

**ENVISIONING THE EFFECTIVE IMPLEMENTATION OF THE MARRAKESH
TREATY FOR BLIND, VISUALLY IMPAIRED, AND PRINT-DISABLED
INDIVIDUALS IN MAURITIUS**

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Abstract: *The Marrakesh Treaty has been hailed as the key to unlocking the door for visually-impaired or print-disabled individuals to have more equitable access to published works. Its most innovative aspect resides in its provision of mandatory copyright exceptions with a view of facilitating the cross-border exchange of published works in an accessible format for individuals with print disabilities. This could have far-reaching benefits in terms of closing the gap on the book famine for visually-impaired persons worldwide, in particular in developing nations such as the Republic of Mauritius. While Mauritius ratified the Marrakesh Treaty on 11 January 2021, it has only entered into force on 11 April 2021. It is therefore well-timed to examine to what extent can the Marrakesh Treaty be effectively implemented for print-disabled individuals in Mauritius to enjoy their rights to access information and to participate in cultural life on an equal basis with others. First, the paper will explore the rationale behind the development and adoption of the Marrakesh Treaty. Second, the paper will elaborate on a human rights framework for copyright. Finally, the paper will provide significant legal and policy recommendations for both state and non-state actors to fully and meaningfully give effect to the treaty, including through the development of a clear action plan, and the role of governmental and non-governmental stakeholders in facilitating access to published works for print-disabled individuals in Mauritius.*

Keywords: Marrakesh Treaty; Mauritius; print disabled; blind and visually-impaired; access to printed works

Research Area: Disability Law and Policy

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1. INTRODUCTION

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) can be heralded as the key to unlocking the door for visually-impaired or otherwise print-disabled individuals to have more equitable access to published works. Its most innovative aspect resides in its provision of mandatory copyright exceptions with a view to facilitating the cross-border exchange of published works in an accessible format for individuals with print disabilities. According to the World Health Organisation, more than 2.2 billion people worldwide suffer from some form of visual impairment, out of which 1 billion cases could have been avoided or can still be addressed.¹ Most published materials are designed exclusively for persons with no visual impairments, thus effectively denying to varying degrees more than one-quarter of the world population access to published works, which can in turn negatively impact their rights to read, education and employment as a whole set of strongly interrelated and indivisible rights.

This could have far-reaching benefits in terms of closing the gap on the book famine for visually-impaired persons worldwide, in particular in developing countries such as the

Republic of Mauritius. While Mauritius ratified the Marrakesh Treaty on January 11, 2021, it has only come into force on April 11, 2021. It is therefore well-timed to examine the extent to which the Marrakesh Treaty can be effectively implemented for blind, visually-impaired or otherwise print-disabled individuals in Mauritius in order to enable them to fully exercise their rights to access information and to participate in cultural life, in an equal basis with others. The Marrakesh Treaty is, in that respect, not only an intellectual property treaty but incorporates a human rights dimension in view of protecting the rights and interests of persons with visual impairments to access printed and other materials on an equal footing.

Insofar as access to published materials has spillover effects on other areas in the life of an individual, the Treaty provides a powerful means to the realisation of other human rights of persons with visual disabilities. Intimately connected with the rights to education and employment, access to published materials and unstifled cross-border exchange of these materials are the little streams that meet and consolidate each other to form an ocean of educational and employment opportunities, thereby increasing the likelihood that persons with visual disabilities will be fully included and be able to holistically participate in society on an equal basis with their non-disabled counterparts. The Marrakesh Treaty is the first international intellectual property agreement that places particular emphasis on the public interest benefit of upholding the rights of print-disabled individuals rather than championing the interests of copyright holders. It is having a positive impact on the rights of persons with visual impairment insofar as 'it is a significant step towards the dissemination of culture and the full participation of persons with disabilities in society.'² The Marrakesh Treaty is therefore highly instrumental in paving the way for the socio-economic empowerment of the visually impaired, and Mauritius has a moral and legal obligation to envision how to promote, respect, and fulfil the rights of its print-disabled citizens.

The aim of this paper is to contemplate the effective implementation of the Marrakesh Treaty through transformative policies that can be adopted to correct the injustices perpetrated against those suffering from the book famine in Mauritius. This paper will first provide a background on the development and adoption of the Marrakesh Treaty. Second, the paper will consider how the development of a human rights framework should be integrated into the calculus of the existing copyright regime to the extent that it affects the rights of the visually impaired.³ Finally, the paper will provide significant legal and policy recommendations for both state and non-state actors to fully and meaningfully give effect to the treaty, inter alia expounding on the mechanisms which can be embraced as to how the existing legal provisions can be implemented in practice with added efficiency; the adoption of a clear national action plan in providing outcome indicators for policy implementation and monitoring; and a critical evaluation of the role of non-governmental and other stakeholders in facilitating access to published works for persons with print disabilities in Mauritius.

2. AN OVERVIEW OF THE MARRAKESH TREATY

2.1 A Treaty To End The Book Famine

The World Blind Union estimated that, out of the countless millions of books that appear each year in the world, less than 5% are published in formats accessible to the visually impaired.⁴ However, thousands of titles in accessible formats are available in public libraries

across the world, but cannot be shared with other countries using the same language, due to copyright restrictions that do not allow for the import or the export of accessible format copies, even if the laws of the two countries provide for similar rules. A comparative study conducted by the World Intellectual Property Organisation (WIPO) in 2007 found that 57 countries had ‘specific provisions that would permit activity to assist visually impaired people unable to access the written word, or to assist people with a print disability more generally, by making a copyright work available to them in an accessible form.’⁵ These provisions did not however settle all the issues raised by making published works accessible for the benefit of people with reading difficulties.

It follows that in each member country, their respective competent authorities had to negotiate licenses with rights holders in order to exchange works in an accessible format, differing from one country with another and therefore strictly tailor-made in the light of country-wise considerations and limitations, or to create their own versions thereto. This purportedly had the effect of considerably increasing the costs of works in an accessible format and thus limited the access of visually impaired people to printed works. It is within this context that the idea of developing an international instrument with binding rules to impose copyright limitations and exceptions and to allow cross-border exchange of accessible materials emanated.

Prior to the advent of the Treaty, copyright exceptions and limitations to the benefit of the visually impaired were undertaken at the domestic level only. The lack of an international treaty catering specifically to the needs of the print disabled ‘carrie[d] the risk of perpetuating cultural inequalities and other social wrongs.’⁶ One of the overarching aims of the Treaty was therefore to harmonise to the maximum extent possible copyright flexibilities across contracting states insofar as this would have the advantage of creating a set of standard rules aiming specifically at facilitating the exchange of accessible format materials across borders. The mandatory exceptions and limitations in the Treaty are not based on the premise to impair the protections afforded to copyright owners under international intellectual property law. These exceptions and limitations have instead been incorporated into the Marrakesh Treaty with the specific purpose of acting as a counterweight to redress the balance for persons with visual disabilities to be in a position to have access to published materials. The Treaty can thus be used as a vehicle to progressively achieve equality in making published materials available to print disabled individuals.

Interests in addressing copyright exceptions and limitations at a global level date back to the 1980s, when WIPO in collaboration with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) produced a report on access to copyrighted materials by the visually and auditory impaired.⁷ However, this had the effect of a drop of water on a hot stone, which provided no tangible instrument to deal with this continuing problem, coupled with the growing concern that the number of disabled persons who were denied access to print materials was soaring at an exponential rate. At the turn of the new millennium, the United Kingdom Royal National Institute of Blind People sounded the alarm about the ‘global book famine’ that was severely impacting and undermining the rights of persons with visual impairments.⁸ This helped set in motion the process of widespread negotiations that concluded with a WIPO diplomatic conference, with the end-result of the ratification and

adoption of the Marrakesh Treaty to formally recognise the rights of blind, visually impaired and print disabled individuals to access cultural and other reading materials on an equal basis with others.⁹

The road to Marrakesh was, however, not infrequently an arduous one through the impenetrable thicket of right-holders' strong protection over copyright as a reward – in all its legitimacy – for their creativity. Initially, most of WIPO member states considered it unusual to adopt a Treaty that would allow exceptions and limitations for a particular group of people. They misconstrued the need for such a Treaty and failed to understand that nothing in the proposed text would undermine the international copyright regime. Even after it was adopted in Marrakesh, Morocco on June 27, 2013, it took some years for worldwide ratification to be attained. The Treaty thereby conferred an international legal framework for the creation, distribution and cross-border exchange of materials in accessible format such as braille, audio and e-books. In that respect, it has been described as nothing short but a 'miracle'¹⁰ or a 'historical treaty'¹¹ insofar as it is the first international instrument that explicitly places the rights of print disabled individuals at the forefront. It should moreover be highlighted that the prevalence of print materials in the standard format available on the market makes it impossible for print disabled persons to obtain knowledge effectively. By placing positive obligations on Contracting States to adopt limitations and exceptions to their domestic copyright law, the Marrakesh Treaty, at its core, is trying to address the systemic injustices that print disabled individuals are facing on account of their disabilities.

2.2 A Human Rights Framework For Copyright

The protection of the rights of persons with disabilities cannot be dissociated from the protection of authors' copyright. In that regard, the Treaty balances the interests of these two diametrically opposed groups akin to an elephant on a dime. The framing of copyright exceptions in human rights terms is the weavings of intellectual property's widened tapestry, in effect 'altering the balance in a high-stakes debate over the scope and functions of intellectual property.'¹² Even if it is a copyright agreement administered by WIPO, the Marrakesh Treaty incorporates human rights values from the Universal Declaration of Human Rights (Universal Declaration) as well as the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The right to have access to knowledge and information is the cornerstone upon which rest pillar rights, which include the right to be included in the community and to freely participate in cultural life as well as to enjoy the arts and the benefits accruing from scientific progress, as enshrined under Article 27(i) Universal Declaration. This right to cultural participation is balanced with the right to the protection of authorship under Article 27(ii) Universal Declaration: 'the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.' A human rights perspective thus 'calls for recognition of the social and human values inherent in copyright law and a heightened regard for fundamental rights and the needs of marginalized groups.'¹³ This is part and parcel of a fundamental recognition of the cultural participation of others in striking the right balance between the rights of authors and users.

Access to information in a format that enables print disabled persons to be well-informed citizens is also a precondition to full and effective participation in public and political life.

Without accessible formats of laws and the news, the person with a print disability cannot, for instance, make an informed decision in the exercise of his or her right to vote. The same goes for the right to participate in the cultural stream and life, which is inextricably linked with having access to literary and other cultural forms of published materials by persons with print disabilities. Other rights include the right to freedom of opinion and expression, as well as the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers as expounded under Article 19 Universal Declaration. As another cornerstone, the right to freedom of expression is an indispensable element without which other civil, political and socio-economic rights cannot be guaranteed.¹⁴ As a result, it is beyond cavil that accessible format works provide the means to the enjoyment of the right to freedom of expression for individuals with print disabilities.

At the core of international disability law, the CRPD requires that intellectual property barriers are eliminated to ensure that persons with print disabilities are able to have access to information on an equal basis with their non-disabled peers. Article 21 CRPD places a positive obligation on States Parties to take all appropriate measures in view of enabling persons with disabilities to enjoy their right to seek, receive and impart information and ideas in an accessible format. Article 21 CRPD must not be interpreted in isolation; its obligations stem from the general principle of accessibility found in the preamble as well as Article 9 on accessibility itself. Article 30(1)(a) CRPD further places an obligation on States Parties to take all appropriate measures to ensure that persons with disabilities are not denied access to cultural materials in accessible formats. More specifically, Article 30(3) CRPD states that all appropriate steps must be taken in line with international law to ensure that national copyright laws do not amount to an unreasonable or discriminatory barrier for persons with disabilities to access cultural materials. It should be highlighted that a similar right with different wording can be found in Article 15(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR), which also applies to persons with disabilities.¹⁵ While neither the CRPD nor the ICESCR provides a definition for cultural rights, General Comment 21 of the ESCR Committee does shed light on the meaning to be ascribed to culture as encompassing “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions. Through which individuals, group of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives [...]”¹⁶

This broad interpretation unambiguously incorporates the role of published materials as the bridge to accessing cultural life on an equal level playing field with others. The Committee on the Rights of Persons with Disabilities has additionally highlighted that State Parties ‘should ensure access to cultural material without unreasonable or discriminatory barriers for persons with disabilities, especially those facing challenges accessing classic print materials.’¹⁷ This would be in line with the realisation of the cultural right of persons with visual impairments, which can in turn foster their cultural and linguistic expressions. One of

the illustrative indicators on Article 30 CRPD on participation in cultural life, recreation, leisure and sport also mandates for the ratification of the Marrakesh Treaty in order to ensure better access and development of the cultural life of persons with disabilities.¹⁸

Since access to print materials also plays a crucial role in the dissemination of information and ideas, there must be the recognition of ‘a right to read’ implicit in various international human rights instruments.¹⁹ And this allows for the social inclusion of persons with visual impairments in society. Social inclusion is fundamentally different from the concept of integration. With respect to integration, the burden is placed on the person to adapt to society and its rules. The concept of inclusion reverses the equation, this time demanding adaptation from the society for manifesting inclusiveness of all people, regardless of their differences and specificities. The concept of universal design moreover has an important role in the inclusion of persons with print disabilities in society. Article 2 CRPD defines universal design as ‘the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.’ The terms ‘to the greatest extent possible’ suggest that States Parties may have some latitude in fulfilling their obligation under Article 9 CRPD. However, their discretion is fettered by the requirement immediately following in the definition of Article 2 CRPD that “‘universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.’ Article 4(1)(f) CRPD places a particular obligation on States Parties “To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines.”

General Comment 2 of the CRPD expands on the scope and normative contents of the novel concept of universal design as strictly applying to all new goods, products, facilities, technologies and services.²⁰ States Parties are under an obligation to ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities. A gradual, progressive or incremental approach to this right has been taken by both the CRPD Committee and States Parties. General Comment 2 clarifies the interrelationship between the provisions contained in both Articles 2 and 30 of the Convention and it also highlights the myriad forms which discrimination may take regarding accessibility:

Everyone has the right to enjoy the arts, take part in sports and go to hotels, restaurants and bars. However, wheelchair users cannot go to a concert if there are only stairs in the concert hall. Blind persons cannot enjoy a painting if there is no description of it they can hear in the gallery. Hard of hearing persons cannot enjoy a film if there are no subtitles. Deaf persons cannot enjoy a theatrical play if there is no sign language interpretation. Persons with intellectual disabilities cannot enjoy a book if there is no easy-to-read version or a version in augmentative and alternative modes.²¹

It follows that the adoption of human rights norms in the implementation of the Marrakesh Treaty are a sine qua non condition in ensuring that persons with print disabilities are

included in society. These human rights norms will undergird the effective implementation of the Treaty in Mauritius.

3. IMPLEMENTATION OF THE MARRAKESH TREATY IN MAURITIUS

It has become increasingly pressing to adopt appropriate measures in view of facilitating access to published materials for print-disabled persons in Mauritius. The shortage of accessible work has been dwindling since the Marrakesh Treaty came into force.²² However, it must be noted that prevailing laws catering to the facilitation of access for print-disabled individuals are not necessarily working in practice. Even if Mauritius is in compliance with a host of international instruments, there is a patent disregard for the implementation of treaties at the national level once they have been ratified. The post-ratification stage of the Marrakesh Treaty will follow this trend unless the authorities can afford to come up with concrete measures to give effect to the provisions of the Treaty for the benefit of print-disabled individuals. Through the medium of Cabinet Decisions of August 28, 2020, the Mauritian government agreed to the ratification of the Marrakesh Treaty.²³ The government made mention of how the Treaty has a clear humanitarian and social development dimension, with its main goal of creating ‘a set of mandatory limitations and expectations for the benefit of the blind, visually impaired and otherwise print disabled.’²⁴ It then states that the Copyright Act 2014 already makes provision for the two main obligations under the Treaty, thus indicating that the national law is to a large extent sufficient to implement the Treaty. Ratification of international treaties, in particular human rights treaties, are a futile exercise if they are not domestically implemented for their intended recipients to enjoy the full extent of the rights and obligations contained therein.

The Marrakesh Treaty itself places a positive obligation on contracting states to ‘adopt measures necessary to ensure the application of this Treaty.’²⁵ It has been mentioned that the Copyright Act 2014 already makes provisions for limitations and exceptions to copyright for individuals with a visual impairment. However, there are no official records as to how and whether this provision has been acted upon in practice. The World Blind Union Guide to the Marrakesh Treaty suggests that the responsibility of putting the Treaty into practice should be entrusted to government intellectual property agencies, working in close partnership with human rights institutions.²⁶ Mauritius does have a national human rights institution, but it is a toothless tiger with no clout.²⁷ There is, however, the Industrial Property Office - another governmental institution - that would be the most appropriate instance to give effect to the Treaty, acting as a focal point to designate authorised entities.²⁸ In order not to undermine the credibility of the whole international copyright system, Contracting States should implement the Marrakesh Treaty by creating a human rights framework agreement for intellectual property that considers both the rights of copyright owners and the visually impaired. A human rights framework is largely in compliance with the letter and spirit of the Marrakesh Treaty as encompassing human rights principles enunciated in its Preamble. One remarkable feature of the Marrakesh Treaty is that it does not need implementing legislation in order to give effect to its objectives in practice.²⁹ It allows beneficiaries and authorised entities across borders to create and share accessible format copies without having to go through cumbersome administrative procedures. This is why it is important to highlight how non-state

actors or private actors can help further the Treaty's objective in a less visible but still important way.³⁰

It is beyond doubt that the sum of accessible format works will nevertheless remain low in Mauritius by virtue of lack of financial and other resources to reproduce and distribute copyrighted materials. The cost of creating accessible format copies is considerably higher insofar as there is a market argument that producers of these accessible materials are not incentivised to create accessible format copies to the extent that the market for this product is not as significant and widespread as the market for printed materials.³¹ As a result, 'authors and publishers refuse to license or make their works available in accessible formats because they view the market for the visually impaired and other persons with disabilities as an 'orphan market' that is not economically prolific.'³² However, the lack of barriers in the cross-border exchange of accessible materials can lower the transactional costs of production and distribution at the domestic level. As mentioned before, it would help avoid duplication of works in an accessible format if accessible format producers were to be in a position to share the work across countries without falling prey to the restrictive domestic copyright law of particular countries.

Thus, beyond the specificities inherent in disability, it is necessary to strive for a more universal approach in order to develop applicable solutions for all. The world is witnessing a paradigm shift in accessibility towards a more global vision, in order to improve the fit between the individual and his environment. According to the above principles, everything should be designed to be accessible to everyone from the start itself, rather than having to adapt them later and demonstrate responsiveness and adaptability. In that regard, the Marrakesh Treaty is an important instrument to level the playing field for Mauritians with visual impairments to have equitable access to printed materials. People with print disabilities will have heightened access to a wide range of reading materials across different countries. This will enhance not only the quality of life of people with disabilities in terms of education and better employment prospects, but it will also allow people with print disabilities to make an effective contribution to the Mauritian economy. Also, this endeavour is cost-effective inasmuch as the Ministry of Education of Mauritius, and public and private educational institutions will not have to spend resources for the local production of works into a more accessible version to facilitate access for people with visual impairments. Schools and libraries will be equipped to use the Trusted Intermediary Global Accessible Resources system in order to enable persons with print disabilities to have easy access to works of other authors in formats that are accessible. It follows, however, that prior consent from the authors and/or copyright owners must be obtained.

Nonetheless, the Marrakesh Treaty coming into force entails many drawbacks, especially for the authors, copyrights owners and publishers. The reason for this is primarily linked to the definition given to 'print disability' and to the 'group or bodies or entities which are authorised to make accessible versions of these works for people with print disability, which will be wider and open the floodgates for additional definitions. This can also put the interest of copyright owners, authors and publishers, in jeopardy by exposing them to risks of copyright violation. These stakeholders have the following concerns. First, there is a relationship of trust between the copyright owners and the Mauritius Society of Authors

(MASA), which is the statutory body in Mauritius dealing with copyright matters. This kind of relationship will be almost inexistent if there were to exist wider authorised bodies which can make these accessible versions of work available. This may result in unauthorised distribution of these works by the prescribed authorities without the consent of the copyright owners and publishers. Second, accessible versions of the works may be in audio file format to facilitate access for persons with visual disabilities. However, this can be made illegally available to people who are not diagnosed with such conditions. This could potentially negatively impact the commercial value of the work of the original author or copyright owner, especially if their prior permission has not been obtained. Both above concerns may amount to copyright violations.

However, the benefits derived from copyright exceptions and the cross-border exchange of these materials far outweigh the drawbacks. This implies that a system should be put in place to effectively counteract these disadvantages. For instance, there can be a commercial availability test, whereby the authorised bodies or organisations are obligated to use the accessible versions of the works only for the benefit of the persons with disabilities and any other commercial use of same should be strictly forbidden. That would not necessarily be the case for Mauritius insofar as the Copyright Act 2023 already makes provisions for copyright exceptions. There can also be strict reporting requirements by these entities. It is of fundamental significance that the Marrakesh Treaty aims to expand the accessibility of copies to print disabled persons is achieved effectively in real life and not only on paper. Within the Marrakesh Treaty, Article 10(1) ascribes key importance to the adoption of actions undertaken by states to assure the application of this Treaty. Primarily to ensure effective implementation of the Marrakesh Treaty, every ratifying state should review their domestic copyright laws to allow the creation and distribution of available format copies. States should also reinforce their existing application of human rights treaties, especially the CRPD. The government IP firms or offices co-operating with human rights agencies may also be of great help in ensuring that these measures are taken. All these legal measures are already in place in Mauritius, but there is a need for a better coordination between the different stakeholders involved for a competent authority to be empowered to designate authorised entities. As observed earlier, this central role should be entrusted to the Industrial Property Office in Mauritius.

Section 23 of the Copyright Act 2014 should be enforced by Mauritius to prevent copyright owners from requesting lawful procedures to prevent print-disabled persons and authorised entities from creating and distributing accessible format copies. Mauritius should however consider a national plan of action when implementing laws that would make invalid any contractual item that overpowers Marrakesh concern actions. States are given ample choices to sort out institutional procedures to assure adequate domestic implementation of the Marrakesh Treaty.³³ Connecting the implementation of the Marrakesh Treaty to additional human rights treaties can further help ensure that a State's efforts to abide with these agreements remain appropriate. With such a reasonable approach, domestic stakeholders such as print disabled persons or human rights institutions may have a say in decision-making and policy formulation.

The local institution in charge for intellectual property laws and regulations should participate fully in the implementation of the Treaty. The Treaty allows print disabled people to generate, distribute and obtain format copies without the agreement of rights bearers and this should not be construed as an issue since it is not in accordance with the protocol agreements and modus operandi IP institutions usually follow. However, the experience and connections these organisations have accumulated over the years can serve as decisive and substantial lynchpins in realising the Treaty's objectives. State parties should align their domestic procedures with the international organisation of intellectual property. If we consider Article 13(2) of Marrakesh Treaty, the Assembly is in charge, acknowledging intergovernmental entities and focusing on treating significant issues pertaining to the growth and preservation of the Treaty. Contracting States should designate a delegate as a representative to the Assembly. The appointment of the selected individual should be executed in non-negotiable conformity with his or her ability to meet the required set of skills and knowledge required for optimal fulfilment of the assigned, incumbent as well as cognate duties following his or her acceptance of the post.³⁴ It is needless to highlight the fact that it is of crucial importance to give a particular thought in choosing one or more print-disabled persons as delegates or members of the delegation.

Mauritius should moreover constantly supervise the extent to which the implementation of Marrakesh Treaty is being rigorously and effectively respected. Monitoring may point out where concerned stakeholders and recipients might be facing issues, such as lack of knowledge or threats of litigation and if the market is not being dominated by private actors. The Industrial Property Office should gather several aspects of compliance, and users' data should be separated by various features while taking into consideration the privacy of beneficiaries in accordance with Article 8 of the Treaty. Disaggregated data can help in ensuring that no disabled person is left behind. Supervising procedures should stick to a national plan of action and effect in the light of consultations with the concerned individuals and organisations. Local bodies entitled to monitoring should provide a review to the government regularly and these reports should be in accessible formats and made public.

Engagement in training and outreach is another essential component required in the implementation of the Marrakesh Treaty. Key stakeholders such as the beneficiaries, copyright owners and software and technology developers must be made aware of concerned parties can easily generate format copies, without the permission of the copyright holder. Publicising States' ratification and implementation of the Marrakesh Treaty should be undertaken at a wide and broad-spectrum level. Disability rights organisation moreover have a prominent place as active agents of change in the implementation of the Marrakesh Treaty. Promoting training and assets to government IP agencies would qualify their staff to answer any questions from copyright owners. The circulation of updates about implementing policies should be done among lawful parties.

United Nations bodies that supervise state conformity with human rights may request information about the availability and sharing rights of beneficiaries in periodic reviews from Marrakesh Treaty Contracting Parties. As international monitoring instruments, treaty bodies play a pivotal and highly functional role in the analysis of State communiqués, acquisition of news, carrying out relevant investigations and formulation of conclusions and

recommendations. Officers assigned with the task of producing Mauritius' periodic reviews should seek information from these organisations in charge of implementing and supervising the Marrakesh Treaty. Print-disabled persons and their representative organisations can come up with shadow reports on the status of the implementation of the Treaty. Treaty bodies' declarations are not legally valid, but the declarations have persuasive effects in acting as a moral anchor for print-disabled individuals. They are not legally binding but can help in the identification of human rights issues as well as stark violations in Mauritius.

With the ratification of the Marrakesh Treaty, print-disabled individuals can anticipate numerous important and positive socio-economic effects, which can last for a long time especially if they have better access to works of authors or copyright owners in accessible formats. Students with print disabilities will no longer be deprived of proper education due to lack or limited access to educational materials in accessible formats.³⁵ The ratification of the Treaty also provides individuals with print disabilities with enhanced access to recreational and foreign written materials, which will in turn help them toward becoming independent individuals in the pursuit of their own life, liberty and happiness. Access to works of famous authors can have a multiplying effect on their autonomy and independence.

In addition, persons with print disabilities should be able to access important health-related information for their own wellbeing. Ratification of the Treaty has facilitated access to these health contents in more accessible versions to help them. The ratification of the Marrakesh Treaty will also positively impact the economy of the country in educational institutions like schools and libraries. Authorised entities, on the other hand, will be in a better position to efficiently utilise their available resources to cater to the educational needs of print-disabled learners and students. This is crucial due to the ever-increasing local production costs of these accessible format copies of reading materials.

As mentioned above, one of the issues with the Copyrights Act 2014 is that the legality of cross-border exchange of accessible format copies of original works of authors and copyrights owners is still in question and the legislation needs to be amended to provide more clarity in this regard. While it is inscribed in the law, there should be a national plan of action to set out exactly how this cross-border exchange will be conducted and which body will be empowered to request access for beneficiaries. If there is no plan of action, it would mean that time and efforts have to be doubly invested in the domestic production of accessible format copies for the print-disabled persons. This is a waste of time and energy since other countries have already produced the accessible format copies and it would require less labour and money to simply share and disseminate the copies through cross-border exchange.

Therefore, there is a dire need to bring about a national plan of action that will provide a proper framework to facilitate the import and export of accessible format copies. There are many benefits to this approach. First, it will be possible to get a better value for money from the current governmental resources if the changes are implemented in a national plan of action. There is a population growth resulting in more students including those with print disabilities. This means that the demand for accessible format copies for educational materials and text books is on the rise, which is in turn responsible for escalating domestic production costs of these materials. Therefore, it will be a better idea if the accessible format

copies of the reading materials could be easily imported and exported to reduce mounting local production cost. Second, the national plan of action could encourage more investments in local production of Mauritian-based accessible format contents in ‘creole’ language (the mother tongue of Mauritius). These local works can then be disseminated locally and made available in international markets as well to the benefit of the Mauritian diaspora abroad.

The ratification of the Marrakesh Treaty will also be culturally valuable to the country. People with print disabilities will have increased accessibility to works of copyright owners written in foreign languages. This is definitely an advantage to help them if they want to learn another language. Also, given that more resources would be available since no financial resources will have to be invested in domestic reproduction of accessible format copies locally, authorised entities could convert more Mauritian-based materials (e.g. a poem or song in ‘creole’ language) which will be more useful for print-disabled people.

4. CONCLUSION

The Marrakesh Treaty has breathed a new lease of life into the international copyright protection system with the adoption of innovative norms in the form of mandatory minimum copyright exceptions to enable visually impaired persons to have access to print materials. The other innovative aspect of the Treaty lies in the cross-border exchange of accessible format copies without affecting the copyright of authors as they remain essentially territorial in scope. Visually impaired and print disabled individuals are subjected to discriminatory and therefore arbitrary treatment when they are denied access to materials in an accessible format, with the subsistent and underlying concern that this has been hindering their inclusion into mainstream society from the very outset. The overarching aim of the Marrakesh Treaty was therefore to create an inclusive society in which persons with visual or other disabilities have equal access to cultural and other published works.

This paper has offered a series of recommendations in the proper implementation of the Marrakesh Treaty in Mauritius. In particular, it has been argued that there is no need to come up with other legislation to give effect to the Marrakesh Treaty insofar as Section 23 of the Copyrights Act 2014 already caters to the implementation of the Treaty. However, there is the need to adopt a clear national plan of action that would flesh out the role of a designated focal point in identifying authorised entities that would be in a better position to request access to accessible materials from other authorised entities abroad.

The most promising characteristic of the Marrakesh Treaty lies in the fact that it allows countries to adopt a rather flexible approach in the application of international obligations. Mauritius has the option to decide whether or not to follow the template, which the treaty provides. The country is free to decide on how to create or adjust its current exceptions for people with print disabilities. The exceptions must nonetheless comply with the international obligations of the treaty. The ratification of the Marrakesh Treaty by Mauritius has likely lessened the predicament of people with print disabilities who have limited to no access to accessible formats copies of the works to certain extent.

Notes

- ¹ World Health Organisation ‘World report on vision’ (2019) <https://www.who.int/publications/i/item/9789241516570> (accessed 19 August 2021).
- ² L Manca ‘Article 30: Participation in cultural life, recreation, leisure and sport’ in V Della Fina, R Cera & G Palmisano (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A commentary* (2017) at 546.
- ³ See L Ayoubi ‘Copyright pluralism and human rights of visually impaired persons’ in S Frankel (ed) *Is Intellectual Property Pluralism Functional?* (2019).
- ⁴ J Sullivan ‘Study on copyright limitations and exceptions for the visually impaired’ (20 February 2007), WIPO Doc SCCR/15/7 (2007) 14.
- ⁵ Sullivan n 4, 9.
- ⁶ Sullivan n 4, 837.
- ⁷ See eg WIPO and UNESCO. ‘Report of Working Group on access by the visually and auditory handicapped to material reproducing works protected by copyright’ (1982) 354.
- ⁸ L Ayoubi, ‘The Marrakesh Treaty: Fixing international copyright law for the benefit of the visually impaired persons’ (2015) 13 *New Zealand Journal of Public and International Law* 255, 256.
- ⁹ WIPO ‘Diplomatic Conference to conclude a treaty to facilitate access to published works by visually impaired persons and persons with print disabilities’ (17 to 28 June 2013) <https://www.wipo.int/dc2013/en/> (accessed 19 August 2021).
- ¹⁰ MJ Ficsor ‘Commentary to the Marrakesh Treaty on accessible format copies for the visually impaired’ (Copyright Seesaw, 2013) 6, www.copyrightseesaw.net/archive/?sw_10_item=50 (accessed 19 August 2021).
- ¹¹ L Zemer & A Gaon ‘Copyright, disability and social inclusion: The Marrakesh Treaty and the role of non-signatories’ (2015) 10 *Journal of Intellectual Property Law and Practice* at 849.
- ¹² LR Helfer, MK Land & R Okediji ‘Copyright exceptions across borders: Implementing the Marrakesh Treaty’ (2020) at 11.
- ¹³ F Shaheed (Special rapporteur in the field of cultural rights) ‘Report on copyright policy and the right to science and culture’ (24 December 2014), UN Doc A/HRC/28/57 (2014) at 60.
- ¹⁴ *Handyside v UK* (1976) 1 EHRR 737.
- ¹⁵ L Manca ‘Article 30: Participation in cultural life, recreation, leisure and sport’ in V Della Fina, R Cera & G Palmisano (n 2) 543.
- ¹⁶ Committee on ESCR ‘General Comment 21 on Article 15(1)(a): Right of everyone to take part in cultural life’ (21 December 2009) UN Doc E/C.12/GC/21 (2009) 13.
- ¹⁷ CRPD Committee ‘General Comment 2 on Article 9: Accessibility’ (25 November 2013), UN Doc CRPD/C/11/3 (2013) 40.
- ¹⁸ OHCHR ‘Article 30: List of illustrative indicators on participation in cultural life, recreation, leisure and sport’ <https://www.ohchr.org/Documents/Issues/Disability/SDG-CRPD-Resource/IndicatorsPDF/article-30-indicators-en.pdf> (accessed 19 August 2021).
- ¹⁹ L Ayoubi ‘Deciphering the right to read under international human rights law: a normative framework for equal access’ (2019) 36 *Wisconsin International Law Journal International* 425.
- ²⁰ General Comment 2 (n 17 above).
- ²¹ General Comment 2 (n 17 above), 13.
- ²² J Kouletakis ‘No man is an island: A critical analysis of the UK’s implementation of the Marrakesh Treaty’ (2020) 17 *SCRIPTed* 54.
- ²³ Prime Minister’s Office of Mauritius ‘Cabinet Decisions’ (28 August 2020). https://pmo.govmu.org/CabinetDecision/2020/Cabinet_Decisions_taken_on_28_August_2020.pdf, at 14 (accessed 19 August 2021).
- ²⁴ As above.
- ²⁵ Article 10(1) Marrakesh Treaty.
- ²⁶ LR Helfer et al *The World Blind Union guide to the Marrakesh Treaty: Facilitating access to books for print-disabled individuals* (2017) 75.
- ²⁷ National Human Rights Commission of Mauritius, <https://nhrc.govmu.org/Pages/index.aspx> (accessed 19 August 2021)

- ²⁸ Industrial Property Officer of Mauritius, <https://foreign.govmu.org/Pages/International-Trade-Division-%28Trade-Policy%2cIndustrial-Property-Office%29.aspx> (accessed 19 August 2021).
- ²⁹ Helfer, Land & Okediji (n 12 above), 8.
- ³⁰ As above.
- ³¹ Sullivan n 4.
- ³² S Fitzpatrick, 'Setting its sights on the Marrakesh Treaty: The US role in alleviating the book famine for persons with print disabilities' (2014) 37 Boston College International and Comparative Law Review 139, 143.
- ³³ P Harpur & N Suzor 'Copyright protections and disability rights: Turning the page to a new international paradigm' (2013) 36 University of New South Wales Law Journal 745.
- ³⁴ J Li & N Selvadurai 'Facilitating access to published works for person with a print disability: Amending Australian copyright laws to ensure compliance with the Marrakesh Treaty' (2017) 43 Monash University Law Review 619.
- ³⁵ See DO Odhiambo 'Marrakesh Treaty: Education gateway for the visually impaired students in Kenya in I Calboli et al (eds) *Research Papers from the 2018 WIPO-WTO colloquium for teachers of intellectual property law* (2009).

REFERENCES

- Ayoubi, L. (2015). The Marrakesh Treaty: Fixing international copyright law for the benefit of the visually impaired persons. *New Zealand Journal of Public and International Law*, 13, 255-256.
- Ayoubi, L. (2019). Copyright pluralism and human rights of visually impaired persons. In S. Frankel (Ed.), *Is Intellectual Property Pluralism Functional?*
- Ayoubi, L. (2019). Deciphering the right to read under international human rights law: a normative framework for equal access. *Wisconsin International Law Journal International*, 36, 425.
- Committee on Economic, Social and Cultural Rights. (2009). General Comment 21 on Article 15(1)(a): Right of everyone to take part in cultural life. UN Doc E/C.12/GC/21 (2009), 13.
- Committee on the Rights of Persons with Disabilities. (2013). General Comment 2 on Article 9: Accessibility. UN Doc CRPD/C/11/3 (2013), 40.
- Ficsor, M. J. (2013). Commentary to the Marrakesh Treaty on accessible format copies for the visually impaired [Web log post]. Copyright Seesaw. Retrieved from www.copyrightseesaw.net/archive/?sw_10_item=50
- Fitzpatrick, S. (2014). Setting its sights on the Marrakesh Treaty: The US role in alleviating the book famine for persons with print disabilities. *Boston College International and Comparative Law Review*, 37, 139-166.
- Handyside v UK, (1976) 1 EHRR 737.
- Harpur, P., & Suzor, N. (2013). Copyright protections and disability rights: Turning the page to a new international paradigm. *University of New South Wales Law Journal*, 36, 745.
- Helfer, L. R., et al. (2017). *The World Blind Union guide to the Marrakesh Treaty: Facilitating access to books for print-disabled individuals* (p. 75).
- Helfer, L. R., Land, M. K., & Okediji, R. (2020). *Copyright exceptions across borders: Implementing the Marrakesh Treaty* (p. 11).
- Industrial Property Office of Mauritius. (n.d.). Retrieved August 19, 2021, from <https://foreign.govmu.org/Pages/International-Trade-Division-%28Trade-Policy%2cIndustrial-Property-Office%29.aspx>
- Kouletakis, J. (2020). No man is an island: A critical analysis of the UK's implementation of the Marrakesh Treaty. *SCRIPTed*, 17, 54.

- Li, J., & Selvadurai, N. (2017). Facilitating access to published works for persons with a print disability: Amending Australian copyright laws to ensure compliance with the Marrakesh Treaty. *Monash University Law Review*, 43, 619.
- Manca, L. (2017). Article 30: Participation in cultural life, recreation, leisure and sport. In V. Della Fina, R. Cera & G. Palmisano (Eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A commentary* (pp. 546).
- Manca, L. (n.d.). Article 30: Participation in cultural life, recreation, leisure and sport. In V. Della Fina, R. Cera & G. Palmisano (Eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A commentary* (p. 543).
- Marrakesh Treaty, Article 10(1)
- National Human Rights Commission of Mauritius. (n.d.). Retrieved August 19, 2021, from <https://nhrc.govmu.org/Pages/index.aspx>
- Odhiambo, D. O. (2018). Marrakesh Treaty: Education gateway for the visually impaired students in Kenya. In I. Calboli et al. (Eds.), *Research Papers from the 2018 WIPO-WTO colloquium for teachers of intellectual property law*.
- OHCHR. (n.d.). Article 30: List of illustrative indicators on participation in cultural life, recreation, leisure and sport. Retrieved August 19, 2021, from <https://www.ohchr.org/Documents/Issues/Disability/SDG-CRPD-Resource/IndicatorsPDF/article-30-indicators-en.pdf>
- Prime Minister's Office of Mauritius. (2020, August 28). Cabinet Decisions. Retrieved August 19, 2021, from https://pmo.govmu.org/CabinetDecision/2020/Cabinet_Decisions_taken_on_28_August_2020.pdf
- Shaheed, F. (2014). Report on copyright policy and the right to science and culture. Special rapporteur in the field of cultural rights. *UN Doc A/HRC/28/57* (2014), 60.
- Sullivan, J. (2007). Study on copyright limitations and exceptions for the visually impaired. *WIPO Doc SCCR/15/7* (2007), 14.
- WIPO. (2013). Diplomatic Conference to conclude a treaty to facilitate access to published works by visually impaired persons and persons with print disabilities. Retrieved August 19, 2021, from <https://www.wipo.int/dc2013/en/>
- World Health Organization. (2019). World report on vision. <https://www.who.int/publications/i/item/9789241516570>. (Accessed 19 August 2021).
- Zemer, L., & Gaon, A. (2015). Copyright, disability and social inclusion: The Marrakesh Treaty and the role of non-signatories. *Journal of Intellectual Property Law and Practice*, 10, 849.