

# **Rwanda Union of the Blind**

## **(RUB)**

### ***Marrakesh Treaty (MT) in Summary for Rwanda and its Organisations of Persons with Disabilities***

#### **1. INTRODUCTION**

This is a simplified summary of the "Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled") (MT). It outlines the meaning of some selected Articles of the Treaty. So, it is written in more of a layman's writing and avoids legal terminologies and analysis. The document is meant for RUB board, staff and members as they carry out their advocacy work around the need to have the Marrakesh Treaty ratified by the government of Rwanda. The document ensures the meaning of the Treaty as a whole is not lost and should be understood by the users.

The Marrakesh Treaty was adopted on 27<sup>th</sup> June, 2013 and it entered into force on 30<sup>th</sup> September, 2016. It builds up a relationship between intellectual property treaties and human rights conventions, especially the Convention on the Rights of Persons with Disabilities (CRPD). In view of this the MT's main objective is to enhance the human rights of persons who are blind, visually impaired or print-disabled by facilitating their ability to create, read, and share books and other cultural materials in accessible formats.

The Rwanda Copyright law still carries barriers in terms of providing that before making any materials accessible, permission needs to be sought from the owners or publishers of such works. This can be read through the Vision, Mission and Objectives of the Rwanda Policy on Intellectual Property. The vision of the policy is "To contribute to the economic and social transformation of Rwanda by creating an enabling environment for the economic utilization of the rights of creators, innovators and business enterprises.<sup>1</sup> It clearly is explicit on protecting the interest and rights of owners or creators of works.

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<sup>1</sup> Rwanda Revised Policy on Intellectual Property 2018

The mission of the policy is “To maintain the protection of intellectual property rights to the highest international standards”.<sup>2</sup>

In view of the vision and mission of the policy, its objectives are strongly on protection and these are: “to put in place a strong legal and institutional framework that adequately protects intellectual property rights in Rwanda, to create a suitable environment for the advancement of scientific and technological skills that in turn would increase the innovation capacity, to facilitate the development and economic exploitation of innovative and creative projects and ideas implemented by creators, inventors, innovators, and SMEs and to enhance the protection of geographical indications, traditional knowledge and cultural expressions and facilitate equitable access to genetic resources”.<sup>3</sup>

So, the MT tries to break this barrier. It breaks this barrier by requiring countries which ratify the Treaty to have an exception to domestic copyright law and policies for persons who are blind, visually impaired and print disabled. This means that countries which ratify the treaty must ensure their laws and policies allow persons who are blind, visually impaired or print-disabled to make their books in accessible formats without asking for permission from the owners, authors or publishers.

The MT also allows for the importation and exportation of books and other works in accessible formats without asking for permission from the owners, authors or publishers. This assists to avoid transcription duplication of already accessible books or works in different countries. Those countries with more accessible books and works can easily share with those countries with less materials like Rwanda. Individuals who are blind, visually impaired or print disabled and their representative organisations are able to import or receive books or other works in accessible formats without any restrictive limitations under Copyright laws like the Rwanda Copyright law.

So, the Marrakesh Treaty was negotiated against the shortage of printed works and cultural materials in accessible formats in the world. This has been referred to as the “book famine”. In simple terms, the “book famine” means hunger when it comes to accessing books for persons who are blind, visually impaired or print disabled. This ‘hunger’ still exists in Rwanda thus the requirement to understand the MT in simple language.

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<sup>2</sup> Rwanda Revised Policy on Intellectual Property 2018

<sup>3</sup> Rwanda Revised Policy on Intellectual Property 2018

## 2. MARRAKESH TREATY ARTICLES

The Marrakesh Treaty has got 22 Articles in all. This document will cover some selected Articles relevant for the beneficiaries in Rwanda.

Article 2 provides for definitions. In (a) “works” refers to the type of publications which can be transcribed or distributed under the terms of the Treaty. The Article refers to “literary and artistic works ... in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media” The definition therefore covers books; periodicals and other similar textual works. This means that what is allowed is transcription of the text without any form of edits.

Article 2(b) defines the term “accessible format copy” as a copy of a work in an alternative manner or form which gives a person who is blind, visually impaired or print disabled 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 meaning allows the transcription of a book or other works in any format that makes the person comfortable to use it.

Article 2(c) defines the term “Authorised Entity” as a non-profit or government agency that makes accessible copies of Works, and limits distribution of those copies to persons with blindness, visual impairments or print disability which it refers to as “Beneficiary Persons.” It also covers for-profit organisations that provide services to beneficiary persons using public funds and on a not-for-profit basis. This includes institutions that provide education and training.

Article 3 defines “Beneficiary Persons” as a person who is blind, visually impaired or any reading difficulties on an equal range as one who does not have such an impairment or disability. It is so broad that it covers almost every person who requires transcription of books to accessible formats.

Article 4 requires countries which ratify the Treaty to enact a domestic copyright exception. This will allow Authorised Entities to make accessible copies of Works without having to ask permission from the owners, authors or publishers. This goes ahead to allow Authorised Entities to supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication including E-mails. It should be noted that this Article ensures that the Authorised Entities doing the transcription does not introduce changes other than those needed to make the work accessible to the beneficiary person and that such accessible format copies are supplied exclusively to be used by beneficiary persons.

Articles 5 and 6 are interlinked because Article 5 is on “Cross-Border Exchange of Accessible Format Copies” while Article 6 is on “Importation of Accessible Format Copies”. Through these

Articles the Marrakesh Treaty permits the cross-border exchange of accessible format books, both between authorized entities and directly from one authorized entity to individuals in other countries.

Article 7 is on “Obligations Concerning Technological Measures”. The MT ensures that when organisations take legal measures to protect their works through any form of technological actions, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in the MT. Technological Protection Measures are sort of a lock to any digital published work to reduce illegal transmission or changes to the text. This may affect persons using screen readers or magnifiers on their computers. So, Article 7 allows one to open such works only for the purpose of making it accessible to persons who are blind, visually impaired or print disabled.

Article 8 requires privacy to be respected when using the provisions of the MT. It is straightforward in that it says countries shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

Article 9 is mostly on “Cooperation to Facilitate Cross-Border Exchange” and it mainly affects governments. It requires that governments take steps 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. Through this Article governments recognise the importance of international cooperation and its promotion, in support of national efforts for realisation of the purpose and objectives of the MT. This simply means that upon ratification the government is free to seek international cooperation to ensure implementation.

Article 10 is on “General Principles on Implementation” and is mainly a guide to government who commit themselves to adopt the measures necessary for the application of the MT within their own domestic legal systems and practice.

Article 11 is specifically on “General Obligations on Limitations and Exceptions” and it is mainly protecting the interests of authors or publishers. It requires that the government, in taking measures for the application of the MT, the government, 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. This is in line with other obligations governments have taken to comply with other international copyright and intellectual property treaties.

Article 12 recognises the different economic, social and cultural situations of different countries as it allows the countries to implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than those already provided by the MT. This

means that countries can enact any other laws to allow transcription of books and other works even though the MT may not have provided for such laws.

Articles 13 to 22 are all about the administration of the Treaty. Article 13 is on “Assembly: while Article 14 is on “International Bureau”. These are bodies to which the country must be represented.

Article 15 addresses “Eligibility for Becoming Party to the Treaty”, Article 16 is on “Rights and Obligations Under the Treaty” while Article 17 is on “Signature of the Treaty”.

Article 18 addresses issues to deal with the “Entry into Force of the Treaty”, Article 19 is on “Effective Date of Becoming Party to the Treaty” and Article 20 is on “Denunciation of the Treaty”.

### 3. BENEFITS OF THE MT

The MT has got some benefits. It is anticipated that the Treaty will have concrete positive effects in all countries where it is implemented, including developing and least developed countries, where the greatest numbers of persons with blindness, visual impairments or print disabilities live. Anticipated benefits include:

- a) Improved awareness of the challenges faced by persons with blindness, visual impairments or print disabilities. The Marrakesh Treaty is an instrument that fosters discussion and raises awareness about the need for policies that benefit persons with disabilities. For example, the implementation of the Marrakesh Treaty could provide access to works for persons with other types of disabilities, or trigger actions to implement additional provisions of the UNCRPD, in favor of the wider community of persons with disabilities.
- b) It enables greater access to education for persons with blindness, visual impairments or print disabilities.

Access to educational materials in accessible formats is essential to enable persons with blindness, visual impairments or print disabilities to pursue educational opportunities. The Marrakesh Treaty will improve the availability of accessible format educational materials so that persons with blindness, visual impairments or print disabilities can enjoy equal access to education.

- c) The MT enhances social integration and cultural participation for persons with disabilities, visual impairments and print disabilities. Having equal access to common sources of knowledge and information is crucial not only for learning, but also for social inclusion and cultural participation. By improving access to both educational and leisure materials, the Marrakesh Treaty will facilitate greater inclusiveness and participation by

persons with blindness, visual impairments or print disabilities in the cultural and social life of their communities.

- d) The MT enhances access to leisure materials such as books, newspapers and magazines which have a clear entertainment and information function in society, to which persons with blindness, visual impairments or print disabilities must equally benefit.
- e) The MT is a great tool for poverty alleviation and increased contributions to the national economy. Individual professional development is highly dependent on educational attainment. By providing access to learning materials in accessible formats, the implementation of the Marrakesh Treaty can be a powerful tool for poverty alleviation, providing persons with blindness, visual impairments or print disabilities with opportunities for professional growth, allowing them to contribute to their local economies and become economically self-sufficient.

In general the implementation of the MT is essential for economic development.

#### 4. RWANDA GOVERNMENT OBLIGATIONS

In Rwanda, there are an estimated 400,000 people with visual impairments, the majority of them being youth. The Rwandan government has made progress towards promotion of the rights of persons with disabilities since ratification of the UN Convention on the Rights of Persons with Disabilities in 2008. In 2018, at the U.K. Global Disability Summit, they made a commitment to finalize and adopt an Inclusive and Special Education Policy and to develop a costed implementation plan for it by 2020. In January 2020, the government adopted the Policy.

It is now necessary for the Government of Rwanda to ratify the Marrakesh Treaty and go ahead to revise its national copyright law and policy to authorize the making, using, and sharing of accessible format copies, including sharing of such works across borders.

The government should further consult with persons with blindness, visual impairments or print disabilities and their representative organisations in order to put in place effective measures to remedy any violations concerning accessibility.

The Government of Rwanda already ratified the CRPD and went further to commit itself to achieve inclusive education at the Global Disability Summit 2018. This commitment includes ensuring that books and other cultural materials are made and provided in accessible formats to persons who are blind, visually impaired or print disabled. Furthermore, by ratifying the CRPD, the Government of Rwanda made a commitment to fulfill Article 30 (3) 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.”Therefore, the MT requires that the Government of Rwanda takes into consideration the direct relationship between the CRPD and intellectual property law.

International human rights instruments also recognise the societal benefits of exceptions and limitations. Most notably, the CRPD requires ratifying states to revise Intellectual Property laws and adopt other policies to facilitate access to cultural materials. Article 30(1) of the CRPD requires states to “take all appropriate measures to ensure that persons with disabilities ... [e]njoy access to cultural materials in accessible formats,” and Article 30(3) obligates states 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.

The CRPD Committee has repeatedly called on states to ratify and implement the Marrakesh Treaty.<sup>4</sup> In a 2013 General Comment focused on the principle of accessibility, the Committee stressed the cross-border human rights impact of the MT.<sup>5</sup> The UN Special Rapporteur in the Field of Cultural Rights has also urged states to ratify the MT and to “ensure that their copyright laws contain adequate exceptions.

## 5. CONCLUSION

It is essential that the Rwanda Union of the Blind understands the Marrakesh Treaty through this simplified summary in order to carry out effective advocacy on the need for the government to quickly ratify the MT and further domesticate it.

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<sup>4</sup>The CRPD Committee has included this call for ratification in reviewing reports from Denmark, New Zealand, Korea, Belgium, Ecuador, and Mexico. In a General Comment on the right to education, the Committee has also called on states to ratify and implement the MT. *General Comment No. 4: Article 24 (Right to inclusive education)*, U.N. Doc. No. CRPD/C/GC/4 (2 Sept. 2016), 22.

<sup>5</sup> The General Comment asserts that the Marrakesh Treaty “should ensure access to cultural material without unreasonable or discriminatory barriers for persons with disabilities, including people with disabilities living abroad or as a member of a minority in another country and who speak or use the same language or means of communication, especially those facing challenges accessing classic print materials.” Committee on the Rights of Persons with Disabilities, *General Comment No. 2: Article 9 (Accessibility)*, U.N. Doc. No. CRPD/C/GC/2 (22 May 2014), 45 [hereinafter General Comment No. 2].