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ISSUE BRIEF FOR ASIA-PACIFIC

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

KEY MESSAGES

- *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* provides an international legal framework to allow the creation, distribution, and cross-border exchange of works in accessible formats such as braille, audio, e-books or large print for print disabled persons.
- Persons with print disabilities cannot obtain knowledge effectively from print materials in the conventional way (e.g. not being able to see/read the text, hold a book, or turn pages). Therefore, they require accessible formats, which are often unavailable particularly in developing countries.
- Lack of accessible formats restricts the fundamental human right to knowledge with serious development consequences. It excludes persons with print disabilities from achieving their full human potential, and from effectively participating in education, the labour market and cultural activities, leading to poverty, marginalisation, and social isolation.
- The Marrakesh Treaty is an effective legal tool to accelerate the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).
- While most countries in the Asia-Pacific region are a Party to the UNCRPD, only a small number of them have become part of the Marrakesh Treaty so far. It is critical that more countries ratify and implement the Marrakesh Treaty, which can contribute significantly to national and global effort towards achieving inclusive and just societies under the Sustainable Development Goals (SDGs).

BACKGROUND

The World Blind Union estimates that less than 1 percent of published books in developing countries, and 7 percent in developed countries, are ever made into formats that are accessible to persons with print disabilities,¹ such as braille, audio, e-books or materials with large print. Lack of equitable, timely and affordable access to published works in accessible formats, referred to as a 'book famine,' prevents millions of persons with print disabilities around the world from making the most of human development opportunities.

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 obtain information effectively from print materials in the conventional way – for example, they may not be able to read the text, hold a book or turn pages. Therefore, they require accessible formats.

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

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

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

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

THE ASIA-PACIFIC CONTEXT

Asia has the highest number of visually-impaired persons in the world, estimated to be over 156 million in 2015.⁵ More specifically, 21.4 million blind persons and 134.9 million persons with moderate to severe vision impairment live in Asia, which correspond to 59 and 72 percent of the global total, respectively.

The Asia-Pacific region is expected to witness a growing number of visually-impaired and print-disabled persons in coming decades. The ageing population in the region, which is growing "at an unprecedented pace"⁶ is likely to further increase the number of the elderly with vision impairment and print disabilities.

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

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

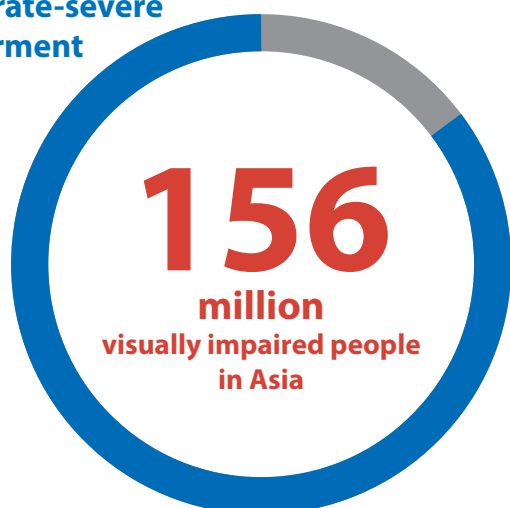
4 World Bank (2016). World Development Report 2016.

5 Bourne, R.R.A. et al. (2017). Magnitude, temporal trends, and projections of the global prevalence of blindness and distance and near vision impairment: a systematic review and meta-analysis. *The Lancet*, Vol 5 September 2017.

6 UNESCAP (2011). Population Data Sheet. <http://www.unescap.org/sdd/publications/datasheet-2011/Datasheet-2011-p1.pdf>

135 million
moderate-severe
impairment

21 million blind



LESS THAN

1%

OF PUBLISHED BOOKS ARE MADE INTO FORMATS ACCESSIBLE TO PRINT DISABLED PERSONS IN DEVELOPING COUNTRIES

MORE THAN

80%

OF PEOPLE WITH DISABILITIES LIVE IN POVERTY

Additionally, non-communicable diseases that can cause print disabilities are on the rise in the region, such as stroke (which can cause paralysis) and diabetes (which can cause blindness or impaired visions). In fact, the Asia-Pacific region is witnessing a rapidly growing epidemic of diabetes.⁷ Together with limited access to diabetes treatment in many developing countries,⁸ this poses a serious concern particularly for the Pacific region, which has one of the highest levels of diabetes among adults in the world.⁹

Given the magnitude of print disability prevalence and risks in the Asia-Pacific region, improved access to published works in accessible formats could contribute to making significant development progress. This is particularly the case for countries where visually-impaired persons make up a large proportion of the disabled population such as in Cambodia,¹⁰ Indonesia¹¹ and Vanuatu.¹²

Despite the fact that most countries across the Asia-Pacific region are a Party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD), so far only a handful of countries have become part of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*. These include Australia, Democratic People's Republic of Korea, India, Mongolia, Republic of Korea, Singapore and Sri Lanka (as of November 2017).

While some countries such as Indonesia and Thailand are already taking action towards joining the Marrakesh Treaty,¹³ it is important that at least all the countries that are part of the UNCRPD will become a Contracting Party to the Marrakesh Treaty, to maximize the benefit of the Treaty and make progress at scale.

7 See for example, International Diabetes Federation: Facts and Figures. <http://www.idf.org/worlddiabetes-day/toolkit/gp/facts-figures>

8 Beran, D. (2011). Improving access to insulin: what can be done? *Diabetes Manage.* (2011) 1(1), 67–76.

9 WHO (2010). Pacific islanders pay heavy price for abandoning traditional diet. <http://www.who.int/bulletin/volumes/88/7/10-010710/en/>

10 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

11 Presentation by Amannullah, G, Director of People Welfare Statistics, BPS – Statistics Indonesia. (2016). Measuring disability in Indonesia. <https://unstats.un.org/unsd/demographic-social/meetings/2016/bangkok--disability-measurement-and-statistics/Session-6/Indonesia.pdf>

12 UNICEF Pacific and Vanuatu National Statistics Office (2014). Children, Women and Men with Disabilities in Vanuatu: What do the data say?, UNICEF, Suva.

13 See, for example, Thai Assembly Approves Marrakesh Treaty, <http://www.radioparliament.net/parliament/viewNews.php?nld=7421#.WgAP0Vu0P2A>

THE MARRAKESH TREATY

Legal obstacles in copyright law for 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 the lack of an international copyright framework that would allow its exchange between the countries.

As a result, the same accessible format version has to be recreated in Country B, resulting in duplication of efforts and squandered resources. The high costs of producing accessible works act as a deterrent to their production and reduces their availability.

In June 2013, member states of the World Intellectual Property Organization (WIPO), a UN agency, came together to adopt the Marrakesh Treaty, with the goal of removing copyright obstacles.¹⁴ The Marrakesh Treaty entered into force on 30 September 2016. As of 1 November 2017, 33 countries have become Contracting Parties to the Treaty.¹⁵

The Marrakesh Treaty can pave the way for an enabling legal environment for improved access to published works for people with print disabilities, while striking the right balance between the protection of the rights of authors and the protection of public interests.

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

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

One significant aspect of the Marrakesh Treaty is that it includes not only blind and visually-impaired persons, but it also covers persons with other print disabilities, who are expected to increase in number because of the changing demographic and disease patterns as noted above.

Ratifying or acceding to the Marrakesh Treaty would require certain changes in national copyright law, in order to comply with the Treaty’s requirements. According to a review of copyright laws of six countries in Asia and the Pacific (Cambodia, China, Fiji, Indonesia, Nepal and Viet Nam) conducted by the United Nations Development Programme (UNDP) and the World Blind Union - Asia Pacific (WBUAP) in 2015,¹⁶ compliance with the Marrakesh Treaty may not require extensive legal amendments, at least in the countries included in the study, and possibly in many other countries.

The Marrakesh Treaty contains optional provisions such as the commercial availability requirement and the remuneration requirement. The commercial availability option prohibits the creation of accessible format copies if an accessible work is available on the market.

The remuneration option requires the payment for creating, distributing or making available of accessible format copies, which essentially means a double payment for

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

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

16 UNDP and World Blind Union Asia Pacific (2015). Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific. 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

use of the work – a tax on the right to read. This is because the work has already been purchased or otherwise lawfully acquired, the accessible format copy is made for the sole purpose of providing equal access to the work, and the activity is undertaken on a non-profit basis.¹⁷

The World Blind Union recommends that countries avoid adopting these optional provisions as they are in conflict with the overarching objectives of the Treaty.¹⁸

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

The Marrakesh Treaty is the first copyright treaty with human rights principles at its core, with specific reference to the Universal Declaration of Human Rights and the 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 therefore 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); and
- ensuring “that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access.” (Article 30.3)^{19,20}

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

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

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

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

18 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.

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

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

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

WAYS FORWARD

According to the preamble of the UNCRPD, 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,”²² rather than an exclusive result of the impairment.

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

Above all, the Marrakesh Treaty can shed light on the challenges of blind, visually-impaired and other print disabled persons, which are often invisible, misunderstood, and under-addressed.

UNDP, WBUAP and the Electronic Information for Libraries (EIFL) provide technical assistance to support countries to take full advantage of the Marrakesh Treaty. The following resources offer useful information about the Marrakesh Treaty:

- UNDP, WBUAP (2015). *Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific*. Available 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
- EIFL. FAQ on the Marrakesh Treaty. Available at <http://www.eifl.net/resources/implementation-marrakesh-treaty-eifl-faqs>

This Issue Brief is available in accessible formats including electronic braille, electronic text and audio.

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- Nadia Rasheed, Asia-Pacific Regional Team Leader, Health and Development, UNDP Bangkok Regional Hub, nadia.rasheed@undp.org

Also available:

- UNDP, WBUAP, EIFL (2017). Cambodia Issue Brief on the Marrakesh Treaty. Available in Khmer, English, braille and audio at <http://www.kh.undp.org/content/cambodia/en/home/library/foster-voice---participation.html>
- UNDP, WBUAP, EIFL (2017). Indonesia Issue Brief on the Marrakesh Treaty. Available in Bahasa Indonesia, English, braille and audio at <http://www.id.undp.org/content/indonesia/en/home/presscenter/articles/2017/10/12/the-marrakesh-treaty-in-indonesia.html>

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