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ISSUE BRIEF

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Cambodia – The Marrakesh Treaty to facilitate access to published works for persons with print disabilities

KEY MESSAGES

- Print disability can be caused by visual disabilities such as blindness and low vision, developmental/learning disabilities such as dyslexia and autism, or physical disabilities such as Parkinson's disease and paralysis.
- The Marrakesh Treaty to facilitate access to published works for persons with print disabilities ('the Marrakesh Treaty' or 'the Treaty') provides an international legal framework to allow the creation, distribution, and cross-border exchange of accessible format works for use by print disabled people. It can make significant contributions to the dignity, rights and well-being of persons with print disabilities, and to Cambodia's inclusive, just, and sustainable development.
- Lack of access to published works in accessible formats restricts the fundamental human right to knowledge, and can lead to serious development consequences. It excludes persons with print disabilities from achieving their full human potential, and from effectively participating in education, the labour market and cultural activities. It can lead to marginalization, poverty, and social isolation.
- Cambodia is one of only two ASEAN countries that have signed the Marrakesh Treaty. However, Cambodia has yet to complete the ratification process.
- The Marrakesh Treaty is particularly relevant and important for Cambodia, as blind and visually-impaired persons represent 35 percent of the disabled population in Cambodia.
- Cambodia's current copyright law contains provisions to allow limitations and exceptions for the benefit of persons with disabilities. However, the scope of these provisions needs to be broadened to comply with and take full advantage of the Marrakesh Treaty.
- The Marrakesh Treaty provides an effective legal framework to accelerate the implementation of the UN Convention on the Rights of Persons with Disabilities, which Cambodia ratified in 2012.

BACKGROUND

Print disability can be caused by visual disabilities such as blindness and low vision; developmental and learning disabilities such as dyslexia and autism; or physical disabilities such as Parkinson's disease and paralysis. Persons with print disabilities cannot effectively obtain information from print materials in the conventional way (e.g. not being able to see/read the text, hold a book, or turn pages) and therefore require accessible formats such as braille, audio, e-books or large print.

Lack of equitable, timely and affordable access to published works in accessible formats prevents millions of persons with print disabilities around the world from making the most of human development opportunities.

It is estimated that less than 1 percent and 7 percent of published books in developing and developed countries, respectively, are ever made into formats accessible to persons with print disabilities.¹ This situation is referred to as a 'book famine', which can exclude persons with print disabilities from education, employment, healthcare, culture or participation in just about any aspect of political, economic and social activities.

The number of persons with print disabilities in Cambodia and elsewhere is likely to grow because of an ageing population and the rise of non-communicable diseases such as stroke (which can cause paralysis) and diabetes (which can cause blindness or impaired visions). Greater access to published works in accessible formats will therefore become increasingly important in every society.

THE MARRAKESH TREATY

Legal obstacles to the creation and distribution of published works in accessible formats, and their cross-border exchange have contributed to the 'book famine' for persons with print disabilities. For example, an accessible format copy of a popular book produced for persons with print disabilities in Country A could not be shared with print disabled persons, blind people's organizations or libraries in Country B, due to lack of international legal frameworks that would allow its exchange between the countries. As a result, the same accessible format version has to be recreated in Country B, e.g. Cambodia, resulting in duplication of efforts and resources. The subsequent increase in costs of producing accessible works acts as a detriment to their availability.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted in June 2013 by member states of the World Intellectual Property Organization (WIPO), aims to remove these legal obstacles.² The Treaty can pave the way for an enabling legal environment to end the 'book famine', while ensuring that an author's rights and interests are protected.

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

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

One significant aspect of the Marrakesh Treaty is that it includes not only blind and visually-impaired persons, but it extends to persons with other print disabilities, which are expected to increase because of population ageing and the rise of non-communicable diseases as mentioned above.

1 World Blind Union (2013). Press Release WIPO Negotiations Treaty for Blind people. Available at <http://www.worldblindunion.org/english/news/pages/press-release-wipo-negotiations-treaty-for-blind-people.aspx>

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

CAMBODIAN CONTEXT

The Marrakesh Treaty is the first copyright treaty with human rights principles at its core, with specific references to the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The widespread lack of access to published works in accessible formats goes against the spirit of and the obligations arising from the UNCRPD. The Marrakesh Treaty will help countries directly address specific UNCRPD obligations such as provisions relating to access to information (Article 9); freedom of expression (Article 21); the right to education (Article 24); the right to participate in cultural life (Article 30.1.a); as well as ensuring “that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access (Article 30.3).”^{3,4}

The Marrakesh Treaty entered into force on 30 September 2016. As of July 2017, 30 countries have become contracting parties to the Treaty.⁵

The *Cambodia Inter-Censal Population Survey 2013* conducted by the Ministry of Planning⁶ found that persons with visual disabilities comprised the largest proportion (35 percent) of the population with disabilities in the country.

Protecting and promoting the rights of persons with disabilities, including their right to knowledge, education and cultural participation, will advance the priorities of the Royal Government of Cambodia including the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSAVY), the Ministry of Education, Youth and Sports (MOEYS), and the Council for Agricultural and Rural Development (CARD), which all address disability rights articulated in the current National Strategic Development Plan.⁷ Advancing disability rights is also vital to Cambodia’s achievement of the Sustainable Development Goals, guided by the principles of ‘leaving no one behind,’ and ‘reaching the furthest behind first.’

Cambodia signed the Marrakesh Treaty when it opened for signature, on 28 June 2013. Being one of only two ASEAN countries to sign the Treaty, Cambodia has demonstrated strong leadership and commitment to advancing disability rights both at national and global levels. However, Cambodia has yet to ratify the Treaty, which is a necessary step before the country becomes a contracting party to the Treaty.

The ratification would require certain changes in Cambodia’s copyright law, in order to comply with the requirements of the Marrakesh Treaty. For example, it would need to include a provision to permit the creation or distribution of accessible format copies. The scope of certain provisions of the existing law would also need to be broadened to allow authorized entities (e.g. those providing services for persons with print disabilities on a non-profit basis, including government, libraries, non-government entities such as the Association of Blind Cambodia), to import and export accessible format copies produced for the exclusive use of print-disabled persons.

Additionally, to ensure an effective implementation, it is advisable to introduce a provision to permit the removal of technological protection measures or ‘digital locks,’ which disable certain accessibility functions such as text-to-speech capabilities on electronic book readers. The Treaty also contains optional provisions such as the commercial availability requirement and the remuneration requirement. The World Blind

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

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

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

6 National Institute of Statistics, Cambodia Ministry of Planning (2013). *Cambodia Inter-Censal Population Survey 2013 Final Report*. http://www.stat.go.jp/info/meetings/cambodia/pdf/ci_fn02.pdf

7 The Royal Government of Cambodia (2012). *The National Strategic Development Plan, 2012-2018*. http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf

Union recommends that states avoid adopting these optional provisions as they are in conflict with the overarching objectives of the Treaty.⁸

By enabling cross-border exchange of accessible format works, the Marrakesh Treaty can particularly benefit resource-constrained countries with limited availability of accessible format works such as Cambodia. A wide range of people would benefit, including print-disabled students wishing to learn foreign languages, as well as persons with disabilities interested in the latest scientific findings or cultural materials.

As Cambodia ratified the UNCRPD in 2012, the Marrakesh Treaty will also provide an additional tool and incentive to help the Cambodian government fulfil its various obligations.

WAYS FORWARD

Disability is the result of “interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation on an equal basis with others,”⁹ rather than an exclusive result of the impairment.

Ratifying and implementing the Marrakesh Treaty can provide Cambodia with an additional legal framework to advocate, protect and promote the rights of persons with disabilities. It will create opportunities to strengthen multisectoral disability responses in Cambodia with new partners such as the Ministry of Commerce, which is the custodian of copyright law in Cambodia, and libraries, for example. It will also open the door for Cambodia to benefit from funding and collaboration opportunities.

For more details on the analysis of Cambodia’s copyright law and recommendations, please see the joint report by UNDP and the World Blind Union Asia-Pacific, titled *Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific – Cambodia edition*, which is available in both Khmer and English on the UNDP Cambodia website at <http://www.kh.undp.org/>. (Accessible format versions of the report in English including electronic braille, DAISY, and audio (MP3) are also available.)¹⁰

The website of the Electronic Information for Libraries (EIFL) offers useful information on the Marrakesh Treaty: <http://www.eifl.net/resources/implementation-marrakesh-treaty-eifl-faqs>

This Issue Brief is available in English, Khmer, and accessible formats such as braille and audio.

UNDP provides technical assistance to support the ratification of the Marrakesh Treaty, in partnership with the government, blind people’s associations such as the Association of the Blind Cambodia and the World Blind Union Asia-Pacific, and other partners such as the Electronic Information for Libraries (EIFL).

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8 Ibid 4.

9 Preamble of the UN Convention on the Rights of Persons with Disabilities.

10 Accessible format versions are downloadable from the UNDP Bangkok Regional Hub website at http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/our-right-to-knowledge--legal-reviews-for-the-ratification-of-th.html