom/en/articles/2014/article\\_0008.html](http://www.wipo.int/pressroom/en/articles/2014/article_0008.html) (last visited 15 May 2015).

Article 21 of India's constitution provides for the right to life and liberty, which has been broadly interpreted to encompass a number of other rights. This provision has been interpreted by the Supreme Court of India to include "the right to live with human dignity," which includes the right to "facilities for reading," among other rights.<sup>77</sup>

In 1995, India enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act.

WHO has estimated that India has 63 million visually impaired individuals.<sup>78</sup> India has a strong network of organizations that provide services to those with disabilities. The Christian Blind Mission, for example, reports that its work in India includes support to "over 173 Partner NGOs. These comprise of ophthalmologists, paramedics, hospital administrators, teachers, trainers, resource persons, grass root level field workers and others, in the areas of medical, educational and vocational rehabilitation of persons with disabilities thereby improving the quality of life."<sup>79</sup>

Organizations, entities and companies that serve those with print disabilities in India include Barrier Break Technologies, Benetech, EnAble India, Indian Association for the Blind, National Association for the Blind (India), National Federation for the Blind, Score Foundation, and Xavier Resource Centre for the Visually Challenged. Several organizations are devoted to promoting the creation and distribution of accessible formats.

One of the two Digital Accessible Information System (DAISY) For All (DFA) project<sup>80</sup> resource centers is located in India.<sup>81</sup> A report for 2003–2004 noted the establishment of a number of facilities and services that support this resource center, including two soundproof recording studios to record DAISY books, digital-to-analog conversion<sup>82</sup> as well as analog-to-digital conversion facilities, a library of DAISY source documents, a braille production facility for English and Indian languages, a digital library, a center for DAISY talking book production training, a digital book reading facility, and a software development facility.<sup>83</sup>

The creation of a DAISY For All resource center in India resulted in the creation of Indian-language software for DAISY talking books as well as the creation of content in Hindi, English, Tamil, Gujarati and Telugu languages.<sup>84</sup> The report noted that the "resource centre in India has set an example of DAISY implementation for developing countries. The developing countries of all over the world are now able to appreciate that this technology is not meant just for the developed world but the fruits of this revolutionary concept can easily reach the persons with blindness living in the developing countries."<sup>85</sup>

Benetech, through Bookshare India, works specifically to promote access to works from its collection of more than 180,000 accessible books in English, Hindi and Tamil languages.<sup>86, 87</sup> Bookshare India partners with the DAISY Forum of India<sup>88</sup> to provide accessible formats for those who are print disabled. Benetech has worked in India since 2008 and has built a coalition of partners, which now serves more than 2,200 Indian Bookshare members.<sup>89</sup> It provides access to a collection of more than 180,000 English, Hindi and Tamil accessible books.<sup>90</sup>

77 Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981 SCC (1) 608 ("We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings.").

78 WHO, *Global Data on Visual Impairments* (2010).

79 Christian Blind Mission, 'India: Building an Inclusive Society', <http://www.cbmindia.org.in/Building-an-inclusive-society-257129.php> (last visited 15 May 2015).

80 The DAISY For All project was developed as a five-year project to deploy DAISY technology and build capacity in developing countries to adapt and localize DAISY software

81 DAISY, India, <http://www.daisy.org/daisyforall/india> (last visited 29 June 2015).

82 The report notes, "Till the time the digital talking book players become popular, all recordings are being made available in both the Cd and audio cassette formats. It is an important concept in making DAISY Standard book production acceptable to organizations in developing countries."

83 Manocha, Dipendra. *India: Annual Report for July 2003–March 2004*, DAISY Consortium, <http://www.daisy.org/daisyforall/india> (last visited 15 May 2015).

84 Ibid.

85 Ibid.

86 Benetech, 'Scholastic India and Renowned Author, Dr. Kiran Bedi Contributes Books; Hundreds of Hindi and Tamil Titles Soon to Be Available in Accessible Formats' (3 December 2009), <http://benetech.org/2009/12/03/bookshare-india-partnerships-build-india-and-worldwide/#sthash.RZyqJMma.dpuf>

87 Pappas, Kristina, 'Benetech Wins All Children Reading: A Grand Challenge for Development Grant to Improve Literacy for Primary School Students with Disabilities in India' (5 February 2015), <http://benetech.org/2015/02/05/benetech-wins-all-children-reading-a-grand-challenge-for-development-grant-to-improve-literacy-for-primary-school-students-with-disabilities-in-india/>

88 Benetech, 'Scholastic India and Renowned Author...' (see footnote 86).

89 Pappas, Kristina, 'Benetech Wins All Children Reading' (see footnote 87).

90 Ibid.



The National Association for the Blind (India) currently houses the Braille Press that was designated by the Government of India in 1963.<sup>91</sup> The Braille Press supports the Shobhi El-Ejel Memorial Braille Library, established in 1990, which has 1,300 books and periodicals.<sup>92</sup> It began computerized braille production in 1994.<sup>93</sup> It produces accessible formats for academic books, general literature and reference materials in five languages: Marathi, Hindi, English, Gujarati and Sanskrit.<sup>94</sup> In addition to braille production, the National Association for the Blind initiated the Talking Book Centre which records books in audio format in English and several Indian languages.<sup>95</sup>

The large network of organizations available to those who are blind, visually impaired or otherwise print disabled can strongly realize the effective implementation of the Marrakesh Treaty.

### 4.1.2 Legal measures

In 2012, while the Marrakesh Treaty was still being discussed and negotiated at WIPO, India amended its copyright law in a number of areas, including the introduction of a new provision allowing for the creation of accessible format works for those with disabilities. Although India amended its laws prior to the existence of the Marrakesh Treaty, its 2012 amendments related to those who are print disabled appear to be consistent with the final Treaty language.<sup>96</sup>

The Copyright Amendment Act of 2012 introduced Section 52(1)(zb) which describes:

The adaptation, reproduction, issue of copies or communication to the public of any work in an accessible format, by –

- (i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or
- (ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons.

This provision broadly allows for the creation and distribution of accessible formats for “any person with disability” and may be done by an individual or an organization “working for the benefit of the persons with disabilities.” The provision does not limit the class of beneficiaries to the blind or visually impaired and is therefore broad enough to cover the print disabled. Additionally, it would appear to go beyond the minimum obligations of the Marrakesh Treaty and also allow for the creation of accessible formats for those who are deaf. Early negotiations of the Marrakesh Treaty included discussions regarding whether those with hearing impairments would also be covered under the Treaty.

While those with hearing impairments were not ultimately included, India may have intentionally implemented a broad provision in light of those discussions. This provision does not limit the type of accessible format that may be created, unlike the existing provisions of many other countries that only permit specific types of accessible formats, such as braille. Again, because India amended its laws several years into the negotiations of the Marrakesh Treaty, the amendments may have been proposed in light of the discussions at WIPO.

In addition to Section 52(1)(zb), the Copyright Amendment Act created a new Section 31B which permits compulsory licenses for the creation of accessible format works on a for-profit basis. Section 31B states:

- (1) Any person working for the benefit of persons with disability on a profit basis or for business may apply to the Copyright Board, in such form and manner and accompanied by such fees as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of subsection (1) of section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavor shall be made to dispose of such application within a period of two months from the date of receipt of the application.

91 National Association for the Blind (India), NAB Sir Jamshedji Duggan Braille Press, <http://www.nabindia.org/activities/braille-press.aspx> (last visited 12 May 2015).

92 Ibid.

93 Ibid.

94 Ibid.

95 National Association for the Blind (India), NAB M. P. Shah All India Talking Book Centre, <http://www.nabindia.org/activities/talking-books.aspx> (last visited 12 May 2015).

96 See Press Information Bureau, Government of India Ministry of Human Resource development, ‘India Becomes First Country to Ratify the Marrakesh Treaty’ (2 July 2014), available from <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106012>.

- (2) The Copyright Board may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.
- (3) If the Copyright Board is satisfied, after giving to the owners of such rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the appellant such a licence to publish the work.
- (4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued including the rate or royalty.

During the course of negotiations of the Marrakesh Treaty, one issue that was heavily discussed is whether commercial, for-profit entities could be considered authorized entities under the treaty. India's 2012 amendments clearly allow for the creation and distribution of accessible format works on a for-profit basis, but activities under this provision depend on a compulsory licence.

With respect to cross-border exchange of works, India's copyright law already provided that importation of infringing copies of works is an infringement of copyright. However, it also explicitly provides that activities under the limitations and exceptions of Article 52 are not an infringement of copyright. Thus, importation of accessible format copies made under Article 52(1)(zb) would be permissible.

### 4.1.3 Practices and lessons for other countries

After ratification of the Marrakesh Treaty, Benetech received a grant from the Skoll Foundation and the United Nations Foundation to scale up Bookshare's library services in India.<sup>97</sup> The grant supports the creation and distribution of accessible format copies in local Indian languages, which will be distributed through WIPO's Accessible Books Consortium (ABC).<sup>98</sup> The swift ratification of the Marrakesh Treaty, together with the involvement of foundations and authorized entities, will help address the book famine for the millions of print-disabled people in India.

Additionally, Benetech received a grant from USAID, World Vision and the Australian Government to "improve literacy for primary school students who are blind in India" by providing accessible formats in the students' mother tongue through Bookshare.<sup>99</sup> Benetech notes that its project is essential to improve literacy for students because:

In countries with several languages, such as India, even when a child with a print disability does not receive an accessible text, it is the bare minimum to participate in class—with little or no reading materials to strengthen their learning outside the classroom, and few opportunities to complement their braille learning with other modes, such as audio. Preliminary data from teachers at our partner schools for the blind in India shows very low levels of early grade reading skills, ranging between 10–15%.<sup>100</sup>

The project will focus on students in Maharashtra and will provide both braille as well as human-narrated audio in the mother tongue language, with a goal of having 30 to 35 percent of the target students reading at grade level in two years.<sup>101</sup>

Other countries ratifying the Marrakesh Treaty, particularly those where multiple languages are spoken, can evaluate this project and determine its effectiveness in improving literacy rates among its student population.

India's experience demonstrates that adoption of an exception for the print disabled leads to the creation and distribution of accessible format copies. There is no indication that the exception has had an adverse impact on publishers or has been abused in any way.

97 Ronkin, Noa. 'Benetech Wins Skoll and UN Foundation Award to Bring Books to People with Print Disabilities in India' (17 April 2015), <http://benetech.org/2015/04/17/benetech-wins-skoll-and-un-foundation-award-to-bring-books-to-people-with-print-disabilities-in-india/>

98 Ibid.

99 Pappas, Kristina, 'Benetech Wins All Children Reading' (see footnote 87).

100 Ibid.

101 Ibid.



## 4.2 Mongolia

### Key points:

- Mongolia has demonstrated its commitment to those with disabilities as it acceded to the Convention on the Rights of Persons with Disabilities and is a member of the Optional Protocol. Mongolia signed the Marrakesh Treaty on the day it opened for signature in June 2013, the Parliament voted to ratify the Treaty in July 2015, and the instrument of ratification was deposited in September 2015.
- Mongolia's disability law grants those who are blind or visually impaired a legal right to be issued a free DAISY talking book player.
- The Mongolian Intellectual Property Office produced a concept paper on the Marrakesh Treaty and sent the proposal to the government prior to ratification. Implementing legislation will be necessary to allow for cross-border exchange and to address technological protection measures.
- Ratification efforts in Mongolia have been supported by domestic organizations as well as international organizations such as the Electronic Information for Libraries. Partnerships between domestic organizations and outside organizations have contributed to the advanced efforts toward ratification in Mongolia.

### 4.2.1 Background

Mongolia acceded to the Convention on the Rights of Persons with Disabilities on 13 May 2009 and is also a member of the Optional Protocol, demonstrating a clear commitment to the rights of those with disabilities. Additionally, Mongolia signed the Marrakesh Treaty on 28 June 2013, the date the Treaty opened for signature, signaling an intention to ratify the agreement.

Mongolia provides for a number of rights to protect those with disabilities in its domestic law. Specifically addressing those who are blind or visually impaired, the Social Welfare Law of 2009 provides a legal right to receive, among other things, braille devices and a tape recorder every five years.<sup>102</sup> Due to strong advocacy by the Mongolian National Federation of the Blind, in 2012 Mongolia amended this law to grant those who are blind or visually impaired a legal right to be issued with a free DAISY talking book player, rather than a tape recorder.<sup>103</sup> The Mongolian National Federation of the Blind has produced DAISY books since 2011 through the support of donor organizations.

Although the law provides that the costs of publishing braille and large-print books are to be provided for by the social welfare fund,<sup>104</sup> economic difficulties in the country have resulted in a lack of funds and cuts to budgets allocated to activities to produce braille books.

Estimates of the number of people with visual impairments in Mongolia range between 16,000 and 130,000,<sup>105</sup> depending on the definition of visually impaired and the methodology for determining the estimate.

In the World Blind Union - Asia Pacific Mid-Term Regional General Assembly meeting in 2014, the Mongolian National Federation of the Blind submitted a report highlighting some of its recent activities. While there have been a number of successes, including the 2012 amendment to the Social Welfare Law, the report noted that persons with disabilities are not adequately represented in policy decisions because they "are not sufficiently empowered [and] do not have enough information and resources which enable them to actively participate on a level where they can influence policy development and the decision making process concerning disability issues."<sup>106</sup> The report

<sup>102</sup> EIFL, "Mongolia Library Success Sparks Law Change" (22 August 2012), <http://www.eifl.net/news/mongolia-library-success-sparks-law-change>

<sup>103</sup> Ibid.

<sup>104</sup> Law on Social Protection of Persons with Disabilities (2008), Art. 9.3.7.

<sup>105</sup> Ulaanbaatar City Public Library, *Factsheet: Mongolian DAISY Talking Book Center* (27 August 2010), <http://daisy-upl-mongolia.blogspot.com/2010/08/factsheet-mongolian-daisy-talking-book.html> (last visited 20 May 2015).

<sup>106</sup> Country Report on WBUAP Mid-Term Regional General Assembly: Mongolia (2014), WBUAP, available from <http://wbup.org/index/mid-term-general-assembly-2014/mongolia-country-report>

also noted that individuals who are blind or visually impaired need to play a greater role in achieving greater changes in Mongolia.

The mid-term report pointed out several improvements in the implementation of the CRPD. For example in 2012, the Ministry of Population Development and Social Protection established a department charged with handling issues related to persons with disabilities.<sup>107</sup> Additionally, the government adopted a 'Plan of Actions to Implement the CRPD in 2013–2016' and accepted the Incheon Strategy.<sup>108</sup> According to this report, Mongolia is working on amending its Law on the Social Protection of Persons With Disabilities to comply with the CRPD.<sup>109</sup>

Those promoting access to accessible formats for the blind, visually impaired or otherwise print disabled have faced significant challenges in Mongolia. A 2010 fact sheet by the Ulaanbaatar library, for example, stated, "Providing educational resources for the blind is made even more difficult in a country such as Mongolia with very remote rural communities. The current services are primarily available in the capital. To address this issue, the Ulaanbaatar Public Library (UPL) project will produce DAISY Digital Talking Books and set up a national network of libraries for the blind in order to ensure access from all regions of Mongolia."<sup>110</sup> But as of mid-2010, none of the rural libraries in Mongolia had accessible books in their collections.<sup>111</sup>

To address this challenge, following trainings in 2008 and 2010 at the DAISY For All resource centers in Thailand and India, a DAISY center was established in Mongolia in July 2010 at the Ulaanbaatar City Public Library through the support of the EIFL Public Library Innovation Program and the Mongolian National Federation of the Blind.<sup>112</sup> This DAISY Center in Mongolia will provide DAISY players to the public libraries in each of Mongolia's provinces and invite librarians from these provinces to the Ulaanbaatar library for training.<sup>113</sup> In 2012, the Ulaanbaatar library had 90 books in DAISY format and this production of books facilitated the amendment in Mongolia's Social Welfare Law that grants those with visual impairments a right to be issued DAISY players.<sup>114</sup>

Additionally, the Mongolian National Federation of the Blind houses a braille and audio production center and a radio station, as well as providing other services such as training centres.<sup>115</sup> The Mongolian National Federation of the Blind also works closely with organizations in other countries. For example, its 2014 report to the World Blind Union - Asia Pacific General Assembly pointed out that it "closely cooperated with [the] Thailand [A]ssociation of the [B]lind, Korean Blind Union, Japanese [B]lind Association and Danish [A]ssociation of the [B]lind and got support from these organizations for [the] wellbeing of Mongolian blind people" for a variety of activities including, for example, conducting braille training and improving capacity building.<sup>116</sup> The support the Mongolian National Federation of the Blind receives from other organizations in the region can provide a strong basis for the meaningful implementation of the Marrakesh Treaty.

While Mongolian is spoken by the vast majority of individuals in the country, some people also speak Russian, English, Chinese, German—particularly the older population—and some forms of Turkish dialects. Those with print disabilities would benefit greatly from the ability to import accessible formats in these languages.

## 4.2.2 Legal measures

The Marrakesh Treaty was translated into Mongolian by the Mongolian National Federation of the Blind in order to support ratification efforts. The translation was approved by the Ministry of Foreign Affairs as an official document, which is also available in braille.

In December 2014, the Mongolian Intellectual Property Office produced a concept paper on the Marrakesh Treaty and sent the proposal to the government. The Mongolian government cabinet discussed the treaty on 15 June 2015 and decided to send it to Parliament. As per the Mongolian legal procedure, the Treaty was discussed by the Social

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid., p. 105

<sup>111</sup> DAISY Planet: Daisy Consortium's Newsletter (August 2010), 'Mongolia Discovers DAISY'; available from <http://www.daisy.org/planet-2010-08#a1>

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> EIFL, 'Mongolia Library Success Sparks Law Change' (see footnote 102).

<sup>115</sup> Country Report on WBUAP Mid-Term Regional General Assembly: Mongolia (2014), (see footnote 106).

<sup>116</sup> Ibid.

Policy Standing Committee before being sent to the Parliament. The Parliament approved the Marrakesh Treaty on 9 July 2015 and the Mongolian government deposited its instrument of ratification on 23 September 2015.

The current copyright law in Mongolia provides for a number of limitations and exceptions, including “To use works for the visually impaired and people with hearing problems.”<sup>117</sup> Mongolia’s copyright law does not appear to have any provisions related to importation or exportation of copyrighted works, nor does it have provisions on technological protection measures.

### 4.2.3 Practices and lessons for other countries

Ratification efforts in Mongolia have been supported by domestic organizations, such as the Mongolian National Federation of the Blind and the DAISY Center at the Ulaanbaatar Public Library, as well as by international organizations such as the Electronic Information for Libraries. The partnership between domestic and foreign organizations has contributed to the advanced efforts toward ratification in Mongolia. These efforts were highlighted on television in December 2014, including in a 36-minute programme.<sup>118</sup>

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117 Law of Mongolia on Copyright and Related Rights (as amended 19 January 2006), Turiin medeeler #7, Art. 24.1.7. In considering the specific limitations and exceptions set forth, Article 24.2 of the law provides that several conditions must be considered including “1. To have a non profit purpose; 2. The extent of use and the importance of the used parts; 3. The value of the work and the effect of the used part on the market.”

118 <https://www.youtube.com/watch?v=21HcOiZ4QFw>

## 4.3 Thailand

### Key points:

- Thailand ratified the Convention on the Rights of Persons with Disabilities and has introduced implementing legislation to comply with the Marrakesh Treaty.
- Thailand has demonstrated a strong commitment to promote the rights of those with disabilities through progressive disability laws and the availability of many public and private schools at all levels that are open to students with disabilities. It also holds special events for those who are blind or visually impaired.
- Implementing legislation to comply with the Marrakesh Treaty was passed in late 2014 and went into effect in August 2015. This legislation ensures that the creation of accessible format copies does not infringe copyright and provides that anti-circumvention rules apply only where circumvention would infringe copyright.
- Thailand's strong network of organizations serving those who are blind or visually impaired coupled with strong advocacy has helped with ratification efforts in the country. Additionally, a Thai legislator who has been blind since birth and served as a Senator in Thailand's Parliament and as President of the Thailand Association of the Blind, was elected to the United Nations Committee on the Rights of Persons with Disabilities and will serve until 2016.

### 4.3.1 Background

Thailand signed the Convention on the Rights of Persons with Disabilities when it opened for signature on 30 March 2007 and ratified it on 1 April 2008. The government noted that it “regard[s] the CRPD as an effective tool to transform our charity-based society into a rights-based society for person with disabilities.”<sup>119</sup> While it has not yet ratified the Optional Protocol, reports suggest that Thailand hopes to do so by 2016.<sup>120</sup>

Thailand revised or implemented its laws on the Rehabilitation of Disabled Persons Act of 1991, Empowerment of Persons with Disabilities Act of 2007, Persons with Disabilities Education Act of 2008, and Persons with Disabilities' Quality of Life Promotion Act of 2007, among other legislation to ensure compliance with the CRPD.<sup>121</sup> These laws guarantee a number of rights, including the rights to education and employment, as well as specific rights such as access to information and communication technology, including assistive devices.<sup>122</sup>

Legislator Monthian Buntan, who has been blind since birth and served as a Senator in Thailand's Parliament and as President of the Thailand Association of the Blind, was elected to the United Nations Committee on the Rights of Persons with Disabilities and will serve until 2016.<sup>123</sup>

Thailand's laws grant the right to education and provide that “persons with disabilities in Thailand may access education at all levels ranging from early intervention and 12 year fundamental education to college level. Currently, there are 22,722 public and private schools open to children with disabilities and 72 college institutions providing

119 Thailand Ministry of Foreign Affairs, “Thailand's status with regard to the Convention on the Rights of Persons with Disabilities (CRPD) and the realization of the MDGs for persons with disabilities”, <http://www.mfa.go.th/humanrights/implementation-of-un-resolutions/136-thailands-status-with-regard-to-the-convention-on-the-rights-of-persons-with-disabilities-crp-and-the-realization-of-the-mdgs-for-persons-with-disabilities> (last visited 25 May 2015).

120 Country Report on WBUAP Mid-Term Regional General Assembly: Thailand (2014), WBUAP, available at <http://wbup.org/index/mid-term-general-assembly-2014/thailand-country-report>

121 Ibid.

122 Ibid., p. 119.

123 Country Report on WBUAP Mid-Term Regional General Assembly: Thailand (2014), (see footnote 120)

a Bachelor to Ph.D. degree for students with disabilities with services related to equipment, assistive devices, sign language interpreters and tutoring.”<sup>124</sup>

A 2014 report noted that, “Thailand now has one of the most progressive disability law[s], and just recently made some amendment[s] by strengthening the implementation of the Convention through expanding service from government sector to civil society sector.”<sup>125</sup> Thailand has indicated a strong commitment to the rights of persons with disabilities through its international obligations and domestic laws. The government has demonstrated a commitment to those with visual impairments and in 2008 published the Universal Declaration of Human Rights in a Thai braille version and distributed them to schools for students with visual impairments.<sup>126</sup>

Thailand hosts a DAISY For All (DFA) Regional Support Center, which facilitates the work of the DFA project in developing countries in the region.<sup>127</sup> It has hosted international trainings for participants in the region, including for the production of full-text DAISY book production, and in 2003 reported at least five DAISY production units in the country.<sup>128</sup>

The Thailand Association of the Blind has national headquarters in Bangkok, with eleven regional branches in the country. Several other organizations to serve the blind or visually impaired also exist, such as the Thai National Research and Development Institute for the Blind, Thai Blind People’s Foundation, the Thonburi Life-long and Career Demonstration Center for the Blind, the Center for learning and Career Demonstration of the Blind, the National Library of the Blind and Persons with Print Disability, and the Thailand Service Co-operative of the Blind.<sup>129</sup>

There are a number of events hosted for those with disabilities. For example, the Thailand national braille reading and writing contest has been held for the past twenty years, a programme aimed at encouraging the practice of using braille for those with visual impairments; a marathon braille-reading contest also exists.<sup>130</sup> Additionally, in January 2014 the Thailand Association of the Blind, together with Ratchasuda College and Mahidol University, held its first International Braille Reading and Writing Contest.<sup>131</sup> In its inaugural year, there were 25 contestants from Malaysia, Singapore, Thailand and Viet Nam.<sup>132</sup>

The Thailand Association of the Blind holds an annual convention to bring together individuals who are visually impaired and stakeholders to “exchange and discuss ways to improve the quality of life of blind people.”<sup>133</sup> In 2013, the Thailand Association of the Blind also convened the first ASEAN Community Blind Forum, which had 17 participants from Brunei Darussalam, Cambodia, Indonesia, the Lao People’s Democratic Republic, Malaysia, the Philippines, Singapore and Viet Nam.<sup>134</sup>

### 4.3.2 Legal measures

Thailand’s copyright law was implemented in 1994. While it includes a number of limitations and exceptions, for example for personal use or the reproduction or adaptation by a teacher for the benefit of their non-profit teaching,<sup>135</sup> the 1994 law does not have any exceptions or limitations for the creation and distribution of accessible formats for the blind, visually impaired or otherwise print disabled.<sup>136</sup> The 1994 law has one provision related to export that prohibits the exportation of the translation of works in Thai that were licensed by approval from the Director General under Article 54 of the Copyright Act for the purposes of non-profit study, teaching or research under certain circumstances.<sup>137</sup> Importation of works “made by infringing the copyright of another person” is prohibited.<sup>138</sup> The law, created prior to the WIPO Copyright Treaty, did not have provisions regarding technological protection measures.

<sup>124</sup> Thailand Ministry of Foreign Affairs, ‘Thailand’s status with regard to the CRPD’ (see footnote 119)

<sup>125</sup> Ibid., p. 123.

<sup>126</sup> Ibid., p. 124.

<sup>127</sup> DAISY Consortium, DAISY For All Resource Center: Thailand, <http://www.daisy.org/daisyforall/thailand> (last visited 25 May 2015).

<sup>128</sup> Ibid.

<sup>129</sup> Ibid., p. 123.

<sup>130</sup> Thailand Ministry of Foreign Affairs, ‘Thailand’s status with regard to the CRPD’ (see footnote 119).

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Thailand Copyright Act, B.E. 2537 (1994), Art. 32.

<sup>136</sup> Thailand Copyright Act, B.E. 2537 (1994).

<sup>137</sup> Ibid., Art. 54(5).

<sup>138</sup> Ibid., Art. 31.

Because the 1994 Copyright Act did not have any provisions regarding the creation and distribution of accessible format works or for the cross-border exchange of such works, amendments to this law are necessary in order to comply with the Marrakesh Treaty. Efforts to ratify the Treaty are already in advanced stages and, according to a 2014 report to the World Blind Union Mid-Term General Assembly, “the National Legislative Assembly is now on its way to adopt the amendment to the Copyright Act which should be adopted by now by the NLA. Such adoption will pave the way for Thailand to sign and ratify the Marrakesh Treaty very soon.”

In late 2014, reports stated that Thailand’s National Legislative Assembly passed two copyright bills.<sup>139</sup> These went into effect in August 2015, 180 days after their publication in the Royal Gazette on 5 February 2015.<sup>140</sup> One of these pieces of legislation includes a new exception under Section 32(9), which “states that reproduction or adaptation of works for the benefit of the disabled is exempt from infringement, provided that the reproduction or adaptation is not done for the intention of profit earning.”<sup>141</sup>

This legislation also created a new provision under Section 53(4) which prohibits circumvention of technological protection measures, but only where it “was performed with the knowledge that it could cause infringement on a copyrighted work or performer’s rights.” The section on circumvention also provides for exceptions to the anti-circumvention provision at Section 53(5), which includes an exception to permit circumvention where it is necessary to achieve a limitation or exception to copyright infringement under the Copyright Act.<sup>142</sup>

### 4.3.3 Practices and lessons for other countries

Thailand has demonstrated a clear and strong commitment to protecting the rights of persons with disabilities. Thailand revised, amended and implemented a number of laws to ensure the robust effectiveness of the rights guaranteed by the CRPD. Additionally, Thailand’s strong network of organizations serving those who are blind or visually impaired coupled with strong advocacy has helped with ratification efforts in the country.

139 International Association for the Protection of Intellectual Property, ‘Major Amendments of Copyright Act and Trade Secret Act in Thailand’, AIPPI e-News No. 40 (February 2015), [https://www.aippi.org/enews/2015/edition40/Suebsiri\\_Taweepon.html](https://www.aippi.org/enews/2015/edition40/Suebsiri_Taweepon.html).

140 Indananda, Nandana and Taweepon, Suebsiri, ‘Thai Copyright Act Amendments: Updating the Law for the Digital Age’, Tilleke & Gibbins: Informed Counsel (9 March 2015), available from <http://www.tilleke.com/resources/thai-copyright-act-amendments-updating-law-digital-age>.

141 Ibid., p. 139.

142 Ibid., p. 139–140.





# Chapter

# 5

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# Legal reviews for the ratification of the Marrakesh Treaty

The following sections of the report examine six individual countries. Specific recommendations are made for each country reviewed, given their existing laws and domestic contexts. Comparative tables at the end of each country section list recommended amendments of current laws. While these laws are specific to the country reviewed, other countries with similar existing laws may wish to consider these recommended amendments.

## 5.1 Cambodia

### Key points:

- Cambodia has ratified the Convention on the Rights of Persons with Disabilities and is a signatory to the Marrakesh Treaty. Those who are blind or visually impaired represent the largest share of those with disabilities in Cambodia.
- Specialized schools for the blind and visually impaired in Cambodia focus on teaching English. Thus, students attending these schools would greatly benefit from the ability to import works from English-speaking countries, such as the United States that have larger existing collections.
- In order to comply with and take full advantage of the Marrakesh Treaty, Cambodia's copyright law should be amended to create an exception to allow for the creation and distribution of accessible format copies and to allow cross-border exchange for accessible copies. While Cambodia does not currently have provisions prohibiting the circumvention of technological protection measures, if its laws change to include anti-circumvention provisions, a new provision permitting beneficiaries to overcome the barriers of technological protection measures would be required. Such a provision could take different forms, including a narrow provision addressing only compliance with the Marrakesh Treaty or a broad provision allowing circumvention for existing limitations and exceptions.

### 5.1.1 Background

#### Disability rights and laws in Cambodia

Cambodia has demonstrated its commitment to people with disabilities through its signatures and ratifications of various treaties. Cambodia ratified the Convention on the Rights of Persons with Disabilities on 20 December 2012 and has signed, but not yet ratified, the Optional Protocol. Cambodia signed the Marrakesh Treaty when it opened for signature on 28 June 2013.

A Disability Action Committee, later renamed the Disability Action Council, was established by Cambodia in 1996 and is a governmental entity that is the “national coordination and advisory mechanism”<sup>143</sup> on issues of disabilities.<sup>144</sup> In 2009, after thirteen years of discussion and work on legislation, Cambodia adopted its Law on the Protection and the Promotion of the Rights of Persons with Disabilities (“Disability Law”). Article 46 of Cambodia’s Disability Law established the Persons with Disabilities Fund responsible for funding services including education.<sup>145</sup>

Cambodia’s Disability Law provides for the right of all students with disabilities to education.<sup>146</sup> It directs the government to develop policies and strategies including “inclusive education ... to the utmost extent possible” as well as “establishing special classes.”<sup>147</sup> The law provides that the Ministry of Education shall “provide accessible facilities for pupils and students with disabilities with regard to the following: [ ...] sign language and Braille<sup>148</sup>; [ ...] study materials or other equipment to assist pupils and students with disabilities.”<sup>149</sup>

These regulations demonstrate a commitment to providing education for students with disabilities, including specifically for those who are visually impaired. Article 49 of the Disability Law also provides “All provisions of international treaties relating to the laws on the protection and the promotion of the rights of persons with disabilities to which the Kingdom of Cambodia is a party shall be implemented together with this national law. In the case of any provisions that contradict the provision of this law, the provisions of those international treaties shall be considered as the principle provisions.”<sup>150</sup> Thus, where the CRPD conflicts with Cambodia’s Disability Law, it seems that this provision requires the CRPD to take precedence.

## People with print disabilities in Cambodia

A 2013 study of Cambodia’s population found that approximately 2 percent of the population was disabled.<sup>151</sup> Those with visual disabilities comprised the largest share of the population with disabilities, making up approximately 35 percent of those with disabilities.<sup>152</sup> The literacy rates of those with disabilities are lower than those without disabilities. Additionally, Cambodia has an aging population, which will contribute to a higher rate of visual impairments in the future.<sup>153</sup>

## Organizations and entities providing assistance to people with disabilities

A 2002 report of disability-related organizations in Cambodia found that there are several entities to serve those who are blind or visually impaired.<sup>154</sup> The Association of Blind Cambodia, a member of the World Blind Union, was established in 2000 and serves all individuals with visual impairments. Its objectives include: establishing a library, training and meeting facility in Cambodia; supporting blind schools with English instruction; and educating and training individuals who are blind in new technological developments.<sup>155</sup> It has capacity for Khmer braille translation and planned to establish a National Resource Center.<sup>156</sup> Additionally, in 2002, it facilitated the creation of the Blind Women’s Committee.<sup>157</sup>

143 Law on the Protection and the Promotion of the Rights of Persons with Disabilities, Kingdom of Cambodia (2009), Art. 6.

144 *Disability Rights Initiative Cambodia: Joint Programme Document*, available from [http://www.unicef.org/cambodia/1-DRIC\\_ProDoc\\_Final\\_Eng%281%29.pdf](http://www.unicef.org/cambodia/1-DRIC_ProDoc_Final_Eng%281%29.pdf).

145 Law on the Protection and the Promotion of the Rights of Persons with Disabilities, Kingdom of Cambodia (2009), Art. 46.

146 *Ibid.*, Art. 27.

147 *Ibid.*, Art. 28.

148 The word ‘braille’ is generally not capitalized but when included as a quotation from another source, its original spelling is maintained.

149 *Ibid.*, Art. 29.

150 *Ibid.*, Art. 49.

151 National Institute of Statistics. *Cambodia Inter-Censal Population Survey 2013: Analysis of CIPS Results: Report 5: Disability*, Phnom Penh, Cambodia (December 2013), p. 12.

152 *Ibid.*, p. 13.

153 National Institute of Statistics. *Demographics of Population Ageing in Cambodia (2012)*, Phnom Penh, Cambodia (“In Cambodia, the proportion of population aged 60 years and above was 6.34 per cent in 2008 (848,911) and expected to increase to 11.01 per cent (2,024,171) by year 2030.”).

154 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Kingdom of Cambodia* (March 2002), Annex 1.

155 *Ibid.*

156 International Labour Office, *Training and Employment of People with Disabilities: Cambodia 2002*, Ability Asia Country Study Series (2002), p. 9–10.

157 *Ibid.*

A 2001 survey found that Cambodia had “two schools for blind children, including Kampot Traditional Music School.”<sup>158</sup> However, this survey found that out of all the specialized schools for students with disabilities in Cambodia, “these eight schools and programmes provide services for just 500 children per year, which is a small fraction of children with disabilities.”<sup>159</sup> In 2002, Krousar Thmey, a school for children who are deaf or blind, reported just 54 students aged 6–14.<sup>160</sup>

### 5.1.2 Copyright law in Cambodia and recommended changes

Cambodia is not a party to the WIPO Copyright Treaty and therefore does not currently have any obligations under this treaty, including the provision of legal protection and remedies against the circumvention of technological measures used to protect rights under the WCT or Berne Convention. Cambodia is also not a party to the Berne Convention.

Cambodia is a member of the World Trade Organization and all members of the WTO are bound by the TRIPS Agreement. However, because of its status as a least developed country, it is afforded an extension of waiver with respect to most articles of the TRIPS Agreement.<sup>161</sup> The latest extension was granted in 2013 and extends until 1 July 2021, or when a particular country ceases to be a least developed country, whichever is earlier.<sup>162</sup>

While this extension may be further extended at some future date, eventually, Cambodia will be required to ensure that its laws are TRIPS compliant. Significantly, its current copyright law, implemented in 2003, is designed to comply with the TRIPS Agreement.

#### Creation and distribution of accessible formats

Article 21 of Cambodia’s copyright law gives authors a number of exclusive rights, including the right to reproduction and creation of derivative works.<sup>163</sup> Article 21 explicitly provides authors the right to translation of works into a foreign language, and the “adaptation and simplification or [to] undertake any modifications.”<sup>164</sup> Article 8 further provides that “Derivative works including translations, adaptations, arrangements and modification or other improvements of works, or compilations of databases, whether in machine readable or other form shall be also protected by this law.”<sup>165</sup>

Cambodia’s copyright law provides for a number of limitations and exceptions, including among others, “the use of work for the purposes of education, which is not for financial gain” and “translation of works from Khmer language into the languages of the ethnic minorities or vice versa.” However, it does not have any provisions regarding the creation or distribution of accessible format works. In order to comply with the Marrakesh Treaty, it will therefore be necessary for Cambodia to amend its copyright law to include a provision to permit such creation and distribution.

#### Importation and exportation

Article 21 of Cambodia’s copyright law gives authors the economic right to distribution and importation, subject to limitations and exceptions. However, Article 23 provides for an exception to Article 21(e) and allows for importation for personal use.<sup>166</sup> Individuals who are blind, visually impaired or otherwise print disabled could therefore use this personal importation provision to import accessible format works from other countries.

<sup>158</sup> Ibid., p. 20.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid., p. 154.

<sup>161</sup> Least developed countries have an extension with respect to implementation of the TRIPS Agreement, with the exceptions of Articles 3, 4 and 5. Cambodia and other least developed countries must still comply with TRIPS obligations regarding national treatment and most-favoured nation status. Additionally, least developed countries must comply with any commitments and obligations they have made through joining WIPO-administered treaties.

<sup>162</sup> Decision of the Council for TRIPS of 11 June 2013: Extension of the Transition Period Under Article 66.1 for Least Developed Country Members, World Trade Organization, IP/C/64 (12 June 2013).

<sup>163</sup> Law on Copyrights and Related Rights, Kingdom of Cambodia (*Adopted by the National Assembly on January 21, 2003 and ratified by the Senate on February 13, 2003.*) Art. 21.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid., Art. 8.

<sup>166</sup> Ibid., Art. 23 (“The importation of a copy of a work by any natural person, for his/her personal use, can be done without the consent of the author of that work or the right-holder”).



While beneficiary individuals can import accessible format copies for personal use, this exception does not appear broad enough to permit authorized entities to import works. Cambodia's copyright law also does not allow an authorized entity to export an accessible format copy to authorized entities or beneficiaries in other countries. The law should therefore be amended, broadening the importation provision and providing for an exception to permit export in order to comply with the Marrakesh Treaty.<sup>167</sup>

Given that some of the specialized schools for the blind and visually impaired place an emphasis on teaching English to its students, beneficiary individuals of the Marrakesh Treaty would benefit greatly from the ability to import accessible formats that exist in the United States and many other English-speaking countries.

## Technological protection measures

Cambodia is not a member to the WCT and is therefore not obligated to provide legal protection and remedies against circumvention of technological protection measures. As such, it does not currently have any provisions in its copyright law regarding technological protection measures. Article 7 of the Marrakesh Treaty requires contracting parties to take appropriate measures to ensure that when a country applies anti-circumvention measures, such provisions do not prevent beneficiaries of the Treaty from enjoying the limitations and exceptions. Cambodia is not obligated to amend its laws with regard to technological protection measures due to the absence of any rules regarding anti-circumvention.

While Cambodia does not have provisions prohibiting the circumvention of technological protection measures, if it later does become a party to the WCT or other treaty or free trade agreements such as the currently negotiated Trans-Pacific Partnership Agreement, it may be required to amend its laws to include anti-circumvention rules. If its copyright laws are amended to prohibit circumvention, a provision would be required for compliance with the Marrakesh Treaty that would permit beneficiaries to overcome the barriers that technological protection measures can place in the creation or access to accessible format works. It may be advisable to adopt such a technological protection measure exception now, as part of implementing the Treaty, so that this battle will not have to be fought in the future.

## 5.1.3 Conclusions and recommendations

In order to comply with the Marrakesh Treaty, Cambodia will need several amendments to its copyright law as it does not currently have any provision permitting the creation or distribution of accessible format works. A new subparagraph under Article 25, which lays out other copyright limitations and exceptions, should be added to allow for the creation and distribution of accessible formats. Cambodia will also need to add a provision allowing authorized entities to import and export accessible format copies.

While Cambodia does not currently provide for anti-circumvention of technological protection measures and therefore does not need an amendment to explicitly allow circumvention, if Cambodia does adopt such a provision in the future—whether as a result of joining the WCT, free trade agreements, or for other reasons—it must also ensure that such a law would not prohibit beneficiaries to enjoy the limitations and exceptions of the Marrakesh Treaty. It may therefore be advisable for Cambodia to introduce an exception that allows for the circumvention of technological protection measures. This would ensure future compliance with the Marrakesh Treaty in the event that its laws later incorporate anti-circumvention provisions.

While Cambodia does not have a large number of organizations and entities serving individuals who are blind, visually impaired or otherwise print disabled, the Association of the Blind for Cambodia does report that it has Khmer braille production capabilities. Additionally, Cambodia would be able to greatly benefit from the importation of works from English-speaking countries due to the fact that a number of its specialized schools teach English. Cambodia is a member of the Organisation Internationale de la Francophonie (OIF)<sup>168</sup> as it has a French-speaking population, and would also benefit from the importation of works from French-speaking countries.

<sup>167</sup> Cambodia is not a member of the WCT and therefore must comply with Article (5)(4)(b) of the Marrakesh Treaty. The recommended amendment to the Cambodian copyright law is sufficiently narrow to meet the three-step test obligation under Article 5(4)(b).

<sup>168</sup> Organisation Internationale de la Francophonie, *About Us*, <http://www.francophonie.org/Welcome-to-the-International.html> (last visited 19 April 2015).





In the following tables in Chapter 5, the left column contains the current language of the copyright law while the right column contains recommended amendments to the current law. Text that is underlined represents new text, while text that is crossed out represents language that should be removed. Only suggested amendments to the current law are included in the right column.

## Creation and distribution of accessible format works

Current law	Recommended amendments
No provisions.	<b>Article 25</b> The author cannot prohibit the following acts:  [...] <u>—The creation and distribution of accessible format copies for people who are blind, visually impaired or otherwise print disabled.</u>
<b>Comment</b>  Article 25 provides for a number of limitations and exceptions and could be amended to include another subparagraph permitting the creation and distribution of accessible format works. The term “accessible format copies” is taken directly from the Marrakesh Treaty and the suggested provision would apply to people who are blind, visually impaired or otherwise print disabled. There are a number of ways Cambodia could amend its laws to permit the creation and distribution of accessible formats for people who are blind, visually impaired or otherwise print disabled; the above recommended addition is a relatively short and simple method for implementing the Marrakesh Treaty.	

## Importation and exportation

Current law	Recommended amendments
<b>Article 21</b> Economic right is the exclusive right of the author to exploit his/her own work through the authorization of reproduction, communication to the public, and creation of derivative work. Unless otherwise specified in the provisions of articles 24, 25, 26, 27, 28 and 29, the author has exclusive right to act by him/herself or authorize someone to do the followings:  [...] <p>e. Importation into the country, the reproduction copies of his/her work.</p>	<b>Article 21</b> Economic right is the exclusive right of the author to exploit his/her own work through the authorization of reproduction, communication to the public, and creation of derivative work. Unless otherwise specified in the provisions of articles <u>23, 24, 25, 26, 27, 28 and 29</u> , the author has exclusive right to act by him/herself or authorize someone to do the followings:  [...] <p>e. Importation into the country, the reproduction copies of his/her work.</p>
<b>Article 23</b> The importation of a copy of work by any natural person, for his/her personal use, can be done without the consent of the author of that work or the right-holder.	<b>Article 23</b> <u>a. The importation of a copy of work by any natural person, for his/her personal use can be done without the consent of the author of that work or the right-holder.</u>  <u>b. Importation or exportation of copies of accessible format copies by an entity recognized by the government that provides services to the blind, visually impaired or otherwise print disabled, can be done without the consent of the author of that work or the right-holder.</u>

### Comment

Cross-border exchange of works is a critical feature of the Marrakesh Treaty that will help address the book famine. Article 21 provides for the economic rights of the author, subject to the articles listed which provide limitations and exceptions. Article 21 should be amended to include Article 23, which currently provides for an exception for personal use importation, in its list of exceptions.

While Article 23 provides for an exception to allow the importation of works for personal use, this provision is limited to a natural person and authorized entities would not be included under Cambodia's current law. Additionally, Cambodia's copyright law does not have any provision regarding the exportation of works. Thus, Article 23 could be amended to add a subparagraph (b), allowing authorized entities to import and export accessible format copies for the purpose of serving those who are blind, visually impaired or otherwise print disabled.

## Technological protection measures

Current law	Recommended amendments
No provisions.	<p><b>Article X</b></p> <p><u>Technological protection measures may be circumvented to create accessible format copies for the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>Because Cambodia's copyright law does not prohibit the circumvention of technological protection measures, no provision is currently needed to provide an exception or otherwise to ensure that beneficiaries of the Marrakesh Treaty can enjoy the exceptions laid out under the Treaty.</p> <p>However, it should be noted that Cambodia may choose to become a party to the WCT at some point and would then be obligated to provide adequate protection against circumvention of technological protection measures used by authors in connection with their rights under the Berne Convention and the WCT. Alternatively, Cambodia may become party to an agreement such as the TPP, which provides for obligations regarding anti-circumvention provision, or Cambodia may change its laws for other reasons.</p> <p>Should Cambodia amend its laws to prohibit the circumvention of technological protection measures, it will need to ensure that its laws do not prevent beneficiaries of the Marrakesh Treaty from enjoying its limitations and exceptions. It may be advisable to adopt the technological protection measures exception as part of the Marrakesh Treaty implementation so that this battle will not have to be fought in the future.</p>	

## 5.2 China

### Key points:

- China has ratified the CRPD and signed the Marrakesh Treaty on the day the Treaty opened for signature. China's disability law was amended in 2008 in advance of ratification of the CRPD.
- China has the largest population of visually impaired people in the world: an estimated 17.31 million. It also has a rapidly aging population and a growing prevalence of non-communicable diseases such as diabetes, so the number of people with visual impairments is therefore expected to increase.
- There are few schools available for those who are blind, visually impaired or otherwise print disabled and only three of China's 2,000 universities admit students who are visually impaired. The large population of individuals with print disabilities in China and their low education rate highlight the need for China to ratify and implement the Marrakesh Treaty to help alleviate the book famine.
- The Chinese language has many homonyms and differing pronunciation of words in local dialects, presenting challenges for braille. Despite these challenges, the National Research Center for Sign Language and Braille standardizes the braille language in China.
- China has several organizations dedicated to serving people with visual impairments with a growing number of local blind associations.
- Although China's current copyright law includes a specific exception permitting the creation of braille formats, in order to comply with the Marrakesh Treaty it must be amended to permit the creation and distribution of any accessible format. It should also be clarified to include a right to import and export accessible format copies as well as a provision ensuring that technological protection measures do not hinder access to accessible formats for people who are blind, visually impaired or otherwise print disabled.
- Cross-border exchange is a critical feature to alleviate the book famine, particularly for the large populations of Chinese speakers who live outside of China.

### 5.2.1 Background

#### Disability rights and laws in China

China signed the Convention on the Rights of Persons with Disabilities on 30 March 2007 when it opened for signature, and ratified it on 1 August 2008. China also signed the Marrakesh Treaty on 28 June 2013, the day the Treaty opened for signature, indicating its intention to ratify it.

China's Law on the Protection of the Disabled Persons, amended in 2008 and implemented just prior to ratification of the CRPD, provides that the government will "take measures to create conditions to eliminate barriers in information communications with disabilities. People's governments at various levels and competent authorities shall take measures to facilitate access to public information for persons with disabilities."<sup>169</sup>

Additionally, for school entrance, career qualification and placement exams, this law requires the availability of braille, electronic examination, or assistance from specialized staff for those with visual impairment.<sup>170</sup> It also provides an obligation for the government "to enrich the spiritual and cultural life of persons with disabilities" by "organiz[ing] and support[ing] the compilation, writing and publication of braille books, audio books and other

<sup>169</sup> Law on the Protection of Disabled Persons, promulgated by Decree by the President of the People's Republic of China, Decree No. 3. (1 July 2008), Art 54.

<sup>170</sup> Ibid.

reading materials for the visually impaired and other persons with disabilities” and “establish[ing a] special section of braille books and audio books for visually impaired persons in public libraries.”<sup>171</sup>

China’s national law on disabilities, coupled with its CRPD commitments, signal a clear commitment to respecting and promoting the rights of people who are blind, visually impaired or otherwise print disabled.

## People with print disabilities in China

According to a WHO fact sheet published prior to 2000, China accounts for approximately 18 percent of the world’s blind population, representing the largest number of blind people in the world.<sup>172</sup> The WHO fact sheet continues, “in absolute terms, the country’s ever-increasing blind population has already surpassed the total population in such countries as Denmark, Finland or Norway.”<sup>173</sup> A 2014 report at the WBUAP Mid-Term Regional General Assembly found that the “Chinese mainland has a population of 17.31 million eyesight impaired people.”<sup>174</sup>

The major causes of blindness in China include cataracts, cornea disease, trachoma, glaucoma and Vitamin A deficiency, with approximately 50 percent resulting from cataracts, a disease primarily associated with aging.<sup>175</sup> China has a rapidly aging population. With 110 million over the age of 65 in 2010 growing to an expected 330 million by the year 2050,<sup>176</sup> the number of people with visual impairments will subsequently increase as well.

A 2013 article pointed out the serious impediments to education for students who are visually impaired: “Few receive a basic education, let alone make it to university. There are just 22 schools for the blind, with a total of 1,500 pupils ... Out of China’s 2,000 universities, only three admit blind students. All of them are in Shanghai.”<sup>177</sup> Between 2002 and 2013, only 60 blind students attended these three universities.<sup>178</sup>

The difficulties for those with visual impairments in China are made even more challenging because its language has so many homophones and because of the different pronunciation of words in local dialects:

For blind people in China, as elsewhere, Braille is the key to literacy. But the peculiarities of the language make it even more difficult for Chinese people to use. Chinese has tens of thousands of characters. Their monosyllabic pronunciation can be rendered in Roman letters using a system called *pinyin*. Chinese in Braille is based in *pinyin*, not characters. But the language is replete with homophones. The four tones of Mandarin Chinese, as well as context, help to eliminate ambiguities. But not always. (In conversation, Chinese occasionally use a finger to trace a character on the palm of the hand to indicate which character is meant.) Blind students are at a further disadvantage if they are used to pronouncing characters in their local dialect, rather than in the Mandarin pronunciation rendered by *pinyin*.<sup>179</sup>

In addition to the challenges with braille in China, the braille system in Hong Kong is based on Cantonese braille. Thus, those wishing to access braille versions of texts face a number of challenges in accessing their desired Chinese language version. Those that instead seek access to English-language versions may benefit greatly from strong implementation of the Marrakesh Treaty, including the importation of accessible format works from the United States or other English-speaking countries. Individuals in Hong Kong, for example, may make greater use of English-language materials.

The large population of individuals with print disabilities in China and their low education rate highlight the need for China to ratify and implement the Marrakesh Treaty to alleviate the book famine. Additionally, significant numbers of Chinese speakers live outside of China and would greatly benefit from the ability to import accessible format copies from China. Without works in accessible formats, individuals will continue to be hindered in achieving a number of human rights, such as the rights to education and employment.

<sup>171</sup> Ibid., Art. 43(2).

<sup>172</sup> WHO, *Blindness as a public health problem in China: Fact sheet No. 230*, available from <http://www.who.int/mediacentre/factsheets/fs230/en/>

<sup>173</sup> Ibid.

<sup>174</sup> Country Report on WBUAP Mid-Term Regional General Assembly: China (2014), WBUAP, available from <http://wbup.org/index/mid-term-general-assembly-2014/china-country-report>

<sup>175</sup> Ibid., p. 173.

<sup>176</sup> WHO, *Global Health and Aging* (2010), available from [http://www.who.int/ageing/publications/global\\_health.pdf](http://www.who.int/ageing/publications/global_health.pdf)

<sup>177</sup> The Economist, ‘Feeling Their Way: Blind people in China struggle with more than just their disability’ (13 July 2013), available from <http://www.economist.com/news/china/21581761-blind-people-china-struggle-more-just-their-disability-feeling-their-way>.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

## Organizations and entities providing assistance to people with disabilities

While there are significant challenges with respect to braille for Chinese-speaking individuals, China's National Research Center for Sign Language and Braille standardizes the Chinese braille language.<sup>180</sup> Organizations in Hong Kong have strong electronic publishing capacity and may make greater use than those in China of materials in English or other languages.

China has several organizations dedicated to serving people with visual impairments. The China Association for the Blind (CAB), for example, was founded in 1953.<sup>181</sup> In 2006, the Ministry of Civil Affairs approved it as a "social organization with legal entity" and, since that time, it "has entered into a new stage of development: fully implementing the function of representation, service and rights protection, entering the community more openly and positively, being the interest spokesperson, service organizer and rights protector of blind people."<sup>182</sup>

Local blind associations have become more prevalent and "among 33 provinces, autonomous regions and municipalities, 90% of cities and counties have established blind person's associations. Since the end of 2013, there are 3143 blind person's associations nationwide..."<sup>183</sup>

### 5.2.2 Copyright law in China and recommended changes

China is a member of the WTO and is therefore bound by the TRIPS Agreement. It is also a party to the Berne Convention and the WIPO Copyright Treaty. China's copyright law therefore reflects the obligations of these treaties, including enforcement and remedies for infringement.<sup>184</sup> Although the majority of this section of the report focuses on the laws of China, it is important to note that if China ratifies the Marrakesh Treaty, the Treaty can also be implemented in Hong Kong and Macau.

China may also become a party to multilateral or bilateral free trade agreements in the future, including those currently under negotiations. New obligations regarding intellectual property may be imposed by these agreements and could require changes to China's laws.

The country's current copyright law<sup>185</sup> was amended and implemented in 2010. It includes a specific exception permitting only the creation of braille formats and will therefore require amendments to comply with the Marrakesh Treaty. The law should also be clarified to include an explicit distribution right, the right to import and export, and a provision ensuring that technological protection measures do not hinder access to accessible formats for people who are blind, visually impaired or otherwise print disabled.

## Creation and distribution of accessible formats

China's copyright law explicitly grants authors the rights of reproduction and distribution, among others.<sup>186</sup> It also grants authors "the right of translation, that is, the right to change the language in which the work is written into another language."

The copyright law provides for a number of limitations and exceptions, including a specific exception for the creation of a braille format. Article 22 states, "In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work are mentioned and the other rights enjoyed by the copyright owner in accordance with this Law are not prejudiced... [by the] (12) transliteration of a published work into braille for publication."<sup>187</sup>

<sup>180</sup> Country Report on WBUAP Mid-Term Regional General Assembly: China (2014) (see footnote 174)

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> In 2009, a WTO Dispute Settlement Report was issued regarding a dispute between the United States and China regarding China's laws on enforcement of criminal measures and whether its laws complied with the TRIPS Agreement. The dispute was largely focused on the thresholds for "commercial scale" and criminal remedies, including disposal of infringing goods. The panel emphasized the flexibilities countries have in implementing the TRIPS Agreement. WTO Panel Report, DS362: China—Measures Affecting the Protection and Enforcement of Intellectual Property Rights (2009), available from [http://www.wto.org/english/tratop\\_e/dispu\\_e/362r\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/362r_e.pdf)

<sup>185</sup> The reference to China's current copyright law concerns the law of Mainland China, not Hong Kong or Macao. It is worth noting, however, that Hong Kong has existing provisions in Sections 40A-40F of its copyright law on the making of accessible format works, broadly defining the beneficiary class and accessible formats. The copyright laws of Hong Kong and Macao will be discussed briefly later in the report.

<sup>186</sup> Copyright Law of the People's Republic of China, Implemented by Order of the President of the People's Republic of China No. 26 (2010) Art. 10(5)-(6).

<sup>187</sup> Ibid., Art. 22(12).

This provision is limited to creation of braille formats and does not allow for other accessible formats that may be needed, such as audio or large print. As noted above, the Chinese language presents unique challenges for individuals learning braille and other accessible formats may therefore be particularly necessary and useful in China.

Additionally, while the law does not specify or limit the beneficiary class explicitly, it may not accommodate those with print disabilities who, for example, cannot turn the pages of a book. China's current exception therefore is more narrowly defined than the obligation under the Marrakesh Treaty. The text of Article 22 should be amended and expanded to allow for the creation of any type of accessible format copy.

China's law does not explicitly provide for an exception allowing for the distribution of these copies. It may be implied that "transliteration ... for publication" assumes permission to distribute braille copies to people who are blind. However, the right to publication and the right to distribution are different rights granted to the author and are explicitly acknowledged by China's law.<sup>188</sup> In order to ensure full compliance with the obligations of the Marrakesh Treaty, a clarification that explicitly allows for distribution of accessible format works is needed.

## Importation and exportation

The copyright law in China provides authors with the right of distribution.<sup>189</sup> The law does not expressly include references to importation or exportation, though the right of distribution would cover these. China does have a regulation detailing administrative procedures in cases of imported and exported goods that infringe intellectual property rights.<sup>190</sup> This regulation may not apply in the case of accessible format copies because they would not be infringing goods.

However, China's copyright law does not include a limitation or exception allowing for the importation or exportation of accessible format works and, in order to comply with the Marrakesh Treaty, should be amended. Cross-border exchange is a critical feature of the Marrakesh Treaty that will help alleviate the book famine. With a high number of Chinese-speaking people living in other countries, the ability to exchange accessible works across borders will better allow these individuals to access works.

## Technological protection measures

The copyright law in China provides for civil remedies for the circumvention of technological protection measures. Article 48 states that "anyone who commits any of the following acts of infringements shall, depending on the circumstances" be liable for civil, administrative or criminal penalties, including for "(6) intentionally circumventing or sabotaging technological measures adopted by a copyright owner or an owner of the rights related to copyright to protect the copyright or the rights related to the copyright in the work ... without permission of the owner, except where otherwise provided for in laws or administrative regulations."<sup>191</sup>

This provision clearly prohibits circumvention of a technological protection measure and those who do circumvent it may be subject to a number of enforcement mechanisms. While this provision applies to technological protection measures "to protect the copyright or rights related to the copyright," this language may be insufficient to permit circumvention even with the exception under Article 22 of China's copyright law.

There does not appear to be an existing law or administrative regulation allowing for the circumvention of a technological protection measure in order to make a work accessible for someone who is blind, visually impaired or otherwise print disabled. China's copyright law clearly anticipates that circumvention of a technological protection measure may be necessary or desirable under certain circumstances. It is therefore necessary to amend the current law or provide an administrative regulation permitting an exception to the anti-circumvention provision to ensure that beneficiaries of the Marrakesh Treaty can enjoy the limitations and exceptions of the Treaty.

<sup>188</sup> Ibid., Art. 10(1), 10(6).

<sup>189</sup> Ibid., Art. 10(6).

<sup>190</sup> Regulations of April 15, 2014, on the Implementation of Administrative Punishments for Cases of Imported and Exported Goods Infringing Intellectual Property Rights under the Customs Law (2014).

<sup>191</sup> Copyright Law of the People's Republic of China, Implemented by Order of the President of the People's Republic of China No. 26 (2010) Art. 48.



### 5.2.3 Conclusions and recommendations

China's copyright law should be amended and expanded in several areas to ensure compliance with the Marrakesh Treaty. The law should be amended to allow for the creation of all types of accessible format works, along with their distribution to those who are blind, visually impaired or otherwise print disabled. Given the large number of Chinese-speaking populations outside China, China would benefit from the ability to import accessible formats from other countries, including English language copies from other countries as it also has English-speaking populations such as those in Hong Kong.

While China's copyright law will need several amendments and revisions, Sections 40A–40F of Hong Kong's Copyright Ordinance already includes broad exceptions for the print disabled.<sup>192</sup> In order to comply with the Marrakesh Treaty, Hong Kong's law would need fewer amendments. Section 40A of Hong Kong's Copyright Ordinance defines "accessible copy" broadly as "a version which provides improved access to the work for a person with a print disability."<sup>193</sup> The term "print disability" is also broadly defined and complies with the Marrakesh Treaty.<sup>194</sup>

Hong Kong's ordinance permitting the creation of an accessible copy by or on behalf of a person with a print disability does not apply to musical or dramatic work and an amendment to this section would be advisable. A "specified body," however, is not subject to the same restrictions and is permitted to create accessible copies for those with print disabilities, including literary, dramatic, musical or artistic works.<sup>195</sup>

While the Marrakesh Treaty does not require inclusion of a commercial availability requirement and such a provision is not recommended in this report, Hong Kong's law currently includes such a provision and therefore Hong Kong may want to consider revisiting this issue if it makes other changes to its Copyright Ordinance. While its laws regarding importation and exportation seem to apply only to infringing copies, it may be useful to include a section that explicitly permits cross-border sharing of accessible formats. Additionally, it should amend its sections regarding technological protection measures to allow circumvention for the creation of accessible formats.

### Creation and distribution of accessible format works

Current law	Recommended amendments
<p><b>Article 22</b></p> <p>In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work are mentioned and the other rights enjoyed by the copyright owner in accordance with this Law are not prejudiced:</p> <p>[...]</p> <p>(12) transliteration of a published work into braille for publication.</p>	<p><b>Article 22</b></p> <p>In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work are mentioned and the other rights enjoyed by the copyright owner in accordance with this Law are not prejudiced:</p> <p>[...]</p> <p>(12) <u>transliteration creation of a published work into braille accessible format copies for publication and distribution for the blind, visually impaired or otherwise print disabled.</u></p>

<sup>192</sup> An Ordinance to make provisions in respect of copyright and related rights and for connected purposes in Hong Kong ("Copyright Ordinance"), Chapter 528 (2007) (as amended 2011), Sections 40A–F.

<sup>193</sup> Copyright Law of the People's Republic of China (see footnote 185), Section 40A.

<sup>194</sup> In fact, portions of the definition of "print disability" in Section 40A are identical to portions of the definition of "beneficiary person" in the Marrakesh Treaty.

<sup>195</sup> Copyright Law of the People's Republic of China (see footnote 186), Section 40C.

### Comment

Currently, China's law is very narrow and applies only to "transliteration ... into braille." However, there are significant challenges with braille in China due to the fact that it is a tonal language and has numerous homonyms. Additionally, braille, as the sole form of works in accessible formats, is insufficient to serve the needs of all individuals with print disabilities. The Marrakesh Treaty obligates countries to provide an exception that broadly defines accessible formats. China's law should therefore be expanded and allow for other accessible formats to be created. The term "accessible format copies" is directly taken from the language of the Marrakesh Treaty.

Additionally, the term "transliteration" is also too narrow, as it is defined as converting text from one script to another alphabet. While this term is appropriate for an exception that applies when translating Chinese characters to braille letters, it may not be broad enough to accommodate the creation of other forms of accessible formats, such as audio books or the text-to-speech function of electronic readers. This term should be replaced with the broader word "creation".

The law should also be amended to explicitly permit the distribution of these accessible format works to ensure compliance with the Marrakesh Treaty.

## Importation and exportation

Current law	Recommended amendments
No provisions.	<p><b>Article 22</b></p> <p><u>(13) Importation of accessible format copies for the benefit of the blind, visually impaired or otherwise print disabled.</u></p> <p><u>(14) Exportation of copies of accessible format copies by the government, non-profit entities or other institutions that provide services to the blind, visually impaired or otherwise print disabled.</u></p>

### Comment

China does not currently have a provision that allows for the importation and exportation of accessible format copies. One option in complying with the Marrakesh Treaty would be to include an exception that allows for importation and exportation under Article 22, the location of the exception currently allowing for the creation of braille copies. It may also be included as a standalone provision in a separate section of the copyright law or as an administrative regulation.

Wherever this exception is included, the law should include an explicit provision to allow entities and beneficiary persons to import accessible format works and for the government or entities to export these works for the benefit of the blind, visually impaired or otherwise print disabled in other countries.

## Technological protection measures

Current law	Recommended amendments
<p><b>Article 48</b></p> <p>Anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the bad effects of the act, making an apology or paying compensation for damages; where public rights and interests are impaired, the administrative department for copyright may order the person to discontinue the infringement, confiscate his unlawful gains, confiscate or destroy the copies produced through infringement, and may also impose a fine; where the circumstances are serious, the said department may, in addition, confiscate the material, tools and instruments mainly used to produce copies through infringement; and where a crime is constituted, criminal liabilities shall be investigated in accordance with law:</p> <p>(6) intentionally circumventing or sabotaging the technological measures adopted by a copyright owner or an owner of the rights related to the copyright to protect the copyright or the rights related to the copyright in the work or the products sound recording or video recording, without permission of the owner, except where otherwise provided for in laws or administrative regulations;</p>	<p><b>Article X</b></p> <p><u>Technological measures may be circumvented to create an accessible format copy for the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>China's copyright law expressly provides for civil, administrative and criminal procedures for the circumvention of a technological protection measure. While the prohibition against circumvention applies where the technological protection measure was placed to protect copyright or related rights, it is not clear whether an exception to copyright is sufficient to allow circumvention. The law should be clarified and amended to expressly allow for circumvention of technological protection measures to allow beneficiaries of the Marrakesh Treaty to enjoy the Treaty's limitations and exceptions.</p> <p>While there should be an exception to anti-circumvention laws, such a provision may be included in various ways. An exception may be included under Article 22, where the exception is located, permitting the creation and distribution of an accessible format work, as a separate provision, as an administrative regulation or elsewhere. Additionally, the language of this exception may also take different forms, including the language included in Appendix 2.</p> <p>This provision may be included under Article 22, as a separate provision, as an administrative regulation or elsewhere.</p>	

## 5.3 Fiji

### Key points:

- Fiji signed the CRPD in 2009, but has not yet ratified the agreement. It did not sign the Marrakesh Treaty.
- Fiji's national policy for people living with disabilities includes the objective to improve accessibility to information, including training on assistive technologies. In order to implement the national plan and promote the rights of people with disabilities, accession to the Marrakesh Treaty would be beneficial.
- Those with disabilities in Fiji are likely to be among the poorest section of the population. They face a lack of job preparation and employment opportunities, and social stigma.
- Fiji has three major languages: English, Fijian and Hindi. Individuals with print disabilities in Fiji would benefit greatly from the ability to import works from countries that share a common language with Fiji. For example, there are large existing collections of accessible formats in English in the United States and Hindi in India.
- There are a number of organizations serving people with disabilities in Fiji, including ones specifically aimed at serving those who are blind or visually impaired. These organizations provide a wide range of services including providing education and training as well as the creation of accessible format copies.
- Fiji can rely on the actual text of the Marrakesh Treaty in drafting amendments to its copyright law to allow for importation and exportation of accessible formats. Fiji's copyright law does not have any limitations or exceptions that allow for the creation and distribution of accessible formats or cross-border exchange of works. Its law will therefore require amendments to comply with the Marrakesh Treaty. The fact that Fiji's copyright law does not currently have any limitations and exceptions for those who are print disabled, coupled with the structure of its copyright law which includes a number of detailed definitions, lends itself to implementation of language that closely adheres to the text of the Marrakesh Treaty.
- Fiji will need to include provisions allowing for the creation and distribution of accessible formats as well as for the importation and exportation of accessible formats. It may also want to consider a specific provision addressing the circumvention of technological protection measures.

### 5.3.1 Background

#### Disability rights and laws in Fiji

Fiji signed the UN Convention on the Rights of Persons with Disabilities on 2 June 2009 but has not yet ratified the agreement. It is not a signatory to the Marrakesh Treaty.

Fiji's constitution protects fundamental human rights and guarantees equality.<sup>196</sup> It also prohibits discrimination on a number of bases, including disability.<sup>197</sup> The Constitution provides for the right to education and states that students cannot be discriminated against on the basis of disability.<sup>198</sup>

In December 1994, the Parliament of Fiji passed the Fiji National Council for Disabled Persons (FNDP) Act, creating the FNDP to serve as a coordinating group for disability matters. The FNDP's mission includes "facilitat[ing] the process of creating a barrier free Society."<sup>199</sup> In 2008, the FNDP, together with the Ministry of Health, Women and Social Welfare produced a ten-year national policy for persons living with disabilities.<sup>200</sup> Among the numerous

<sup>196</sup> *Constitution of the Republic of Fiji*, Arts. 1(d), 26.

<sup>197</sup> *Ibid.*, Art. 26.

<sup>198</sup> *Ibid.*, Arts. 26, 31.

<sup>199</sup> Fiji National Council for Disabled Persons. [www.fncdp.org/profile.html](http://www.fncdp.org/profile.html) (last visited 14 Oct 15).

<sup>200</sup> Fiji National Council for Disabled Persons with the Ministry of Health, Women and Social Welfare, *Fiji Islands: A National Policy on Persons*

strategic policies laid out, including on providing effective education and alleviating poverty, the policy also provided a specific section on 'Access to information and communications technology'. This section states:

There needs to be collaboration between public libraries, information, centres and organisations of people with disabilities to address the information barriers for people with disability and increase the availability of information in different forms. Measures need to be explored to make new technology more available to people with disabilities, especially to children with disabilities at school so that they can access information and communicate locally and globally.

Objectives:

8.1. Increasing opportunities for people with disabilities to gain access and have accessibility to information and communications technology.

Actions

8.1.1. FNDP in collaboration with MOE and relevant stakeholders provide training with adaptive technology, (e.g. Braille, and computer based technology for the sight impaired, students with learning disabilities and intellectual impairment) in all schools and institutions that provide services for people with disabilities;

[ ... ]

8.1.4. FNDP in collaboration with secondary and tertiary training institutions provide training courses for people with disabilities on accessing technologies and information.<sup>201</sup>

Acceding to the Marrakesh Treaty will assist Fiji in implementing this national plan by promoting the availability of accessible formats and realizing the rights of persons with disabilities.

## People with print disabilities in Fiji

A 2002 country profile on disabilities in Fiji noted, "Reliable data on disability has not been obtained."<sup>202</sup> While the United Nations has estimated a global prevalence of disability at 15 percent,<sup>203</sup> the Fiji National Council for Disabled Persons noted in a report, "when this is considered alongside increasing incidences of heart disease, diabetes, Vitamin A deficiency, and an increasing number of road accidents we can assume that the incidence of disability in Fiji's population is likely to be higher than the UN's ... figure."<sup>204</sup>

With respect to children, a review done by Project Heaven, a national school screening programme for hearing and visual impairments founded in 1998, stated that 10 percent of children had a hearing or visual impairment, but that this rate was reduced to 6–7 percent of children by 2010 due to improved health care.<sup>205</sup>

Those with disabilities in Fiji are likely to be amongst the poorest section of the population:

There is a relationship between poverty and disability which is commonly accepted as a 'vicious cycle.' Disability adds to the risk of poverty and conditions of poverty increase the risk of disability. The result of the cycle of poverty and disability is that people with disabilities are usually amongst the poorest of the poor.<sup>206</sup>

Those with disabilities face a lack of job preparation and employment opportunities, resulting, in many cases, in continued poverty.<sup>207</sup>

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*Living with Disabilities 2008–2018* (2008), available from [http://www.fncdp.org/docs/2008-18\\_NationalDisabilityPolicy.pdf](http://www.fncdp.org/docs/2008-18_NationalDisabilityPolicy.pdf)

201 Ibid., p. 27.

202 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Republic of the Fiji Islands*, p. 3 (March 2002).

203 World Health Organization, *Disability and Health*, FACT SHEET No. 352 (December 2014), <http://www.who.int/mediacentre/factsheets/fs352/en/>

204 Fiji National Council for Disabled Persons & Ministry of Health, Women and Social Welfare, *Fiji Islands: A National Policy on Persons Living With Disabilities 2008–2018* (2008), p. 6. At the time of this report, the UN estimated a global prevalence of disability rate of 10 percent. Newer figures, as noted above, place the global prevalence of disability at 15 percent.

205 Tavola, Helen and Whippy, Nainasa, *Pacific Children with Disabilities: A Report for UNICEF Pacific's 2010 mid-term review*, UNICEF (2010), p. 16.

206 Fiji National Council for Disabled Persons & Ministry of Health, Women and Social Welfare, *Fiji Islands: A National...* (see footnote 200)

207 Ibid., p. 5.

With respect to education, Fiji promotes integrated education but specialized schools also exist, including the Early Intervention Centre and the Fiji School for the Blind.<sup>208</sup>

Fiji has three major languages: English, Fijian and Hindi.<sup>209</sup> Individuals with print disabilities in Fiji would therefore benefit greatly from the ability to import works from countries that share a common language with Fiji. Those with print disabilities in Fiji would benefit from importation of accessible format copies from countries with large existing collections in English, such as from authorized entities in the United States. Similarly, as more accessible format works are created in Hindi in India, Hindi-speaking Fijians with print disabilities would benefit from importation.

## Organizations and entities providing assistance to people with disabilities

Fiji has several organizations that provide assistance to people with disabilities. According to *Fiji Islands: A National Policy on Persons Living with Disabilities 2008–2018*:

The number of disability NGOs and agencies affiliated to FNDPC have mushroomed in the past few years to the present level of over 33. The National Council with associated NGOs, DPOs, [and] the six Advisory and eighteen District Committees have progressed a programme of awareness and advocacy to create a higher level of awareness of the rights and aspirations of people with disability in Fiji.<sup>210</sup>

Some of these organizations are specifically devoted to serving those who are blind or visually impaired. For example, the United Blind Persons of Fiji works “to ensure that blind and visually-impaired persons are aware of the importance of the CRPD as a tool for rights advocacy and awareness building.”<sup>211</sup> The Fiji Society of the Blind provides education, training and assistance to the visually impaired.<sup>212</sup> The Fiji School for the Blind was established in 1982 and provides education, training, typing and computer education, and skills training for the visually impaired.<sup>213</sup> Braille and transcription services, print enlargement and audio book production are also offered.<sup>214</sup>

## 5.3.2 Copyright law in Fiji and recommended changes

Fiji is a member of the WTO and bound by the rights and obligations of the TRIPS Agreement. Additionally, Fiji is a party to the Berne Convention, but has not signed or acceded to the WCT. Fiji’s copyright law of 1999 does not have any limitations or exceptions that allow for the creation and distribution of accessible formats or for the cross-border exchange of the works and will need to amend its laws to comply with the Marrakesh Treaty.

The fact that Fiji’s copyright law does not currently have any limitations and exceptions for those who are print disabled, coupled with the structure of its copyright law which include a number of detailed definitions, lends itself to the implementation of language that closely adheres to the text of the Marrakesh Treaty. Unlike the laws of other countries in this document, Fiji’s copyright law supports detailed language for implementing legislation for the Marrakesh Treaty.

## Creation and distribution of accessible formats

Fiji’s current copyright law does not have a limitation or exception for the creation and distribution of accessible formats for people who are blind, visually impaired or otherwise print disabled. It does, however, provide for the creation and distribution of subtitled copies of broadcast or cable programs for people who are deaf or hard of hearing.

This provision states, “A body prescribed by regulations made under this Act may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally disabled in any other way, with copies that are subtitled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes

<sup>208</sup> Tavola, Helen and Whippy, Nainasa, *Pacific Children with Disabilities*, (see footnote 206). p. 65.

<sup>209</sup> Australian Government Department of Foreign Affairs and Trade, *Fiji Country Brief* (2014), <http://dfat.gov.au/geo/fiji/pages/fiji-country-brief.aspx> (last visited 30 April 2015).

<sup>210</sup> Fiji National Council for Disabled Persons & Ministry of Health, Women and Social Welfare, *Fiji Islands: A National Policy...* (see footnote 200), p. 5.

<sup>211</sup> <http://www.disabilityrightsfund.org/grantee/pacific-island-countries/fiji/2013/united-blind-persons-fiji.html>

<sup>212</sup> Christian Blind Mission, Programme: Fiji School for the Blind and Resource Center, <http://www.cbm.org/programmes/Fiji-School-for-the-Blind-and-Resource-Center-276300.php> (last visited 2 May 2015).

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.



and issue copies to the public, without infringing any copyright..."<sup>215</sup> The established body must not be "established or conducted for profit."<sup>216</sup> Other specific exceptions to copyright, such as for the purpose of criticism, comment or news reporting or for education, exist in the portion of the copyright law entitled 'Part IV: Acts Permitted in Relation to Copyrighted Works'.

In order to accede to and implement the Marrakesh Treaty, Fiji must establish a provision for the creation and distribution of accessible format copies for people who are blind, visually impaired or otherwise print disabled. In doing so, it may use its exception for the creation of subtitled copies for people who are deaf as a starting point in crafting its exception for the blind and print disabled.

The key elements to the provision will be to ensure not only creation and distribution, but also that the beneficiary class is broadly defined to include the blind and visually impaired as well as those with print disabilities (similar to the language under Article 81 applying also to those who are "physically or mentally disabled in any other way") and that the type of accessible format that can be made is not restricted (similar to the language under Article 81 allowing "copies that are subtitled or otherwise modified for their special needs").

A new division should be created under Part IV of Fiji's copyright law that provides a comprehensive provision to address the obligations of the Marrakesh Treaty, including for the creation and distribution of accessible format copies. Additionally, the key definitions used in the Marrakesh Treaty, including "accessible format copy", "authorized entity" and "beneficiary person" should be added to Article 2's definitions of terms used in Fiji's copyright law. The term "authorized entity" under the Marrakesh Treaty references organizations that are recognized by the government; Fiji may choose to replicate language under Article 81 and set further definitions for authorized entities by regulation.

## Importation and exportation

Under Article 35 of Fiji's copyright law, it is an infringement to "import[ ] into the Fiji Islands, other than for that person's private and domestic use, an object that is, and the person knows or has reason to believe it is an infringing copy of the work."<sup>217</sup> This provision appears to exempt private use from the prohibition against importation and a beneficiary person may therefore still be able to import a work.

Additionally, Article 35 states that it applies to "an infringing copy of the work." This provision could be read as applying only to those copies that would have been considered infringing had they been made under the copyright laws of Fiji. Under this interpretation, this prohibition against importation would not apply to accessible format copies, provided that Fiji amends its laws to permit the creation of such copies for individuals who are blind, visually impaired or otherwise print disabled.

Alternatively, it may be read as applying to those copies that are infringing under the domestic laws of the country from which they originate, which would allow importation of accessible formats as long as they did not infringe in the country they were made in, for example, those works made by authorized entities in many developed countries such as the United States. The language could also be read as applying in both scenarios. Regardless, Fiji's copyright law should be amended to clearly permit the importation of accessible format works, including by authorized entities.

Furthermore, Fiji's copyright law does not have an explicit provision allowing for the export of accessible formats or other copies of works. A clear export right should be provided to allow authorized entities to share their works across borders and reduce the book famine problem.

One option in providing for the cross-border exchange of accessible format works is to include a provision under the new proposed Division "X" that expressly allows for the importation and exportation of these works. While there are other ways to amend Fiji's copyright law in this respect, including the provision under Article "X" would be logical given that other limitations and exceptions are similarly grouped thematically, such as all provisions related to libraries and archives. Fiji can rely on the actual text of the Marrakesh Treaty in drafting amendments to its copyright law to allow for importation and exportation of accessible formats.<sup>218</sup>

<sup>215</sup> Copyright Act No. 11 of 1999 (1999), Art. 81.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid., Art. 35.

<sup>218</sup> Fiji is not a member of the WCT and therefore must comply with Article (5)(4)(b) of the Marrakesh Treaty. The recommended amendment to Fiji's copyright law is sufficiently narrow to meet the three-step test obligation under Article 5(4)(b).

## Technological protection measures

Fiji's copyright law does not expressly address technological protection measures. However, the law does make it an infringement to make, import, possess in the course of business, sell or lease "an object specifically designed or adapted for making copies of that work, knowing or having reason to believe that the object is to be used to make such infringing copies."<sup>219</sup> This provision could be read as prohibiting devices that circumvent technological protection measures, but the provision is limited to cases where there is knowledge or reasonable grounds to know that the object would be used to make infringing copies. An accessible format copy might not be considered an infringement in this context and Article 37 would therefore not apply.

Even if this provision of Fiji's copyright law is not read as applying to technological protection measures, Fiji may want to include a specific provision addressing this issue in the event that it later joins the WCT or another agreement.

### 5.3.3 Conclusions and recommendations

In order to comply with the obligations of the Marrakesh Treaty, Fiji's copyright law will need to be amended to permit the creation and distribution of accessible format copies for the blind, visually impaired or otherwise print disabled, as well as the cross-border exchange of these copies. A new Article X should be created under Part IV of Fiji's copyright law to provide for this exception.

## Creation and distribution of accessible format works

Current law	Recommended amendments
<p>No provisions.</p> <p>There is an analogous provision for the creation of subtitled copies of broadcast and cable programmes for people who are deaf or hard of hearing. Additionally, there are a number of limitations and exceptions to copyright under current Fiji law, such as for news reporting, private study, education or for libraries and archives.</p>	<p>Interpretation</p> <p>2.-(1) In this Act, unless the context otherwise requires-</p> <p><u>"Accessible format copy" means 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.</u></p> <p>[...]</p> <p><u>"Authorised entity" means an entity that is authorised or recognized by the government or receives financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons or a non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations."</u></p> <p><u>"Beneficiary person" means a person who is blind, has a visual impairment or a perceptual or reading disability or is otherwise unable through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.</u></p>

<sup>219</sup> Copyright Act No. 11 of 1999 (1999), Art. 37(1).

Current law	Recommended amendments
	<p><b><u>Division X – Access for the Print Disabled</u></b></p> <p><b><u>Creation of Accessible Format Copies</u></b></p> <p><u>X1. A beneficiary person, someone acting on his or her behalf, or an authorised entity, may make and distribute accessible format copies, including by electronic communication by wire or wireless communication, for the purpose of providing access to a beneficiary person, without infringing any copyright.</u></p>
Comment	
<p>The key definitions of the Marrakesh Treaty, including “accessible format copy,” “authorized entity” and “beneficiary persons” should be included in the definition section of Fiji’s copyright law. Alternatively, these recommended additions could be included in the proposed Article X which would allow for the creation and distribution, as well as cross-border exchange, of accessible formats, similar to the way that Article 48 provides definitions used for the Article 49–53 limitations and exceptions to copyright for libraries and archives. These definitions are largely taken directly from the Marrakesh Treaty.</p> <p>Additionally, a new Division X is proposed to create a comprehensive section that would address the rights and obligations of the Marrakesh Treaty. Division X should contain several provisions, including one to address the creation and distribution of accessible format copies for those who are blind, visually impaired or otherwise print disabled. The language of Article X1, like the definitions, largely replicates the language of the Marrakesh Treaty and would permit a beneficiary person, someone acting on his or her behalf, or an authorised entity to make and distribute accessible format copies, including by wire or wireless communication.</p>	

## Importation and exportation

Current law	Recommended amendments
<p><b>Article 35</b></p> <p>Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, imports into the Fiji Islands, other than for that person’s private and domestic use, an object that is, and the person knows or has reason to believe it is an infringing copy of the work.</p>	<p><b><u>Division X – Access for the Print Disabled</u></b></p> <p><b><u>Cross-border exchange for the print disabled</u></b></p> <p><u>X2. Any person or entity in subsection (1) may import an accessible format copy, including by electronic communication by wire or wireless communication.</u></p> <p><u>X3. An entity in subsection (1) may distribute or make available accessible format copies to an entity or people who are blind, visually impaired or print disabled in any other way in another country.</u></p>

### Comment

A new Division X is recommended, as noted above, to comprehensively provide for new limitations and exceptions under Fiji's copyright law in order to comply with the obligations and rights of the Marrakesh Treaty. Under Division X, several articles should be established. In addition to providing X1 for the creation and distribution of accessible format works, Articles X2 and X3 should be created to allow for the importation and exportation of these works.

Although Article 35 seems to allow for importation of works for personal use and could be read as prohibiting importation of works only when they would be infringing copies under Fiji's laws, proposed Article X2 would clarify and explicitly permit both individuals and authorized entities to import accessible format copies for the benefit of those who are blind, visually impaired or otherwise print disabled.

Fiji's copyright law does not provide a specific exception for the exportation of works and a new Article X3 is recommended to expressly allow authorized entities to export accessible format copies to entities or beneficiary persons in other countries.

Together, Articles X2 and X3 would allow those who are blind, visually impaired or otherwise print disabled to enjoy the benefits of the cross-border sharing envisioned in the Marrakesh Treaty. The language for both proposed Article X2 and X3 is substantially replicated from the text of the Marrakesh Treaty itself.

## Technological protection measures

Current law	Recommended amendments
<p><b>Article 37</b></p> <p>(1) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence-</p> <p>(a) makes;</p> <p>(b) imports into the Fiji Islands;</p> <p>(c) possesses in the course of a business;</p> <p>(d) in the course of business or otherwise, sells or lets for hire; or</p> <p>(e) in the course of business, offers or exposes for sale or hire,</p> <p>an object specifically designed or adapted for making copies of that work, knowing or having reason to believe that the object is to be used to make such infringing copies.</p>	<p><b>Article X4.</b></p> <p><u>Technological protection measures may be circumvented to create accessible format copies for the blind, visually impaired or otherwise print disabled.</u></p>

### Comment

Proposed Article X4 may not be necessary at this time given that Fiji's copyright law does not expressly address technological protection measures or have a specific anti-circumvention provision. However, Article 37 of its law could be read as applying to devices that circumvent copy control measures. Additionally, Fiji may at some point become a party to the WCT or join an agreement, such as the TPP, which would require provisions for protection measures.

It may therefore be desirable and, depending on which treaties Fiji joins in the future, necessary to include another section under proposed Article X4 that would allow for the circumvention of technological protection measures to render a copy accessible for the blind, visually impaired or otherwise print disabled. It may be advisable to adopt the technological protection measures exception as part of the Marrakesh Treaty implementation so that this battle would not have to be fought in the future.

## Privacy

### Current law

No provisions.

### Recommended amendments

#### **Article X5.**

An authorized entity shall respect the privacy of beneficiary persons when providing services under this Article.

### Comment

Proposed Article X5 supports the goal of Article 8 of the Marrakesh Treaty that parties "shall endeavor to protect the privacy of beneficiary persons on an equal basis with others." As noted above, the structure of Fiji's current copyright law lends itself to more detailed provisions and it may be desirable to include a section on privacy in the proposed Article X5.



## 5.4 Indonesia

### Key points:

- Indonesia has ratified the Convention on the Rights of Persons with Disabilities and signed the Marrakesh Treaty.
- Indonesia's national action plan for persons with disabilities takes a rights-based approach and promotes empowerment of those with disabilities. Providing access to accessible format works fits into this approach.
- While it is not clear how many people with disabilities live in Indonesia due to lack of accurate data, the country does have an aging population, which will lead to a growing number of individuals who need accessible format works.
- Students with disabilities do not have equal access to education in Indonesia, but there are efforts to promote accessibility for individuals with visual impairments, including through the availability of accessible formats. These efforts can be strengthened through ratification and implementation of the Marrakesh Treaty.
- The fact that there are more than 700 languages spoken in Indonesia creates challenges in ensuring that accessible format copies are available in the necessary languages. Individuals with print disabilities in Indonesia would benefit from the ratification of the Marrakesh Treaty as they would be able to import works from other countries that share languages and dialects spoken in Indonesia, such as from China, Malaysia and the Netherlands, as well as from English-speaking countries.
- Indonesia's copyright law includes a specific exception that allows for the creation of braille formats, but will need to be amended to comply with the Marrakesh Treaty. Its current exception must be broadened to allow for the creation and distribution of any accessible format necessary, the importation and exportation of these copies, and an explicit exception to allow circumvention of technological protection measures.

### 5.4.1 Background

#### Disability rights and laws in Indonesia

Indonesia has signaled its support for and commitment to the rights of people with disabilities, signing the Convention on the Rights of Persons with Disabilities when it opened for signature on 30 March 2007 and ratifying the treaty on 30 November 2011. Indonesia enacted Law No. 19 in 2011, incorporating the CRPD into domestic law. Additionally, on 24 September 2013, Indonesia signed the Marrakesh Treaty, indicating an intention to ratify and become a Contracting Party.

Indonesia's 1997 law on Persons with Disabilities specifically provides for the rights to education, employment, and equal opportunity and treatment.<sup>220</sup> Indonesia has indicated further commitment to the area of disabilities by preparing a "National Action Plan on Disabilities from 2013 to 2022", which "shifted its focus from a service based approach to a rights based approach, which enables persons with disabilities in Indonesia to enjoy the right to liberty and security, while also empowering them."<sup>221</sup> Providing access to accessible format works fits into this rights-based approach, and promoting access to information will contribute to the empowerment of those with print disabilities.

<sup>220</sup> Law No. 4/1997, Persons with Disabilities, Indonesia (1997), Arts. 6, 8, 10, 11, 12, 13, 14 and 16.

<sup>221</sup> Statement of the Republic of Indonesia at the 6<sup>th</sup> Session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities, New York (17 July 2013), available from <http://www.indonesiamission-ny.org/zymurgy/custom/statement.php?id=337#>

## People with print disabilities in Indonesia

It is difficult to estimate the number of individuals in Indonesia with print disabilities, or disabilities in general, due to the lack of accurate data. In June 2013, the UN Special Rapporteur on Disability, Shuhaib Chalklen, called for more accurate data and statistics on disabilities in order to ensure adequate implementation of the CRPD.<sup>222</sup> Similarly, a Fact Sheet by the International Labour Organization (ILO) pointed out the lack of reliable data in Indonesia:

There is little comprehensive data regarding people with disabilities in Indonesia. In 2006, the Asia-Pacific Development Center on Disability estimated the number of disabled persons in Indonesia to be about 1.38 per cent of the total population recorded. However, recent World Health Organization (WHO) figures showed that around 10–15 percent of the Indonesian population are disabled. The lack of accurate data acts as a brake on a range of actions and measures that could be taken to counter the effects of discrimination and exclusion.<sup>223</sup>

While it is not clear how many people with disabilities live in Indonesia, the country does have an aging population, which will lead to a growing number of individuals who need accessible format works. While the 2010 census found 18.1 million people in Indonesia aged 60 years or older, representing 7.6 percent of the population, projections estimate that by 2025 this number will increase to 33.7 million, or 11.8 percent of the population, and by 2035 to 28.2 million, or 15.8 percent of the population.<sup>224</sup>

As noted by a UNFPA report, disability prevalence increases with age and “[d]ifficulties in seeing, hearing and climbing stairs are common problems suffered by older Indonesians. Cataracts cause loss of sight, which hampers older people from conducting their usual activities, and from working, thereby leading to income loss.”<sup>225</sup> Thus, even without accurate data on the number of individuals in Indonesia, the increasingly aging population of the country translates to an increased need to address ways to improve access to accessible format works for people with visual impairments.

Historically, most educational institutions that serve students with disabilities are situated in the Jakarta area, and those who live in remote areas have limited access to such facilities.<sup>226</sup> A 2002 report noted that there were 24 public specialized schools for children with disabilities as well as more than 700 schools managed by NGOs. Additionally, the Indonesian Government has made efforts to include and integrate children with disabilities into its nine-year compulsory education system.<sup>227</sup>

The World Health Organization’s *2011 World Report on Disability* found that in Indonesia, while nearly 90 percent of children without disabilities aged 6–11 attended school, less than 30 percent of those with disabilities attended, a difference of 60 percentage points that highlights the challenges children with disabilities face in attaining the right education.<sup>228</sup>

While students with disabilities do not have equal access to education, a 2002 report indicated that there are efforts in Indonesia to promote accessibility for individuals with visual impairments. The report found that “[f]or the visually ... impaired, the Braille system as well as talking books [and] assistive devices ... are being promoted to remove barriers to information and communication. Indonesia also aims to ... create a national network of Braille publishing houses and libraries.”<sup>229</sup> Such efforts can be better achieved through the ratification and implementation of the Marrakesh Treaty.

One of the challenges in Indonesia is the fact that there are more than 700 languages spoken in the country, making it difficult to ensure that accessible format copies are available in the necessary languages. Individuals with print

222 UNESCO, *UN Special Rapporteur on Disability stresses the need for better data on Persons with Disabilities in Indonesia* (25 June 2013), [http://www.unesco.org/new/en/jakarta/about-this-office/single-view/news/un\\_special\\_rapporteur\\_on\\_disability\\_stresses\\_the\\_need\\_for\\_better\\_data\\_on\\_persons\\_with\\_disabilities\\_in\\_indonesia/](http://www.unesco.org/new/en/jakarta/about-this-office/single-view/news/un_special_rapporteur_on_disability_stresses_the_need_for_better_data_on_persons_with_disabilities_in_indonesia/)

223 ILO Fact Sheet: *Inclusion of People With Disabilities in Indonesia* (January 2013), available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/publication/wcms\\_210477.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_210477.pdf)

224 Adioetomo, Sri Moertiningsih and Mujahid, Ghazy, *Indonesia on the Threshold of Population Ageing*, UNFPA Indonesia Monograph Series, No. 1, xi (2014), available from [http://www.ifa-fiv.org/wp-content/uploads/2014/09/Indonesian\\_Ageing\\_Monograph-print-version1.pdf](http://www.ifa-fiv.org/wp-content/uploads/2014/09/Indonesian_Ageing_Monograph-print-version1.pdf)

225 Ibid.

226 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Republic of Indonesia* (March 2002), p. 20, [http://siteresources.worldbank.org/DISABILITY/Resources/Regions/East-Asia-Pacific/JICA\\_Indonesia.pdf](http://siteresources.worldbank.org/DISABILITY/Resources/Regions/East-Asia-Pacific/JICA_Indonesia.pdf)

227 Ibid.

228 World Health Organization, *World Report on Disability* at Figure 7.1 (2011), available from [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1)

229 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Republic of Indonesia* (March 2002), p. 23.

disabilities in Indonesia would benefit from the Marrakesh Treaty as they would be able to import works from other countries that share languages and dialects spoken in Indonesia, such as China, Malaysia and the Netherlands, or from English-speaking countries.

## Organizations and entities providing assistance to people with disabilities

A 2011 fact sheet by the ILO stated that Indonesia does not have any official national organizations for people with disabilities.<sup>230</sup> However, there are national-level member organizations of people with disabilities including the Indonesian Blind Union (PERTUNI) as well as provincially based organizations.<sup>231</sup>

In 2006, a DAISY For All<sup>232</sup> focal point was established and included training of 13 participants, representing 8 organizations, to use DAISY production tools to create DAISY files and digital audio books.<sup>233</sup>

## 5.4.2 Copyright law in Indonesia

Indonesia is a member of the WTO and is therefore bound by the rights and obligations of the TRIPS Agreement. Additionally, it is a party to the Berne Convention and the WIPO Copyright Treaty. Indonesia's copyright law, including enforcement and remedies for infringement, reflects the obligations of these treaties.

Additionally, it is likely that Indonesia will eventually become a party to bilateral or multilateral free trade agreements, which could include new obligations regarding the protection of intellectual property. Indonesia's current copyright law was enacted in 2002 and, while it includes a specific exception for the creation of braille formats, it will need to be amended to comply with the Marrakesh Treaty.

## Creation and distribution of accessible formats

Indonesian copyright law provides authors the right to publication and reproduction.<sup>234</sup> The law also provides a specific exception to the right of production, permitting the creation of braille copies of copyrighted works. Article 15(d) states that the "reproduction of a scientific, artistic and literary work in braille for the purposes of the blind, unless such reproduction is of a commercial purpose" is not an infringement of copyright provided that attribution is given.<sup>235</sup> This exception is more narrowly defined than the obligation under the Marrakesh Treaty, limiting the creation of an accessible format to a braille copy.

Thus, creation of other accessible formats, such as an audio version, is not permitted under Indonesian copyright law. Article 15(d) limits the creation of a braille copy to a non-profit basis; this limitation is in accordance with the mode of implementation under Article 4(2) of the Marrakesh Treaty.

Indonesian copyright law does not have an explicit exception allowing for the distribution of an accessible format copy. In order to fully comply with the Marrakesh Treaty, the law should be clarified to permit distribution, which in the context of the Treaty includes digital transmissions of accessible format copies.

## Importation and exportation

Article 2(1) provides a copyright holder with the right to "publish or reproduce his/her work"<sup>236</sup> which includes the right of "distribution or dissemination."<sup>237</sup> Indonesia's copyright law does not include any explicit provisions

230 ILO Fact Sheet: Inclusion of People With Disabilities in Indonesia (January 2013), available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/publication/wcms\\_210477.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_210477.pdf)

231 Ibid.

232 According to the Digital Accessible Information System (DAISY) website, "The DAISY for All (DFA) project deployed DAISY technology and addressed goals and objective which included capacity building in developing countries and served as a catalyst to generate broader alliances supporting the global sharing of human knowledge in the information society. DAISY for All was funded by the Nippon Foundation as a five year project. The DFA Project maintained several activities relating to the development and adaptation of open source software and standards. These efforts were intended to support the specific local needs of the focal points for accessible and localized DAISY software, to build local capacity for adaptation and localization of DAISY software, and to ensure that the technical standards underlying the DAISY and open source software meet the current and emerging needs of the disability communities served by DFA."

233 DAISY Consortium, *DAISY for All: DFA Focal Point Indonesia*, <http://www.daisy.org/daisyforall/indonesia> (last visited 6 April 2015).

234 Law of the Republic of Indonesia, No. 19/2002 on Copyright (2002), Art. 2(1).

235 Ibid., Art. 15(d).

236 Ibid., Art. 2(1).

237 Ibid., Art. 1(5).

regarding importation or exportation, even for personal use. The law does provide for remedies, such as provisional measures, against importation of “allegedly infringing” works.<sup>238</sup> Such a provision likely would not apply to accessible format copies made under an exception, since such a copy would not be an infringement

Additionally, Indonesian copyright law provides an exception to its civil remedy of confiscation for “any work which is in the hand of a party who has good intention in obtaining the work solely for his own need and not using it for any commercial purpose and/or any interests related to commercial activities.”<sup>239</sup>

However, this exception only applies in the context of “confiscation.” It would therefore be advisable to include a specific provision allowing for the importation and exportation of accessible format copies.

Notably, there is one reference to exportation in Indonesia’s copyright law, prohibiting the exportation of translation of works in Indonesia created under the exception in Article 16.<sup>240</sup> In order to comply with the Marrakesh Treaty, an exception to this prohibition is necessary.

As noted above, the large number of languages spoken in Indonesia presents challenges in addressing the book famine and ensuring that people who are print disabled are able to access accessible format works. Allowing the importation and exportation of accessible format works will allow those in Indonesia to benefit from accessible format copies made in other countries with shared languages.

## Technological protection measures

Indonesia’s copyright law provides that “Except with the permission of the Author, the technological control measures to safeguard the right of the Author shall not be damaged, destroyed or made malfunction.” While this provision prohibits the circumvention of technological protection measures, it can be read as applying only “to safeguard the right of the Author” and therefore the provision might not apply where there is a limitation or exception. However, there is ambiguity in this provision and clarification would be helpful.

Additionally, considering that Indonesia may become a party at some point to free trade agreements, such as the Trans-Pacific Partnership Agreement or others, and its provisions regarding technological protection measures may be amended, it may be desirable to safeguard against potential changes and provide an explicit exception to permit circumvention for the creation of or access to an accessible format.

### 5.4.3 Conclusions and recommendations

In order to comply with the Marrakesh Treaty, Indonesia should amend its copyright law to expand its current exception and allow for the creation of an accessible format copy in any format necessary, rather than limiting this provision to the creation of a braille copy. It should also provide an explicit exception to allow circumvention of technological measures and provide for the ability to import and export accessible format works.

Without these available exceptions, Indonesia will not meet the obligations of the Marrakesh Treaty and will be hindered in addressing the book famine in the country.

<sup>238</sup> Ibid., Art. 67(a).

<sup>239</sup> Ibid., Arts. 56–57.

<sup>240</sup> Ibid., Art. 16. (“(1) For the interests of education, science, and research and development activities, upon a work in the field of science and literature, the Minister, after hearing the considerations of the Copyright Council may: a. obligate the Copyright Holder to himself carry out the translation and/or reproduction of such work in the territory of the Republic of Indonesia within a stipulated period of time; b. obligate the Copyright Holder concerned to grant a license to other parties to translate and/or to reproduce such work in the territory of the Republic of Indonesia within a stipulated period of time, where the Copyright Holder concerned does not himself carry out the obligations as referred to in item a; c. designate other parties to carry out the translation and/or reproduction of such work, where the Copyright Holder does not carry out the obligations as referred to in item b ... (4) The translation or reproduction as referred to in paragraph (1) shall only be used within the territory of the Republic of Indonesia and shall not be exported into the territory of other countries.”).

## Creation and distribution of accessible formats

Current law	Recommended amendments
<p><b>Article 15</b> Provided that the sources are fully cited, the following shall not be deemed as Copyright infringement:</p> <p>[...]</p> <p>d. reproduction of a scientific, artistic and literary work in Braille for the purposes of the blind, unless such reproduction is of a commercial purpose</p>	<p><b>Article 15</b> Provided that the sources are fully cited, the following shall not be deemed as Copyright infringement:</p> <p>[...]</p> <p>d. reproduction <u>and distribution</u> of a scientific, artistic and literary work in <u>Braille an accessible format copy</u> for the purposes of <u>[providing access to]</u> the blind, <u>visually impaired or print disabled</u> unless such reproduction is of a commercial purpose.</p>
<p><b>Comment</b></p> <p>The current law is limited to braille, which is insufficient to serve all beneficiary persons under the Marrakesh Treaty. This exception must be broadened to accommodate the variety of necessary formats. The term “accessible format copy” is a term taken directly from the Marrakesh Treaty.</p> <p>Additionally, the Marrakesh Treaty is designed to serve not only the blind, but also those who are visually impaired or have other print disabilities, such as those who have a perceptual or reading disability, or have a physical disability preventing them from holding a book or turning its pages. The addition of “visually impaired or print disabled” to the exception under Article 15(d) appropriately extends the exception in accordance with the obligations of the Marrakesh Treaty.</p>	

## Importation and exportation

Current law	Recommended amendments
<p>No provisions.</p>	<p><b>Article 15</b> Provided that the sources are fully cited, the following shall not be deemed as Copyright infringement:</p> <p><u>(d)(ii) An entity authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to the blind, visually impaired or print disabled may import or export copies made under subparagraph (i) to other countries, including by electronic communication by wire or wireless means.</u></p> <p><u>(d)(iii) A person who is blind, visually impaired or print disabled, or a person acting on the person's behalf, may import an accessible format copy.</u></p>
<p><b>Comment</b></p> <p>The ability to import and export accessible format works is a key benefit to the Marrakesh Treaty and Indonesia's law should clearly provide for such exceptions. The large number of languages spoken in Indonesia presents challenges in addressing the book famine; even if an accessible format copy exists in one language spoken in Indonesia, it may not exist in another commonly spoken language. People who are blind, visually impaired or have other print disabilities who speak English, Dutch, Malay or Chinese could benefit greatly from the existence of accessible format works in other countries with a shared language.</p>	

## Technological protection measures

Current Law	Recommended Amendments
<p><b>Article 27</b> Except with the permission of the Author, the technological control measures to safeguard the right of the Author shall not be damaged, destroyed or made malfunction.</p>	<p><b>Article 27</b> (1) Except with the permission of the Author, the technological control measures to safeguard the right of the Author shall not be damaged, destroyed or made malfunction.</p> <p>(2) <u>The provision as referred to in paragraph (1) shall not apply in the case of creation of or access to an accessible format copy for the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>The addition is an important clarification to ensure that individuals who are blind, visually impaired or otherwise print disabled are effectively able to circumvent technological protection measures through the purchase of equipment capable of rendering digital works accessible. Additionally, a new Article 27(2) provides one method of ensuring, should Indonesia amends its intellectual property law include anti-circumvention measures, compliance with Article 7 of the Marrakesh Treaty. Parties to the Marrakesh Treaty have an obligation to ensure that any anti-circumvention measures do not prevent beneficiaries of the treaty from enjoying the limitations and exceptions discussed above.</p>	



## 5.5 Nepal

### Key points:

- Nepal ratified the CRPD and the Optional Protocol in May 2010. Nepal also signed the Marrakesh Treaty on the day the Treaty opened for signature.
- While Nepal's laws and Interim Constitution support the rights of those with disabilities, implementation of rights such as the right to information and expression has not been fully realized due to the lack of appropriate formats, means and technology.
- Only about 10 percent of school-aged children with visual impairments receive education and those who wish to attend college face additional challenges due to limited access to accessible format works. The low level of overall education for those who are visually impaired results in lower employment rates.
- While Nepali is the official language of the country, many people speak other major languages as well. Higher education classes are generally taught in English. Students are taught either the Nepali or English braille system. However, braille has not been standardized in Nepal, leading to challenges for those with visual impairments. Given that a major segment of the Nepalese population speak other languages, such as English or Hindi, the Marrakesh Treaty would be greatly beneficial in allowing the importation of accessible format works from countries such as India and the United States.
- Nepal has a number of organizations dedicated to serving those who are blind or visually impaired. These organizations provide a range of services, including the creation of accessible formats. There is a National Braille Book Library in Kathmandu.
- Nepal's copyright law does not include any specific exceptions to allow for the creation and distribution of accessible format copies. In order to comply with the Marrakesh Treaty, its law must be amended to permit the creation and distribution of accessible formats. It would also be useful to clarify that there is an importation right for authorized entities and include an explicit right to exportation. Its copyright law should further be amended to ensure that its anti-circumvention provisions do not impede beneficiary persons from gaining access to accessible format works.

### 5.5.1 Background

#### Disability rights and laws in Nepal

Nepal has demonstrated its commitment to the rights of people with disabilities by ratifying both the CRPD and its Optional Protocol in May 2010.<sup>241</sup> Nepal also signed the Marrakesh Treaty on 28 June 2013 when the Treaty opened for signature.

Nepal enacted its first laws to protect those with disabilities in 1982, with the regulations on how to implement the legislation established in 1994.<sup>242</sup> Nepal's laws, including its National Policy and Plan of Action on Disability in 2006 and its Interim Constitution in 2007, support the principle of inclusion of persons with disabilities.<sup>243</sup> The Interim Constitution provides for the right to information and expression.<sup>244</sup> However, implementation of this right "has not been fully executed in absence of appropriate format, module, means and technology."<sup>245</sup>

<sup>241</sup> UN Enable, *Convention and Optional Protocol Signatures and Ratifications*, <http://www.un.org/disabilities/countries.asp?id=166#N>

<sup>242</sup> Disabled Persons (Protections and Welfare) Act (1982).

<sup>243</sup> National Federation of the Disabled – Nepal, *Disability Rights Holistic Monitoring Report* (2013), p. 24, available from <https://ia902600.us.archive.org/4/items/nfdnepal/Nepal-CMP-Disability-Rights-Holistic-Report-Final%28PrintingVersion%29.pdf>

<sup>244</sup> Ibid., p. 44.

<sup>245</sup> Ibid.

## People with print disabilities in Nepal

According to statistics by Nepal's Central Bureau of Statistics, the overall prevalence rate of disability in its 2011 census was 2 percent, with physical disabilities and blindness<sup>246</sup> or low vision<sup>247</sup> combining to account for more than 50 percent of all total disabilities.<sup>248</sup> However, the actual prevalence rate of disabilities in Nepal is disputed and "[v]arious surveys and studies conducted by government agencies, NGOs and Self-help organizations have come up with different prevalence rate from 0.45 to 8.99."<sup>249</sup> A 2013 survey of disability in Nepal noted, "Lack of adequate data has been one of the most significant factors leading to the neglect of disability issues, including the development of policy and measures to monitor and evaluate its implementation; the data collected do not reflect the full extent of disability prevalence in Nepal."<sup>250</sup>

The Nepal Association of the Blind estimates that there are 200,000 visually impaired people in Nepal. Of the approximately 40,000 visually impaired school-aged individuals, only 4,000, or 10 percent, receive education.<sup>251</sup> Those who wish to attend college face additional challenges because they have limited access to accessible works.

A 2013 survey summarized that with respect to access to communication and information for those with disabilities, "[a]round four out of seven experiences of persons with disabilities reflect that they have been excluded, two out of seven expressed that they are discriminated [against] and one out of seven expressed there is no dignity. There are no positive responses at all."<sup>252</sup> One student stated, "The audio books are not available in the college, the government doesn't provide braille books in the higher secondary levels. I am deprived of learning materials and left back in the classroom. I have no opportunities to learn the text that I wish."<sup>253</sup>

The low level of overall education for the visually impaired results in difficulties in finding employment.<sup>254</sup> The Nepal Association of the Blind also points out that "[V]isually impaired people in rural areas have little access to special services as most institutions for the blind are situated in Kathmandu ... Visually impaired women are double marginalized due to their gender and disability. Their limited mobility excludes them from many opportunities for education and employment." Those who do find employment are primarily employed as teachers, musicians or telephone operators.<sup>255</sup>

Nepali is the official language of Nepal, but people in the country speak a number of other major languages as well. Higher education classes are generally taught in English. Students are taught the Nepali braille system or English braille system.<sup>256</sup> However, "[i]n Nepal... Braille and tactile communication have not yet been standardized. These and other forms of communication need to be developed, standardized and disseminated."<sup>257</sup>

## Organizations and entities providing assistance to people with disabilities

A DAISY For All focal point was established in Nepal in August 2005.<sup>258</sup> A training course was held that focused on production of DAISY formats.<sup>259</sup> DAISY For All Japan has provided technical and equipment support to Nepal and upgrades have been provided with the support of the Australian embassy.

Nepal has several organizations dedicated to serving those who are blind or visually impaired. The National Association for the Welfare of the Blind has a mission to integrate the blind into society and promote self-reliance.<sup>260</sup>

246 Nepal defines a blind person as one who even after treatment cannot count or detect fingers with the better-sighted eye from a distance of ten feet or cannot read the characters of the Snellen chart (3/60).

247 Nepal defines a visually impaired person as one who cannot count or detect fingers with the better-sighted eye from a distance of twenty feet, or cannot read the characters on the Snellen chart (6/18).

248 Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics, *Population Monograph of Nepal: Demographic Analysis, Vol. 1* (2014), d, 296.

249 National Federation of the Disabled – Nepal, *Disability Rights Holistic Monitoring Report* (2013), (see footnote 244) p. 18.

250 Ibid.

251 Nepal Association of the Blind, *Situation of the Blind*, <http://www.nabnepal.org/page.php?page=situation> (last visited 21 April 2015).

252 National Federation of the Disabled – Nepal, *Disability Rights Holistic Monitoring Report* (2013), (see footnote 244) p. 35.

253 Ibid.

254 Ibid.

255 Ibid.

256 The Rose International Fund for Children, *TRIFC/NAWB National Braille Library, Kathmandu*, <http://www.trifc.org/trifcnawb-national-braille-library-kathmandu/> (last visited 30 April 2015).

257 National Federation of the Disabled – Nepal, *Disability Rights Holistic Monitoring Report* (2013), (see footnote 244), p. 54.

258 DAISY, DAISY For All: Nepal, <http://www.daisy.org/daisyforall/nepal> (last visited 15 May 2015). For more information on DAISY, see footnote 233.

259 Ibid.

260 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Kingdom of Nepal* (March 2002).

This organization prints and distributes textbooks, reference books, magazines and calendars in braille, as well as DAISY books; provides scholarships for blind and visually impaired students; and provides braille typewriters and papers.<sup>261</sup>

The National Association of the Blind works to protect and promote the interests and rights of the blind and provides training and rehabilitation services.<sup>262</sup> It has operated a braille press since 2001, which now has the capacity of printing 1,800 braille pages per hour, and is primarily engaged in printing school textbooks for the Ministry of Education as well as other reference materials.<sup>263</sup> The National Association of the Blind also records textbooks in DAISY format. The organization also houses a braille equipment bank with equipment imported from China and India.<sup>264</sup>

In March 2010, the National Braille Book Library was established in Kathmandu as a partnership between the Rose International Fund for Children and the Nepal Association for the Welfare of the Blind.<sup>265</sup> The National Braille Library had 558 users in 2010.<sup>266</sup>

Other organizations in Nepal serving those who are blind or visually impaired are Netra Jyoti Sangh (NNJS), Netrahin Sangh and Andha Apang Kalyan as described in a 2002 report.<sup>267</sup>

## 5.5.2 Copyright law in Nepal and recommended changes

Nepal is a party to the Berne Convention and a member of the WTO. While Nepal is a least developed country,<sup>268</sup> and least developed countries are afforded an extension with respect to most articles of the TRIPS Agreement, Nepal amended its copyright law and the current law was enacted in 2002. Its current copyright law was designed to conform to the TRIPS Agreement, particularly with respect to enforcement measures, due to the voluntary commitment Nepal made to comply with the TRIPS Agreement by 2006. Nepal's copyright law therefore reflects the obligations and commitments of the Berne Convention and the TRIPS Agreement, including provisions on enforcement and remedies.

Nepal's 2002 copyright law does not include any specific exceptions to allow for the creation or distribution of accessible formats. While it does have an exception to allow for importation for personal use, it does not allow importation for other reasons and does not include any specific provisions governing export. Nepal will therefore need to amend its laws in order to comply with the Marrakesh Treaty.

### Creation and distribution of accessible formats

Nepal's copyright law provides copyright owners with a number of economic rights including the right of reproduction,<sup>269</sup> translation<sup>270</sup> and distribution.<sup>271</sup> Without an exception to these rights, the creation and distribution of an accessible format work would not be permitted.

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Annex 1.

261 Christian Blind Mission, *Programme: Nepal Association for the Welfare of the Blind*, <http://www.cbm.org/programmes/Nepal-Association-for-the-Welfare-of-the-Blind-342781.php> (last visited 20 April 2015).

262 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Kingdom of Nepal* (March 2002). Annex 1.

263 Nepal Association of the Blind, *About us*, [http://www.nabnepal.org/page.php?page=about\\_us](http://www.nabnepal.org/page.php?page=about_us) (last visited 19 Oct 15).

264 Ibid.

265 The Rose International Fund for Children, *TRIFC/NAWB National Braille Library, Kathmandu*, <http://www.trifc.org/trifcnawb-national-braille-library-kathmandu/> (last visited 30 April 2015).

266 Ibid.

267 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Kingdom of Nepal* (March 2002). Annex 1.

268 Least developed countries are afforded an extension with respect to implementing most articles of the TRIPS Agreement (with the exceptions of Articles 3, 4 and 5). Least developed countries that are members to the WTO must still comply with the provisions of TRIPS governing national treatment and most-favoured nation status. Additionally, least developed countries must comply with any commitments and obligations it has made through joining WIPO-administered treaties. The latest extension was granted in 2013 and extends until 1 July 2021, or when a particular country ceases to be a least developed country, whichever is earlier. See Decision of the Council for TRIPS of 11 June 2013: Extension of the Transition Period Under Article 66.1 for Least Developed Country Members, World Trade Organization, IP/C/64 (12 June 2013).

269 The Copyright Act, 2059 (2002), as amended by Some Nepal Acts relating to Export and Import and Intellectual Property Act, 2063, Art. 7(a).

270 Ibid., Art. 7(b).

271 Ibid., Art. 7(e).

In addition to specifying the rights of reproduction, translation and distribution, the copyright law states that it is copyright infringement “[t]o make work of another subject or nature by changing the form and language of a work belonging to another person with a motive of deriving economic benefit.” While the creation of an accessible format work may be done without a profit motive and therefore not explicitly categorized as an infringement, it may nonetheless be considered an infringement of the economic rights laid out under Nepal’s copyright law unless an exception to these rights exists.

While Chapter 4 of Nepal’s copyright law provides for a number of limitations and exceptions to copyright, none of these existing exceptions allow for the creation or distribution of accessible format works. Authorization from the rightholder and remuneration are not required, under certain circumstances, for the following categories of uses: reproduction for personal use, citation, teaching and learning, libraries and archives, news reporting, computer programs to achieve the purpose of the program or for backup, or for public display.<sup>272</sup>

A new article should be created under Chapter 4 to add to this list of limitations and exceptions. The new article should provide for a specific exception allowing for the creation and distribution of accessible format copies, similar to other existing exceptions under Nepal’s copyright law.

## Importation and exportation

Article 7 of Nepal’s copyright law sets forth a number of economic rights, including the right of distribution and the right of import.<sup>273</sup> While the copyright law grants rightholders the right of importation, the law also permits importation for personal use.<sup>274</sup> Thus, those who are blind, visually impaired or otherwise print disabled can import accessible format copies for their own personal use. This provision likely does not cover authorized entities, however.

The section of Nepal’s copyright law governing infringement prohibits “importation of unauthorized copies.”<sup>275</sup> Article 26 provides, “Importation of copies of work or sound recording, either made in a foreign country or sourced otherwise, into Nepal for business purpose shall not be permitted if preparation of such copies would be considered illegal if they were prepared in Nepal.”

This provision does not apply to personal use, but is only applicable where importation is done for “business purpose.” This term is undefined by the Copyright Act and it is therefore unclear whether this provision applies only for commercial purposes, or whether non-profit uses might also be prohibited.

Regardless, this section of Nepal’s copyright law only prohibits importation “if preparation of such copies would be considered illegal if they were prepared in Nepal.” Thus, this prohibition would not apply where a copy would have been permissible if made under a limitation or exception in Nepal. Remedies are available against importation that violates Article 26 and therefore also only applicable where the imported copy would have violated Nepal’s copyright law.<sup>276</sup>

The implementation of a provision in Nepal’s copyright law expressly permitting creation and distribution of an accessible format work would mean that importation of such a copy would not be prohibited under Article 26. However, given that Article 22 expressly permits importation for personal use, it would be helpful to clarify Nepal’s law to ensure that authorized entities may also import works for the benefit of the blind, visually impaired or otherwise print disabled.

Nepal’s copyright law does not have any provisions regarding exportation. An exception expressly permitting the exportation of accessible format works is recommended in order to comply with the provisions on cross-border exchange in the Marrakesh Treaty.<sup>277</sup>

<sup>272</sup> Ibid., Arts. 16–23.

<sup>273</sup> Ibid., Art. 7(e), (g).

<sup>274</sup> Ibid., Art. 22.

<sup>275</sup> The Copyright Act, 2059 (2002), as amended by Some Nepal Acts relating to Export and Import and Intellectual Property Act, 2063, Art. 26.

<sup>276</sup> Ibid., Art. 28 (“In cases where any person imports unauthorized copies of any work in violation of Section 26, such a person shall be punished with a fine of a sum from ten thousand to one hundred thousand rupees according to the gravity of the offense, and such copies shall be seized; and compensation for the loss caused to the copyright owner from such importation shall also be realized from the importer and provided to the copyright owner.”)

<sup>277</sup> Nepal is not a member of the WCT and therefore must comply with Article (5)(4)(b) of the Marrakesh Treaty. The recommended amendment

The Marrakesh Treaty allows for beneficiaries of the Treaty and individuals acting on their behalf, as well as authorized entities, to import accessible format copies from other countries. It also permits the export of accessible format copies by authorized entities.

As noted above, Nepali is the official language of Nepal; the language is also spoken in some parts of India and works that are created in Nepali could be shared between Nepal and India. Those pursuing higher education would benefit from the importation of accessible format works produced in the English language. Hindi is also a commonly spoken language in Nepal; accessible works from India would assist in expanding the variety of content available in Nepal for those who speak Hindi.

## Technological protection measures

Article 25(1)(e) of Nepal's copyright law states that it is an infringement to "import, produce or rent any equipment or device prepared with intention of circumventing any device designed to discourage the unauthorized reproduction."<sup>278</sup> This provision would prohibit the importation, production or rental of equipment that can circumvent a technological protection measure to render a work accessible, such as a text-to-speech format on an e-reader.

This provision does not appear to be limited to a prohibition on circumvention for unauthorized reproduction, but instead appears to apply to the circumvention of "*any device*" such as a technological protection measure if that device or measure was applied to "discourage" unauthorized uses. Thus, this section could be read as effectively preventing beneficiary persons from using devices to circumvent technological protection measures.

Article 25(1)(g) provides that it is an infringement to "import, sell, distribute or use a mechanical device prepared with a sole object of infringing the copyright..."<sup>279</sup> This provision is limited to devices whose "sole object" is "infringing the copyright" and is therefore unlikely to apply to the circumvention of technological protection measures for purposes of creating an accessible format work, provided that the making of an accessible format work is interpreted as not infringing copyright.

While Nepal's copyright law provides for the above prohibitions on circumvention of technological protection measures, there does not appear to be a specific provision expressly permitting circumvention, or exceptions or limitations to allow for the importation, production, distribution or use of devices that can circumvent technological protection measures, even for non-infringing uses.

Nepal's copyright law should therefore be amended to ensure that beneficiary persons are effectively able to enjoy the limitations and exceptions under the Marrakesh Treaty. While there are different ways to amend the law to ensure that anti-circumvention provisions do not impede beneficiary persons from gaining access to accessible format works, one method of complying with the Marrakesh Treaty would be to create a subparagraph that provides that Articles 25(1)(e) and (g) do not apply with respect to the creation and distribution of accessible format works for the blind, visually impaired or otherwise print disabled.

## 5.5.3 Conclusions and recommendations

Nepal's copyright law does not currently have any limitations or exceptions that expressly benefit those who are blind, visually impaired or otherwise print disabled. Its law therefore requires several amendments to comply with the obligations of the Marrakesh Treaty to allow for the creation and distribution of accessible format works, cross-border exchange, and to ensure that beneficiaries are able to enjoy the Treaty's exceptions if necessary, including by circumventing technological protection measures.

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to the Nepali copyright law is sufficiently narrow to meet the three-step test obligation under Article 5(4)(b).

278 The Copyright Act, 2059 (2002), as amended by Some Nepal Acts relating to Export and Import and Intellectual Property Act, 2063, Art. 25(1)(e).

279 Ibid., 25(1)(g).

## Creation and distribution of accessible format works

Current law	Recommended amendments
No exceptions available.	<b>Article X. Accessible Formats Allowed</b> <u>Notwithstanding anything contained in Section 7, an accessible format copy of a work may be created and distributed for the blind, visually impaired or otherwise print disabled, without authorization of its author or copyright owner.</u>
Comment	
<p>A new article under Chapter 4 should be created to allow for the creation and distribution of accessible format works because Nepal's copyright law currently does not have an exception for the creation of accessible formats. Chapter 4 lays out the individual articles for each exception permitted under Nepal's copyright law and provides examples of the type of language used in Nepal's copyright limitations and exceptions.</p> <p>Article X would expressly permit the creation and distribution of accessible formats for the blind, visually impaired or otherwise print disabled, by allowing for "accessible format copies," a phrase taken directly from the Marrakesh Treaty.</p>	

## Importation and exportation

Current law	Recommended amendments
<p><b>Article 22.</b> Importation allowed for personal purposes: Notwithstanding anything contained in Clauses (g) of Section 7, one copy of any work can be imported for personal purpose, without authorization of its author or copyright owner.</p> <p><b>Article 26</b> Importation of copies of work or sound recording, either made in a foreign country or sourced otherwise, into Nepal for business purpose shall not be permitted if preparation of such copies would be considered illegal if they were prepared in Nepal.</p>	<p><b>Article 22.</b> Importation allowed for personal purposes; <u>Importation and exportation for the blind, visually impaired or print disabled</u></p> <p>(1) Notwithstanding anything contained in Clauses (g) of Section 7, one copy of any work can be imported for personal purpose <u>or for the benefit of the blind, visually impaired or otherwise print disabled</u>, without authorization of its author or copyright owner.</p> <p>(2) <u>An accessible format copy can be exported by the government, non-profit entities or other institutions that provide services to the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>In order to comply with the Marrakesh Treaty, entities that serve the print disabled as well as individuals who are blind, visually impaired or otherwise print disabled must be permitted to import works. Nepal's copyright law explicitly provides rightholders with the economic rights of distribution and importation. While it does have an exception to this importation right for personal use, this exception may not be broad enough to cover individuals acting on behalf of beneficiaries of the Marrakesh Treaty or authorized entities. Article 22 of the copyright law should therefore be amended to provide a broader exception for importation beyond just personal use.</p> <p>Additionally, Nepal's copyright law does not have any provisions regarding export. It should therefore be amended to include a provision that allows the government, non-profit entities and other institutions that serve beneficiaries of the Marrakesh Treaty to export accessible format copies.</p>	



## Technological protection measures

Current law	Recommended amendments
<p><b>Article 25</b></p> <p>(1) Any one who carries out the following act shall be considered to have infringed the right protected under this Act:-</p> <p>[...]</p> <p>(e) To import, produce or rent any equipment or device prepared with intention of circumventing any device designed to discourage the unauthorized reproduction.</p> <p>[...]</p> <p>(g) To import, sell, distribute and use a mechanical device prepared with a sole object of infringing the copyright, except those mentioned in Clauses (e) and (f).</p>	<p><b>Article 25</b></p> <p><u>(x) Paragraph (1)(e) and (1)(g) shall not apply to devices designed or used to circumvent a device for the purpose of creating an accessible format copy for the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>Nepal's copyright law provides that it is an infringement of copyright to import, sell or rent devices that circumvent technological measures under certain circumstances. It also provides that it is an infringement to use a device "prepared with a sole object of infringing the copyright."</p> <p>These provisions may discourage the circumvention of technological protection measures even for the purpose of creating an accessible format for those who are blind, visually impaired or otherwise print disabled.</p> <p>A new subsection under Article 25 should be added to clarify that these provisions do not prevent the circumvention of technological protection measures when done to create an accessible format copy. This clarification will also permit authorized entities and beneficiary persons to purchase, rent, distribute or create devices and equipment capable of rendering digital works accessible. This new subsection provides one method of ensuring that Nepal's copyright law complies with the Marrakesh Treaty obligation to ensure that any anti-circumvention measures provided for under domestic law do not prevent beneficiaries of the Treaty from enjoying its limitations and exceptions.</p>	

## 5.6 Viet Nam

### Key points:

- Viet Nam ratified the CRPD on 5 February 2015. It is not a signatory to the Marrakesh Treaty.
- According to the 2009 census, Viet Nam has a population of 6.1 million people with disabilities, 4 million of whom have a visual disability. Those with disabilities in Viet Nam have lower literacy, education and employment rates compared to the general population.
- Viet Nam has a number of organizations and institutions to support people with disabilities that provide a wide range of services including education, early care programs for those with visual impairments, and publication of accessible formats such as braille, audio and large print.
- The braille system in Viet Nam is derived from various languages, though it closely resembles French braille. There was an effort in 2001 to unify the braille codes, which had been absorbed in different ways by different organizations. Braille formats are unaffordable for many students. One report found that more than 50 percent of visually impaired students do not have the necessary books to study. Thus, while there is a national organization as well as many local organizations and entities serving the blind and visually impaired, a serious shortage of resources remains.
- While Viet Nam's copyright law does provide a specific exception for "transcription" of works into braille, this language will need to be broadened to apply to any accessible format. Additionally, Viet Nam's copyright 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 copyright law should also be amended to ensure the provision regarding anti-circumvention of technological measures does not impair the rights of beneficiary persons to accessible format works, particularly if the TPP comes into force and Viet Nam is required to change its laws with respect to these measures.

### 5.6.1 Background

#### Disability rights and laws in Viet Nam

Viet Nam's constitution provides that "Citizens have the right to work and to choose their occupations, employment and workplaces."<sup>280</sup> Additionally, in June 2010, Viet Nam enacted a comprehensive disability law, mandating that people with disabilities have a right "to participate on an equal basis in social activities," and providing for, among other things, accommodation and access to education, employment, vocational training and cultural services.<sup>281</sup>

Viet Nam further confirmed a commitment to promoting the rights of people with disabilities, ratifying the Convention on the Rights of Persons with Disabilities on 5 February 2015. These recent commitments to promoting the rights of those with disabilities are encouraging developments and should provide evidence of a policy supportive of accession to and implementation of the Marrakesh Treaty.

#### People with print disabilities in Viet Nam

The 2009 census in Viet Nam revealed that there were 6.1 million people with disabilities, representing 7.8 percent of the population.<sup>282</sup> The majority of these individuals, approximately 4 million, had a visual disability.<sup>283</sup>

Vietnamese people with disabilities have a lower literacy, education and employment rate compared to the general population. A 2011 study by the United Nations Population Fund, based on the 2009 census report in Viet Nam, found that people with visual disabilities only had a 76.6 percent literacy rate, compared to 95.2 percent for those

<sup>280</sup> Constitution of the Socialist Republic of Vietnam (amended and supplemented, 2013), Art. 35.

<sup>281</sup> Law on Persons with Disabilities (2010), No. 51/2010/QH12.

<sup>282</sup> United Nations Population Fund (UNFPA), People with Disabilities in Viet Nam, Key Findings from the 2009 Viet Nam Population and Housing Census. Ha Noi, (December 2011), [http://vietnam.unfpa.org/webdav/site/vietnam/shared/Disability\\_ENG.pdf](http://vietnam.unfpa.org/webdav/site/vietnam/shared/Disability_ENG.pdf)

<sup>283</sup> Ibid.

without disabilities.<sup>284</sup> Those that are blind reported a literacy rate of only 38.5 percent, with an even lower rate of just 19.9 percent for youths aged 15 to 24, resulting in UNFPA concluding that “more attention and support are needed in education for the youth [with disabilities].”<sup>285</sup>

Of children with visual impairments aged 6 to 10, only 71.3 percent were enrolled in school and 26.8 percent had never attended school; for children who are blind, only 12 percent had attended school.<sup>286</sup> In comparison, non-disabled children had a 97.8 percent rate of attendance with only 2.2 percent reporting that they had never attended.<sup>287</sup>

The rate of employment for people with visual impairments was 75.5 percent and just under 21 percent for the blind, compared to 82.7 percent for those without disabilities.<sup>288</sup>

These disparities in literacy, education and employment rates are even higher for individuals with multiple disabilities.<sup>289</sup>

## Organizations and entities providing assistance to people with disabilities

There are a number of organizations and institutions to support people with disabilities in Viet Nam. According to a 2002 report, the Research and Education Center for Disabled Children of Ho Chi Minh City “manages the 20 special education schools within the City and some vocational activities in some provinces in the South and the North, trains teachers, implements early care programs for visually impairment holders, publishes braille books and holds cultural festivals for classes with children with disabilities.”<sup>290</sup> Additionally, the National Fund for Job Creation loaned 27.2 billion VND to create jobs for blind people and an additional 8 billion VND for other people with disabilities.<sup>291</sup>

Several organizations are specifically targeted at assisting persons who are blind or visually impaired, including the Viet Nam Blind Association, which, in 2002, was the only national organization of persons with disabilities.<sup>292</sup> The Vietnam Blind Association, in its 2013–2014 report, stated that it had 52 blind associations nationwide and more than 66,000 members (almost double its membership of 35,000 in 2002) and that education is a “major activity” for the organization.<sup>293</sup>

In 2006, a DAISY For All focal point was established, and it trained participants—including the Vietnam Blind Association (VBA), the Training and Rehabilitation Center for the Blind, the Hanoi Blind Association, the Hai Duong Blind Association and the Hue Blind Association—to use DAISY production tools to create DAISY files and digital audio books.<sup>294</sup> The Nguyen Dinh Chieu School for Blind Children participates in the production of accessible formats including braille, audio and large print formats.<sup>295</sup>

Despite the fact that there are organizations that provide services to individuals with visual impairments, as noted above, there are still significant challenges that result in lower literacy, educational and employment rates. One of the reasons for this may be the fact that while the braille system was introduced in Viet Nam in 1898, the “codes were developed and absorbed in unique ways ... result[ing] in many variations in using the Braille codes from organizations to educational centers. Therefore, visually impaired people in Vietnam faced many difficulties in learning Braille.”

284 Ibid., p. 58.

285 Ibid., pp. 27, 58.

286 Ibid., p. 60.

287 Ibid.

288 Ibid., p. 62.

289 Ibid.

290 Vietnam Country Report, The 9<sup>th</sup> ASEAN & Japan High level officials meeting on Caring Societies: “Human Resource Development in the sectors of Welfare and Health with a focus on capacity building of service providers and employability promotion of vulnerable people,” (25–28 October 2011), p. 20 (citing Nakanishi, Yukiko, *Ajitaiteiyou no shougaisha no kyouiku* (Education for Person with Disabilities in the Asia Pacific, <http://www.din.or.jp/~yukin/ED.html>).

291 Ibid.

292 Japan International Cooperation Agency, Planning and Evaluation Department, *Country Profile on Disability: Socialist Republic of Vietnam* (March 2002).

293 Country Report of the Vietnam Blind Association (2013–2014), <http://wbup.org/index/mid-term-general-assembly-2014/vietnam-country-report>

294 DAISY, DAISY For All: Vietnam, <http://www.daisy.org/daisyforall/vietnam> (last visited 15 May 2015). For more information about the DAISY For All project, see footnote 233.

295 CBM, *Programme: Nguyen Dinh Chieu School for Blind Children*, <http://www.cbm.org/programmes/Nguyen-Dinh-Chieu-School-for-Blind-Children-303237.php> (last visited 1 April 2015).

In 2001, to address this problem, the International Council for Education of People with Visual Impairments (ICEVI) organized a conference to unify the Vietnamese Braille codes.<sup>296</sup> While advancements have been made to unify the braille codes which would make the necessary codes more widely available, “[c]ommunication tools for persons with disabilities such as Braille letter boards [and] cassette tapes ... are still limited and expensive.”<sup>297</sup> A 2006 proposal for a national braille production center in Viet Nam confirmed:

The Braille textbook is still an unaffordable commodity for the visual impairment students in Vietnam. The organizations, educational centers and special schools for the visually impaired children prepare Braille books for their own students by manual methods. Only few special schools have mini Braille presses to emboss the Braille text. And they have not provided enough Braille books for their own students. Following the statistical record of the [Ministry of Education and Training (MOET)], more than 50 percent of visually impaired students still do not have the basic books to study. They are going to class without Braille books or sharing the Braille books with their visually impaired friends in the special school or studying with the help of their sighted peers in integrated schools...

Furthermore, as inclusive education is fast growing, when the ideal of inclusive education is implemented, demand for Braille books for children with visual impairment in general classrooms are increasing. And there is a real need to make cost effective Braille book production centers in Vietnam so that all children and adults with visual impairment can afford ... Braille books.<sup>298</sup>

Thus, while there is a national organization as well as many local organizations and entities serving the blind and visually impaired, a serious shortage of resources remains.

### 5.6.2 Copyright law in Viet Nam

Viet Nam is a party to the Berne Convention and a member of the WTO, but has not yet joined the WCT. However, it is party to the recently concluded TPP, a large regional trade agreement, with 12 parties.<sup>299</sup> As will be discussed in greater detail below, the TPP could require Viet Nam to amend its copyright laws, including the possibility of being required to accede to the WCT and change its laws with respect to technological protection measures.

Viet Nam’s current copyright law conforms with its rights and obligations under the Berne Convention and TRIPS Agreement, including the enforcement of intellectual property rights and remedies for infringement.

While Viet Nam’s copyright law does provide a specific exception for “transcription” of works into braille, this language will need to be broadened in order to comply with the Marrakesh Treaty. Additionally, Viet Nam’s copyright law should be amended to ensure that cross-border sharing may be done and that its laws prohibiting circumvention of technological measures do not impair the rights of beneficiary persons to accessible format works.

### Creation and distribution of accessible formats

Under current copyright law in Viet Nam, authors have the economic right to make derivative works.<sup>300</sup> However, a specific exception to copyright exists for the creation of at least a braille format for the blind. Article 25.1(i) provides that it is not necessary to seek permission or provide remuneration for “Transcription of works into braille or characters of other languages for the blind.”<sup>301</sup>

This exception clearly provides for an exception for the creation of accessible formats in braille, though what “characters of other languages for the blind” encompasses is not clearly defined. Considering that braille was not standardized in Viet Nam until after 2001, it is possible that this language was designed to permit the creation of accessible formats into multiple codes. This exception, focusing on braille or “characters of other languages for the

296 Nguyen Van Khoa, ‘Building a cost-effective Braille book production System in Vietnam’, International Council for Education of People with Visual Impairments, E032, p. 1. available from [http://icevi.org/publications/icevi\\_wc2006/01-access&information\\_technology/paper/ea\\_032\\_khoa.pdf](http://icevi.org/publications/icevi_wc2006/01-access&information_technology/paper/ea_032_khoa.pdf)

297 Japan International Cooperation Agency, *Planning and Evaluation Department, Country Profile on Disability: Socialist Republic of Vietnam* (March 2002).

298 Nguyen Van Khoa, ‘Building a cost-effective Braille book production System in Vietnam’, (see footnote 297), p. 2.

299 The current negotiating parties to the TPP are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam.

300 Law on Intellectual Property, No. 50 2005/QH11 (November 29, 2005), as amended by Law No. 36/2009/QH12 (June 19, 2009), and Law No. 19/2013/VBHN-VPQH (December 18, 2013).

301 Ibid.

blind” does not appear to permit the creation of other accessible formats such as audio or large print, which may be necessary. Additionally, this exception applies only to the blind and may not include those who are visually impaired or those with other print disabilities.

As a result, the current exception is much narrower than provided for by the Marrakesh Treaty. In order to comply with the Treaty and take full advantage of its provisions, the text of Article 25 should be amended to expand the scope of the beneficiary and type of the accessible format copy that may be created.

In providing for this exception, Viet Nam’s law does not explicitly provide for the distribution of accessible format copies. In order to fully comply with the Marrakesh Treaty, the law should be clarified to permit distribution, which in the context of the Treaty, includes digital transmissions of accessible format copies.

## Importation and exportation

Article 20 provides authors with the economic right of distribution and importation.<sup>302</sup> Article 28 further provides that it is an infringement of copyright to export, import or distribute works without permission of the copyright holder.<sup>303</sup> However, Article 25 provides for an exception, permitting the importation of copies for personal use.<sup>304</sup>

Thus, beneficiary individuals of the treaty could use the personal importation provision to import accessible format works from other countries. However, Article 25 does not appear broad enough to permit authorized entities to import works. It also does not allow an authorized entity to export an accessible format copy.

Viet Nam should therefore amend its law to provide authorized entities the ability to import and export accessible format works.<sup>305</sup> This is a critical component not only to comply with the Marrakesh Treaty, but also to ensure that the full advantages of the treaty can be realized.

## Technological protection measures

Article 198, which applies to all forms of intellectual property rights, permits rightholders “to protect their intellectual property rights” by “applying technological measures to prevent acts of infringing upon intellectual property rights.”<sup>306</sup> It appears to apply only to prevent acts of infringement, however, and the making of an accessible format work could be interpreted as not infringing copyright.

Furthermore, while Article 198 provides a right to apply a technological protection measure, there is no provision prohibiting circumvention of these measures and remedies appear to apply only to infringement.

Article 28, which focuses specifically on copyright, prohibits the “manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works.”<sup>307</sup>

While Article 28’s prohibition does not apply directly to the act of circumvention, it does prohibit the manufacture, distribution, and importation of devices that can circumvent technological protection measures. This provision could be problematic in implementation of the Marrakesh Treaty as it may be necessary to overcome protection measures that are placed on digital works.

Article 28 places a broad prohibition on the manufacture and distribution of such devices, seemingly applying to all cases where there is knowledge of or grounds to know that the device or equipment “may deactivate” technological protection measures. Effectively, this provision would prevent individuals who are print disabled from being able to purchase devices designed to overcome technological measures to make works accessible.

<sup>302</sup> Ibid., Art. 20.1(d).

<sup>303</sup> Ibid., Art. 28.16.

<sup>304</sup> Ibid., Art. 25.1(j). This provision, like 25.1(i) which permits the creation of a braille copy, is subject to the requirement that it does not affect the normal use of the work or cause prejudice to the copyright holder.

<sup>305</sup> Vietnam is not a member of the WCT and therefore must comply with Article (5)(4)(b) of the Marrakesh Treaty. The recommended amendment to the Vietnamese copyright law is sufficiently narrow to meet the three-step test obligation under Article 5(4)(b).

<sup>306</sup> Law on Intellectual Property (see footnote 301), Art. 198.1(a).

<sup>307</sup> Ibid., Art. 28.14.

There does not appear to be specific provisions in Viet Nam's copyright law expressly permitting circumvention or exceptions or limitations to allow the manufacture, distribution, importation or sale of devices that can circumvent technological protection measures, even for non-infringing uses.

While Articles 198 and 28 cover current regulations under Viet Nam's copyright law, it is expected that Viet Nam will be required to amend its laws to comply with the Trans-Pacific Partnership Agreement. Although the official negotiating text of the TPP has not been released, there have been several leaks of the agreement. The leaked provisions, if accurate, would require parties to prohibit circumvention of technological protection measures as well as the manufacture, import, distribution or offer for sale of certain devices or products that circumvent technological protection measures.<sup>308</sup>

Viet Nam's current status as a TPP negotiating party, and the likely changes to copyright law that will be required, should be taken into account in considering amendments for successful implementation of the Marrakesh Treaty.

Notably, the TPP's language on limitations and exceptions includes recognition of facilitating access to works for persons who are blind, visually impaired or otherwise print disabled, including a footnote specifically referencing the Marrakesh Treaty.<sup>309</sup>

Viet Nam's copyright law should therefore be amended to ensure that technological protection measures do not prevent beneficiary persons from enjoying the limitations and exceptions under the Marrakesh Treaty. Additionally, the law should be amended to allow for the manufacture, distribution and importation of devices or equipment to overcome technological protection measures and enable the use of technology to make works accessible; individuals may not be able to overcome technological protection measures without the use of devices designed to make works accessible.

### 5.6.3 Conclusion and recommendations

Viet Nam should amend its copyright law to broaden its provision on the creation and distribution of accessible format works. Its law appears to be limited to braille and should be broadened to apply to any accessible format. Additionally, Viet Nam should provide a clear importation right for authorized entities and an exportation provision to facilitate cross-border exchange of accessible format works.

Furthermore, its law should clarify that beneficiary persons can circumvent technological protection measures, particularly if the TPP comes into force and Viet Nam is required to change its laws with respect to these measures.

#### Creation and distribution of accessible format works

Current law	Recommended amendments
<p><b>Article 25</b></p> <p>1. Cases of use of published works where permission or payment of royalties and/or remuneration is not required include:</p> <p>[...]</p> <p>i/ Transcription of works into Braille or characters of other languages for the blind;</p>	<p><b>Article 25</b></p> <p>1. Cases of use of published works where permission or payment of royalties and/or remuneration is not required include:</p> <p>[...]</p> <p>i/ <u>Creation and distribution</u> of works into <u>accessible format copies</u> Braille or characters of other languages for the blind, <u>visually impaired or otherwise print disabled</u>;</p> <p>2. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause prejudice to rights of the authors and/or copyright holders; and must indicate the authors' names, and sources and origins of the works.</p>

308 Wikileaks, *Updated Secret Trans-Pacific Partnership Agreement (TPP) – IP Chapter (Second publication)*, Article QQ.G.10 (16 October 2014), <https://www.wikileaks.org/tpa-ip2/>

309 Ibid.



### Comment

In order to comply with the Marrakesh Treaty, this exception needs to be broadened to ensure that accessible formats are not restricted to braille and can be made in a variety of necessary formats. The term “accessible format copies” is a term taken directly from the Marrakesh Treaty.

Additionally, the Marrakesh Treaty is designed to serve not only the blind, but also those who are visually impaired or have other print disabilities, such as those who have a perceptual or reading disability, or have a physical disability preventing them from holding a book or turning its pages. The recommended additions of the terms “visually impaired” and “print disabled” appropriately extend the exception in accordance with the obligations of the Marrakesh Treaty.

Viet Nam’s current law provides for a number of limitations and exceptions, including this article to allow the creation of a braille format for a person who is blind. However, the law does not explicitly also allow for distribution. It is possible that the chapeau to Article 25, providing that these are “cases of use” that do not require permission or remuneration, could be interpreted as also applying to distribution. However, in order to comply with the obligations of the Marrakesh Treaty, it is recommended that Article 25.1(i) be amended to permit distribution of accessible format copies.<sup>310</sup>

## Importation and exportation

Current law	Recommended amendments
<p><b>Article 28 – Acts of infringing upon copyright</b> [...]</p> <p>16. Exporting, importing, or distributing of works without permission of copyright holders</p> <p><b>Article 25</b> 1. Cases of use of published works where permission or payment of royalties and/or remuneration is not required include: [...]</p> <p>j/ Importation of copies of others’ works for personal use.</p>	<p><b>Article 25</b> 1. Cases of use of published works where permission or payment of royalties and/or remuneration is not required include: [...]</p> <p>j/ Importation of copies of others’ works for personal use <u>or for the benefit of the blind, visually impaired or otherwise print disabled.</u></p> <p>k/ <u>Exportation of copies of accessible format copies by the government, non-profit entities or other institutions that provide services to the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>In order to comply with the Marrakesh Treaty, entities that serve the print disabled as well as individuals who are blind, visually impaired or otherwise print disabled must be permitted to import works. Article 25.1(j) should be amended to allow entities that serve the blind, visually impaired or print disabled, as well as individuals acting on behalf of a person needing an accessible format, to import accessible copies of works.</p> <p>Viet Nam’s copyright law should also include an amendment, either to Article 25.1(j) or through a new provision, Article 25.1(k), to allow the government, non-profit entities and other institutions that serve the intended beneficiaries of the Marrakesh Treaty to export accessible format copies. Cross-border exchange is a key feature of the Marrakesh Treaty and should be utilized to address the book famine.</p>	

<sup>310</sup> In explicitly including distribution in this provision, it may be desirable to include a savings clause to ensure that the inclusion of the term in subparagraph (i) does not prejudice the other limitations and exceptions under Article 25.

## Technological protection measures

Current law	Recommended amendments
<p><b>Article 28</b> – Acts of infringing upon copyright [...]</p> <p>14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works.</p> <p><b>Article 198</b></p> <p>1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:</p> <p>a/ Applying technological measures to prevent acts of infringing upon intellectual property rights;</p> <p>[...]</p>	<p><b>Article 28</b> – Acts of infringing upon copyright [...]</p> <p>14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works, <u>other than where such equipment is used to create an accessible format copy of a work.</u></p> <p><b>Article 198</b></p> <p>1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:</p> <p>a/ Applying technological measures to prevent acts of infringing upon intellectual property rights;</p> <p>[...]</p> <p><b>Article X</b></p> <p><u>Technological measures may be circumvented to create or access an accessible work for the blind, visually impaired or otherwise print disabled.</u></p>
Comment	
<p>The addition to Article 28.14 is an important clarification to ensure that individuals who are blind, visually impaired or otherwise print disabled are effectively able to circumvent technological protection measures through the purchase of equipment capable of rendering digital works accessible. Additionally, a new Article X provides one method of ensuring compliance with Article 7 of the Marrakesh Treaty should the TPP come into force and Viet Nam amends its intellectual property law to comply with the anti-circumvention provisions of the TPP. Parties to the Marrakesh Treaty have an obligation to ensure that any anti-circumvention measures do not prevent beneficiaries of the Treaty from enjoying the limitations and exceptions discussed above.</p> <p>There are different ways of ensuring compliance with the Marrakesh Treaty and the recommended text here is merely one method of ensuring that beneficiaries can enjoy the limitations and exceptions that allow the creation and distribution of accessible format works and cross-border exchange of accessible copies.</p>	

# Appendices

## Appendix 1: Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired, or Otherwise Print Disabled\*

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## Preamble

The Contracting Parties,

*Recalling* the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities,

*Mindful* of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

*Emphasizing* the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits,

*Aware* of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

*Taking into account* that the majority of persons with visual impairments or with other print disabilities live in developing and least developed countries,

*Recognizing* that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level,

*Recognizing* that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts,

*Recognizing* both the importance of rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities and the importance of appropriate limitations and exceptions to make works accessible to these persons, particularly when the market is unable to provide such access,

*Recognizing* the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities,

*Reaffirming* the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments,

*Recalling* the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

*Recognizing* the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities,

Have agreed as follows:

## Article 1

### Relation to Other Conventions and Treaties

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

## Article 2

### Definitions

For the purposes of this Treaty:

(a) “works” means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media<sup>1</sup>;

(b) “accessible format copy” means 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;

(c) “authorized entity” means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations<sup>2</sup>.

An authorized entity establishes and follows its own practices:

- (i) to establish that the persons it serves are beneficiary persons;
- (ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;
- (iii) to discourage the reproduction, distribution and making available of unauthorized copies; and
- (iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

## Article 3

### Beneficiary Persons

A beneficiary person is a person who:

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or<sup>3</sup>
- (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities.

1 Agreed statement concerning Article 2(a): For the purposes of this Treaty, it is understood that this definition includes such works in audio form, such as audiobooks.

2 Agreed statement concerning Article 2(c): For the purposes of this Treaty, it is understood that “entities recognized by the government” may include entities receiving financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.

3 Agreed statement concerning Article 3(b): Nothing in this language implies that “cannot be improved” requires the use of all possible medical diagnostic procedures and treatments.

## Article 4

### National Law Limitations and Exceptions Regarding Accessible Format Copies

1. (a) 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 as provided by the WIPO Copyright Treaty (WCT), 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 the work accessible in the alternative format.  
  
(b) Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.
2. A Contracting Party may fulfill Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:  
  
(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:  
  
(i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;  
  
(ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;  
  
(iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and  
  
(iv) the activity is undertaken on a non-profit basis;  
  
and  
  
(b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.
3. A Contracting Party may fulfill Article 4(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 10 and 11<sup>4</sup>.
4. A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market. Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter<sup>5</sup>.
5. It shall be a matter for national law to determine whether limitations or exceptions under this Article are subject to remuneration.

4 Agreed statement concerning Article 4(3): It is understood that this paragraph neither reduces nor extends the scope of applicability of limitations and exceptions permitted under the Berne Convention, as regards the right of translation, with respect to persons with visual impairments or with other print disabilities.

5 Agreed statement concerning Article 4(4): It is understood that a commercial availability requirement does not prejudice whether or not a limitation or exception under this Article is consistent with the three-step test.



## Article 5

### Cross-Border Exchange of Accessible Format Copies

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party<sup>6</sup>.
2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:
  - (a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and
  - (b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party;

provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons<sup>7</sup>.

3. A Contracting Party may fulfill Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), 10 and 11.
4. (a) When an authorized entity in a Contracting Party receives accessible format copies pursuant to Article 5(1) and that Contracting Party does not have obligations under Article 9 of the Berne Convention, it will ensure, consistent with its own legal system and practices, that the accessible format copies are only reproduced, distributed or made available for the benefit of beneficiary persons in that Contracting Party's jurisdiction.
  - (b) The distribution and making available of accessible format copies by an authorized entity pursuant to Article 5(1) shall be limited to that jurisdiction unless the Contracting Party is a Party to the WIPO Copyright Treaty or otherwise limits limitations and exceptions implementing this Treaty to the right of distribution and the right of making available to the public to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder<sup>8,9</sup>.
  - (c) Nothing in this Article affects the determination of what constitutes an act of distribution or an act of making available to the public.
5. Nothing in this Treaty shall be used to address the issue of exhaustion of rights.

## Article 6

### Importation of Accessible Format Copies

To the extent that the national law of 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

6 Agreed statement concerning Article 5(1): It is further understood that nothing in this Treaty reduces or extends the scope of exclusive rights under any other treaty.

7 Agreed statement concerning Article 5(2): It is understood that, to distribute or make available accessible format copies directly to a beneficiary person in another Contracting Party, it may be appropriate for an authorized entity to apply further measures to confirm that the person it is serving is a beneficiary person and to follow its own practices as described in Article 2(c).

8 Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty requires or implies that a Contracting Party adopt or apply the three-step test beyond its obligations under this instrument or under other international treaties.

9 Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of its provisions and nothing in this Treaty prejudices any rights, limitations and exceptions contained in the WCT.

Contracting Party shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder<sup>10</sup>.

## Article 7

### Obligations Concerning Technological Measures

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty<sup>11</sup>.

## Article 8

### Respect for Privacy

In the implementation of the limitations and exceptions provided for in this Treaty, Contracting Parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

## Article 9

### Cooperation to Facilitate Cross-Border Exchange

1. Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose.
2. Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.
3. The International Bureau of WIPO is invited to share information, where available, about the functioning of this Treaty.
4. Contracting Parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty<sup>12</sup>.

## Article 10

### General Principles on Implementation

1. Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.
2. Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal system and practice<sup>13</sup>.
3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices,

<sup>10</sup> Agreed statement concerning Article 6: It is understood that the Contracting Parties have the same flexibilities set out in Article 4 when implementing their obligations under Article 6.

<sup>11</sup> Agreed statement concerning Article 7: It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.

<sup>12</sup> Agreed statement concerning Article 9: It is understood that Article 9 does not imply mandatory registration for authorized entities nor does it constitute a precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies.

<sup>13</sup> Agreed statement concerning Article 10(2): It is understood that when a work qualifies as a work under Article 2(a), including such works in audio form, the limitations and exceptions provided for by this Treaty apply mutatis mutandis to related rights as necessary to make the accessible format copy, to distribute it and to make it available to beneficiary persons.

dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

## Article 11

### General Obligations on Limitations and Exceptions

In adopting measures necessary to ensure the application of this Treaty, a Contracting Party may exercise the rights and shall comply with the obligations that that Contracting Party has under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, including their interpretative agreements so that:

- (a) in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;
- (b) in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder;
- (c) in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;
- (d) in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

## Article 12

### Other Limitations and Exceptions

1. Contracting Parties recognize that a Contracting Party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that Contracting Party's economic situation, and its social and cultural needs, in conformity with that Contracting Party's international rights and obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.
2. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

## Article 13

### Assembly

1. (a) The Contracting Parties shall have an Assembly.  
 (b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.  
 (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 15 in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.  
  
(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.
5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

## **Article 14**

### **International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty.

## **Article 15**

### **Eligibility for Becoming Party to the Treaty**

1. Any Member State of WIPO may become party to this Treaty.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
3. The European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

## **Article 16**

### **Rights and Obligations Under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

## **Article 17**

### **Signature of the Treaty**

This Treaty shall be open for signature at the Diplomatic Conference in Marrakesh, and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

## **Article 18**

### **Entry into Force of the Treaty**

This Treaty shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

## **Article 19**

### **Effective Date of Becoming Party to the Treaty**

This Treaty shall bind:

- (a) the 20 eligible parties referred to in Article 18, from the date on which this Treaty has entered into force;
- (b) each other eligible party referred to in Article 15, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

## **Article 20**

### **Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

## **Article 21**

### **Languages of the Treaty**

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
2. An official text in any language other than those referred to in Article 21(1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

## **Article 22**

### **Depositary**

The Director General of WIPO is the depositary of this Treaty.

Done in Marrakesh on the 27th day of June, 2013.

## Appendix 2: Model Statute for Implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled

Jonathan Band and Peter Jaszi

The Marrakesh Treaty provides Contracting Parties with great flexibility concerning the implementation of its obligations.<sup>1</sup> As Article 10(3) provides, “Contracting Parties may fulfill their rights and obligations under this treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof...” Article 4(2) sets forth one way a Contracting Party may meet its obligation under Article 4(1) to permit the making and distribution of accessible format copies domestically. Likewise, Article 5(2) sets forth one way a Contracting Party may meet its obligation under Article 5(1) to permit the cross-border exchange of accessible format copies. Below is a model statute for implementing the framework of Articles 4(2) and 5(2) in domestic law. We are not suggesting that this necessarily is the best approach for achieving the Treaty’s objective of increasing the availability of accessible format copies to the print disabled. Rather, this approach may be the most politically feasible for countries that do not already have an exception for the print disabled in domestic law because it hews so closely to the Treaty text.

### SECTION X -- EXCEPTION FOR THE MAKING AND DISTRIBUTION OF ACCESSIBLE FORMAT COPIES

#### X.1 Definitions

For the purposes of this Section:

- (a) “works” means literary and artistic works in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media, including such works in audio form;
- (b) “accessible format copy” means 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 navigate and have access as feasibly and comfortably as a person without visual impairment or other print disability, and which respects 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;
- (c) “authorized entity” means
  - (i) an entity that is authorized or recognized by [the government], or receives financial support from [the government], to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, or
  - (ii) a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.
- (d) A “beneficiary person” means a person who:
  - (i) is blind;
  - (ii) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
  - (iii) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;regardless of any other disabilities.

<sup>1</sup> The text of the Marrakesh Treaty is at [http://www.wipo.int/edocs/mdocs/copyright/en/vip\\_dc/vip\\_dc\\_8\\_rev.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/vip_dc/vip_dc_8_rev.pdf). For an explanation of Treaty, see Jonathan Band, “A User Guide to the Marrakesh Treaty,” <http://www.librarycopyrightalliance.org/bm~doc/user-guide-marrakesh-treaty-0913final.pdf>.



## **X.2 The Making and Distribution of Accessible Format Copies**

- (a) An authorized entity is permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:
  - (i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
  - (ii) the work is converted to an accessible format copy;
  - (iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and
  - (iv) the activity is undertaken on a non-profit basis.
- (b) An authorized entity meets requirements of subsection (a)(iii) when it establishes and follows its own practices:
  - (i) to establish that the persons it serves are beneficiary persons;
  - (ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies; and
  - (iii) to maintain due care in, and records of, its handling of copies of works.
- (c) A beneficiary person, or someone acting on his or her behalf (including a primary caretaker or caregiver), is permitted to make an accessible format copy of a work for the personal use of the beneficiary person or otherwise to assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

## **X.3 Cross-Border Exchange of Accessible Format Copies**

- (a) An authorized entity is permitted, without the authorization of the rightholder,
  - (i) to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another country; and
  - (ii) to distribute or make available accessible format copies to a beneficiary person in another country;
 provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons.
- (b) An authorized entity, a beneficiary person, or someone acting on his or her behalf (including a primary caretaker or caregiver), is permitted, without the authorization of the rightholder, to import an accessible format copy, including by electronic communication by wire or wireless means.

## **X.4 Technological Measures** [if circumvention of technological measures is prohibited]

An authorized entity, a beneficiary person, or someone acting on his or her behalf, is permitted, without the authorization of the rightholder, to circumvent effective technological measures exclusively for the purpose of enjoying the exceptions provided for in this Section.

## **X.5 Respect for Privacy**

An authorized entity shall respect the privacy of beneficiary persons when providing services under this Section.

In addition to this statutory text, it may be appropriate for the legislature or an appropriate government agency to adopt findings or issue a statement stressing that the Section is intended to promote the making and distribution of accessible format copies, including across borders. Furthermore, authorized entities acting pursuant to the provisions of this Section could be encouraged to share information, solely on a voluntary basis, with the World

Intellectual Property Organization International Bureau in an effort to assist authorized entities in identifying one another and thereby creating greater international exchange of accessible format copies.

September 25, 2013

## Appendix 3: Human Rights Treaty Provisions Supporting the Right to Knowledge

The following provisions are found in various human rights treaties and support a number of human rights that rely on the right to knowledge or information.

### Right to information and to exercise freedom of opinion and expression

- International Covenant on Civil and Political Rights (ICCPR), Article 18.1 ("Everyone shall have the right to freedom of thought . . .")
- ICCPR, Article 19 ("1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.")
- Convention on the Rights of the Child (CRC), Article 12.1 ("States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child...")
- CRC Article 13.1 ("The child shall have the right to freedom of expression; this right shall include freedom to seek, receive or impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.")
- CRC Article 14.1 ("States Parties shall respect the right of the child to freedom of thought, conscience and religion.")
- CRC Article 17 ("States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, State Parties shall: (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29; (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources; (c) Encourage the production and dissemination of children's books").
- Convention on the Rights of Persons with Disabilities (CRPD), Article 21 ("States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by: (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost; (b) Accepting and facilitating the use of sign languages, braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions; (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities; (d) Encouraging the mass media, including providers of information through the Internet to make their services accessible to persons with disabilities.")

### Right to take part in society:

- CRC, Article 23.1 ("States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.")
- CRPD, Article 29 ("States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to: (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with

disabilities to vote and be elected... (b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs..."

- CRPD, Article 9 ("1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*: ... (b) information, communications and other services, including electronic services and emergency services. 2. States Parties shall also take appropriate measures to: ... (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information; (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet; (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.")

### **Right to participate in cultural life:**

- International Covenant on Economic Social and Cultural Rights (ICESCR), Article 15.1 ("The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life.")
- CRC, Article 31 ("1. States Parties recognize the right of the child to rest and leisure ... and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. 3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.")
- CRPD, Article 30 ("1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities: (a) Enjoy access to cultural materials in accessible formats; (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats; (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance. 2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society. 3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.")

### **Right to enjoy the benefits of scientific progress:**

- ICESCR, Article 15.1 ("The States Parties to the present Covenant recognize the right of everyone: ... (b) To enjoy the benefits of scientific progress and its applications.")

### **Right to education:**

- ICESCR, Article 6 ("1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.")
- ICESCR, Article 1.1 ("All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development.")

- CRPD, Article 27 (“1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment by taking appropriate steps, including through legislation, to, *inter alia*: (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, continuance of employment, career advancement and safe and healthy working conditions; (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances ... (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training; (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.”)

#### **Right to employment opportunities:**

- ICESCR, Article 6 (“1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”)
- ICESCR, Article 1.1 (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development.”)
- CRPD, Article 27 (“1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment by taking appropriate steps, including through legislation, to, *inter alia*: (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, continuance of employment, career advancement and safe and healthy working conditions; (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances ... (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training; (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.”)

## Appendix 4: World Blind Union – Asia Pacific (WBUAP) Hong Kong Statement

We the participants at the WBUAP Mid-Term Regional General Assembly (Assembly) in Hong Kong, 24th November, 2014,

1. Call upon all governments throughout the Asia-Pacific region (region) to ratify the Marrakesh Treaty at the earliest opportunity so that persons who are blind or partially sighted (blind) or who have other print disability, have full access to works of literature, culture and to educational materials.
2. Welcome the opportunity to co-operate with the United Nations (UN) Development Programme to build capacity across the region so that persons who are blind or who have print disability are able to advocate for greater access to information.
3. Encourage development organisations to work with governments to support data collection, develop disability inclusive policies and strategies to progress the action plan of the Incheon Strategy.
4. Urge all governments and relevant bodies throughout the region to make all efforts toward the speedy ratification and effective implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). In particular, prioritize to ensure the full and effective participation of persons with disabilities and their representative organizations in strengthening independent monitoring mechanisms, given that fewer than half of the countries in the world who have ratified the UNCRPD have presented country and shadow reports to the UN.
5. Being moved by the enthusiasm and strong determination, expressed by women who are blind through the Women's Forum, campaign for the acceleration of women with disabilities' empowerment programmes, in accordance with the Asian and Pacific inter-government Ministerial Declaration on Gender Equality and Women's Empowerment (UNESCAP, 2014).
6. In recognition of challenges and opportunities faced by youth who are blind in this region, and the tremendous success of the Youth Forum held during this Assembly in stimulating innovation and social entrepreneurship among youth of the region, it is recommended that:
  - a youth forum be held at future regional assemblies, and
  - the World Blind Union (WBU) be requested to hold an international youth summit.
7. Call upon all governments, businesses and other global partners to take the necessary steps to ensure that essential technologies are available, accessible and affordable to persons who are blind in the region, as it is through such technology that real inclusion can be advanced and social isolation eliminated.
8. Initiate and implement a web accessibility campaign at the regional level to promote the adoption of internationally recognised accessibility standards in web design, APPs, e-learning and other ICT products and services; in consultation with organizations of the blind.
9. Undertake to actively share best practice initiatives and programmes in areas of fundraising and capacity development.
10. Noting the high levels of unemployment and under employment of persons who are blind in the region, task all governments to implement programs that enable full participation in open employment including education programs for employers and the community, transition to employment programs and the provision of specialist equipment schemes by the government.
11. In recognising that social enterprises have demonstrated their impact in creating employment for persons who are blind, in changing public attitudes and in generating funds to further the cause of the movement for people who are blind, the Assembly urges the WBUAP and WBU to establish a task force to investigate how social enterprises can be promoted and advanced.









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