

10. THE IMPLICATIONS FOR MOROCCO OF THE 2013 MARRAKESH TREATY TO FACILITATE ACCESS TO PUBLISHED WORKS FOR PERSONS WHO ARE BLIND, VISUALLY IMPAIRED OR OTHERWISE PRINT DISABLED

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It is humbling to know that when the weakest amongst us is in need, you answered the call with a steely determination and a steadfast courage to make a difference.

Stevie Wonder

ABSTRACT

This article intends, first, to shed light on the situation of visually impaired persons in Morocco, which has only recently reinforced its legal framework with adequate legislation, bringing relief to persons with different disabilities. Yet the access of visually impaired persons and persons with print disabilities to education and to different artistic activities has been hindered by the lack of more 'advanced' laws. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013) meets these long awaited needs. This article highlights the implications of this Treaty for Morocco, with a particular focus on the provisions providing access to published works – both Braille e-books and other digital or hard copy works – and the new horizons it will open up for visually impaired persons in the areas of education, scientific research, culture, arts, media and communication. This article also discusses the new opportunities offered by the cross-border exchange of published works and the new prerogatives of 'authorized entities'. These considerations show how Morocco – in the light of many considerations – can be a model for developing countries in general and North African ones, in particular, in matters of implementing the provisions of this Treaty.

Keywords: *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (VIP) Treaty, Morocco, cross-border, authorized entities, accessible works, format copies*

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I. INTRODUCTION

In spite of being a developing country, Morocco has substantial intellectual property legislation. Its intellectual property system arose from a combination of two main traditions (the French 'droit d'auteur' tradition and the Anglo-Saxon copyright tradition). Morocco has been party to most international conventions and treaties in copyright and related rights. Not only has Morocco signed most of the relevant conventions, but it has also hosted a number of global treaties that bear the name of Marrakesh: the 1994 Marrakesh Agreement Establishing the World Trade Organization and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled of 2013 (Marrakesh VIP Treaty (2013)). Yet access of visually impaired persons and persons with print disabilities to educational, cultural and artistic activities, until recently, is still hindered in Morocco by some obstacles due to a lack of more 'advanced' and more targeted laws.

Before discussing the Marrakesh VIP Treaty (2013) within the Moroccan context, this article will provide an historical overview of the legal treatment of visually impaired persons.

II. THE SITUATION OF VISUALLY IMPAIRED PERSONS IN MOROCCO AND INTERNATIONAL LEGISLATION

A. Overview of the situation of the visually impaired in Morocco

According to Governmental statistics, in 2004 there were approximately 1,530,000 disabled persons, representing 5.12 per cent of the Moroccan population. In 2010 this number had increased to 1,664,000. Among these persons, visually impaired persons represent approximately 10.32 per cent (15,900 persons in total).¹ In Morocco, visual disability affects over 1,000 individuals between 0.5 and two years of age.²

Historically, these individuals have been neglected in Morocco and face many difficulties in accessing education and the job market. Two factors have primarily contributed to these barriers: societal prejudice, and, most importantly, the scarcity of clearly defined laws providing rights.

Notably, the Moroccan Law on Copyright and Related Rights, both in its 2000 form (Law No. 2.00) and in its 2006 modifying version (Law No. 34.05), makes no mention of the disabled. Yet many

¹ Ministère de la Solidarité, de la Femme, de la Famille et du Développement Social. *Guide des normes d'accessibilité pour les personnes en situation de handicap* (Rabat 2011) 9 <<http://www.social.gov.ma/>> accessed 19 April 2014

² *ibid* 10.

emerging factors have contributed to change this situation. At the external level, the signing of the Free Trade Treaty between Morocco and the United States in 2004 and the signing of the UN Convention on the Rights of Persons with Disabilities, as well as the Optional Protocol in 2006, have given a boost to disabled and visually impaired persons' rights. Morocco signed the TRIPS Agreement in 1995 and the WIPO Copyright Treaty in 2011, thus paving the way for more advanced improvements in this field.

Morocco now attaches special importance to legislation that promotes the situation of visually impaired persons, evidenced more particularly by:

(a) King Mohamed VI of Morocco's speeches and policies, which have been more favourable to all persons with disabilities. For example, those individuals occupy a privileged place in the National Initiative for Human Development (INDH), a programme launched by King Mohamed VI and designed to help the different governmental administrations and non-governmental agencies in matters of improving inclusiveness.

(b) The Moroccan Government's recent policies to improve the lives of persons living with these disabilities. In addition to a yearly celebration, the focus of the National Day of Disabled Persons on 30 March, a new initiative by the Ministry of Social Development, Family and Solidarity (which has become the Ministry of Solidarity, Women, Family and Social Development) is for disabled persons. Nouzha Skalli, the former Minister of Social Development, Family and Solidarity, stated that the Government of Morocco had prepared, in cooperation with various government departments and civil society, a bill relating to persons with disabilities. She stressed that:

This Convention reflected the country's commitment to guaranteeing the rights of the disabled through a global strategy.³

In the same vein, the present Minister, Bassima Haqqaoui, supervised the launching of a four-year programme (2012-2015) to facilitate the access of disabled persons to public administration services and to cultural life.⁴ Additionally, this Department released a set of documents and notes on the

accessibility of Disabled Persons, the 'Guide des normes d'accessibilité pour les personnes en situation de handicap' (Guide of Accessibility Standards for Disabled Persons).⁵ Mrs Haqqaoui is also conscious that it is no longer time to think only about 'concrete accessibilities' and that the complex digital situation presupposes providing more forms of accessibility hand in hand with technological developments in ICT.⁶

(c) International legislation which encourages more national legislation: Morocco has always been among the first countries to sign and ratify international legislation on the rights of the disabled and visually impaired, on the one hand, and on copyright and related rights, on the other.

(d) The Moroccan civil society: a number of national organizations and human rights associations are dealing with questions concerning disabled persons in Morocco. Their attitudes and views are decisive, as evidenced by the newly adopted Constitution in Morocco (2011) that confers a significant role to Civil Society organizations. Among these national organizations, three have played a key role: the Conseil Consultatif des Droits de l'Homme (CCDH) (Advisory Council of Human Rights), the Alaouite Organization for the Protection of the Blind in Morocco (OAPAM) and the Coalition for the Promotion of the Rights of Persons in a Situation of Handicap.

These factors and measures have resulted in legislation being introduced that seeks to meet the needs outlined of disabled persons.

B. The need for national and international legislation

Morocco has only recently, especially under King Mohamed VI, enhanced its legal framework for disabled persons. Karim Cherkaoui, from the 'Coalition' points out that national legislation on the disabled in Morocco could be considered 'general principles that lack some precision at the level of implementation and a clear definition of roles and responsibility for implementation'.⁷

Furthermore, in their report on Copyright in Morocco, Moroccan academicians, Saïd Aghrib *et al* spell out that:

Morocco suffers from a scarcity of copyright research, except for a very limited number of theses and dissertations compiled within the realm

³ 'Protecting Rights of Persons with Disabilities: Towards a Full and Integrated Approach' <<http://www.ccdh.org.ma/an/bulletin-d-information/protecting-rights-persons-disabilities-towards-full-and-integrated-approach>> accessed 03 April 2014

⁴ Sana Karim, 'Ay siyassah li-Imaghrîb li-nnuhudhi bi awdaa al-muaaq?' (Which Policy in Morocco to Promote the Situation of the Disabled?) *Attajdid* (Rabat, 01 April 2014) 6

⁵ Ministère de la Solidarité [1]

⁶ Karim [4] 6.

⁷ *ibid*

of academic research⁸ and that such researchers were more 'seeking answers regarding the lack of compliance with copyright and often blaming the laxity of state control.⁹

Indeed, although Morocco has signed and ratified all the main international copyright treaties, including acceding to the WIPO Copyright Treaty in 2011, what it needed more urgently is to bring its national legislation in line with this treaty, in order to be consistent with more recent international conventions and obligations concerning digital copyright and Article 10(1) of the Marrakesh Treaty, which calls on contracting parties 'to adopt the measures necessary to ensure the application of this Treaty'. This would ensure that Morocco is able to implement the Marrakesh Treaty, especially with regard to the limitations and exceptions of digital copyright and the definition of the panoply of national devices of 'rights management information', as provided by Article 2 of the WIPO Copyright Treaty. In short, the visually impaired in Morocco need both national and international conventions and obligations, especially at the copyright level.

C. Contribution of the Marrakesh Treaty

In this context, Morocco hosted the Marrakesh VIP Treaty. This Treaty was a significant first step, but now more crucial progress is needed, namely, the enforcement of the Treaty. In the Moroccan context, this Treaty bears high expectations for the integration and accessibility of visually impaired persons. First, it will contribute to the rehabilitation of the rights of visually impaired persons and persons with print disabilities, especially in Morocco, as a developing country. Second, it will open up new horizons in the fields of education, scientific research, culture, arts, and media and communication.

The codification and proliferation of artistic works of the blind and visually impaired persons has already been debated in Morocco. For example, since 2010, the Louis Braille Association for the Blind (Association Louis Braille pour les Personnes Aveugles) has hosted an annual Festival of Blind and Visually Impaired Musicians, with the participation of blind artists from Morocco, Egypt, Canada, Algeria, and Tunisia, Japan, the United Kingdom, and Poland.

⁸ Said Aghrib, Noufissa El-Moujaddidi and Abdelmalek El-Ouazzani, ACA2K Country Report, *Morocco* (African Copyright and Access to Knowledge Project, July 2009) 25 <<http://www.aca2k.org/attachments/ACA2K%20Morocco%20CR.pdf>> accessed 2 May 2014

⁹ *ibid*

In 2011, this association also organized a conference on the 'Writing of Music in Braille'.¹⁰

III. THE DEBATE OVER THE IMPLEMENTATION OF THE TREATY IN MOROCCO

A. Implementing the Treaty in Morocco

Though the main Moroccan Law on Copyright, No. 34-05 (2006), makes no mention of disabled users, who sometimes need to circumvent technological protection measures (TPMs) in order to convert works from one format to another¹¹, it has limited anti-circumvention of such measures mentioned in Article 65, 'for the benefit of some non-profit entities'.¹² This is a deliberate effort on the part of Moroccan legislators to create necessary limitations and exceptions for visually impaired persons.

Among the questions that are currently under debate, the shortage of copyright laws in Morocco and the vague nature of some of those currently enacted, in particular, make it difficult for Morocco to comply with the provisions of the Marrakesh Treaty. In this regard, a set of measures should be given chief importance:

- At the legislative level, Morocco needs to issue new laws that will facilitate the availability of works in accessible formats for visually impaired persons and persons with print disabilities. This is one of the direct recommendations of Article 4(1) of the Marrakesh Treaty.
- At the administrative level, Morocco is already endowed with a National Office of Copyright (Bureau National du Droit d'Auteur – BMDA), but this will need to be reformed, reinforced and updated, in order to be able to cope with the new copyright issues. In addition, more regional offices and agencies will be needed to help implement the provisions of the Marrakesh Treaty.

At the technological level, the different institutions – both governmental and non-governmental – that are in charge of the educational and artistic activities of visually impaired persons will have to enhance their Information Communication Technology (ICT)

¹⁰ 'Festival des musiciens malvoyants à Tétouan' *Libération* (Rabat, 30 Novembre 2011); 'Festival international des musiciens non-voyants et malvoyants' *La Nouvelle Tribune* (Casablanca, 12 Novembre 2013) <<http://www.lnt.ma/culture-maroc/festival-des-musiciens-mal-voyants-a-tetouan-90068.html>> accessed 6 May 2014

¹¹ Aghrib [7] 19.

¹² *ibid*

infrastructures, in order to facilitate the 'cross-border exchange of accessible format copies' and to help both national and international 'authorized entities' carry out the functions assigned to them by the Marrakesh Treaty.

B. The cross-border exchange of accessible format copies

Article 9 of the Marrakesh VIP Treaty provides that:

Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another.

It also stipulates that 'The International Bureau of WIPO shall establish an information access point for this purpose'. The scope of 'authorized entities' in this Treaty includes the right to exchange accessible material with other 'authorized entities' within the same country (Article 4(2)(a)) or with 'authorized entities' in other Contracting States (Article 5(2)(a)).

These new limitations and exceptions are further strengthened by the right of importation given to individuals, which means that applicable persons, their representatives, or the nationally recognized 'authorized entities' will be able to import any accessible work directly from authorized entities that are located in Europe, the Middle East and the United States. This makes cross-border exchanges of rights and materials easier, allowing a more accessible use of global material by visually impaired persons in Morocco and a free dissemination of their own works.

Notably, Morocco and its North African neighbors have Arabic as the first official and national language and French as the main foreign language. Many relevant works are expressed in these languages, and translation to and from these languages, as well as English, is easily obtained. Thus no linguistic barrier exists to the cross-border exchange or circulation.

The challenge Morocco faces at this level is the ability to provide national legislation that would complement international conventions and obligations. There is a need for national provisions that secure the 'cross-border exchange of accessible format copies' for the sole benefit of visually impaired persons and persons with print disabilities without the authorization of authors, provided that they are not for commercial purposes and, at the same time, the rights of authors/publishers by guaranteeing that the distribution of 'accessible format copies' to anyone other than the beneficiary

persons will be prevented. Since the making, circulating, and exchanging of 'accessible format copies' will be more associated with the digital world and the information society, Morocco must first strengthen its technological infrastructure and, second, improve its copyright legislation.

C. The extended role of 'Authorized Entities'

'Authorized Entities' are given an important and vital role in the Marrakesh VIP Treaty. In Article 2(c) of the Treaty an 'authorized entity' is defined as:

an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.

According to this definition, many educational and academic institutions and libraries can fulfil these functions in Morocco. But the definition is further broadened in Article 2(c) by allowing non-governmental, non-profit organizations to offer 'the same services to beneficiary persons as one of its primary activities or institutional obligations'.

At the international level, 'authorized entities' will be primarily libraries and organizations working for the promotion of the blind and visually impaired, especially at the educational, cultural and artistic levels. If such institutions are recognized in developed countries, it is hoped they will play an essential role in providing 'accessible format copies' to libraries, educational institutions and similar organizations recognized as 'authorized entities' in developing and least developed countries. Therefore, the main challenge now is the acceleration of recognizing these institutions and enforcement of the Treaty. Further delay may, unfortunately, be considered or understood as a 'pocket veto' of the Treaty itself.

At the national level, Moroccan institutions such as the Alaouite Organization for the Protection of the Blind in Morocco (OAPAM) and the Coalition for the Promotion of the Rights of Persons in a Situation of Handicap have already been serving blind and visually impaired persons at the social, educational and cultural levels. Accordingly, they may very well act as 'authorized entities' that will be entitled to:

make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons (...) (Article 4(2)(a)).

The possibility of obtaining 'accessible format copies' – both Braille e-books and other digital or hard copy works – from foreign authorized entities is an opportunity for authorized entities in Morocco, because it will offer the possibility to provide ready-made copies without cost or legislative barriers that have so far hindered the making and the circulation of such copies.

As for the obligations imposed on these 'authorized entities' by Article 2(c) of the Marrakesh Treaty, some of them, especially ones having to do with 'beneficiary persons' (Article 2(c)(i)), have already been partially fulfilled as a part of the access conditions of the Moroccan institutions that deal with visually impaired persons. But there is still much work to be done, at the level of national legislation:

to discourage the reproduction, distribution and making available of unauthorized copies; (Article 2(c)(iii))

and, at the technical level, to enable and empower the Moroccan authorized-entities-to-be:

to maintain due care in, and records of, its handling of copies of works ... (Article 2(c)(iv)).

The focus here should be on the role of the already existing organizations of civil society (non-governmental organizations or NGOs) which are concerned with the rights and the daily life of the blind and the visually impaired in Morocco, in implementing the provisions assigned to 'authorized entities' in the Marrakesh Treaty. Such organizations have been working hard to sustain this group, and they will be empowered by this Treaty to serve visually impaired persons. Some of them even attended the Diplomatic Conference of the Treaty, after being officially admitted as observers by WIPO.¹³

IV. THE MARRAKESH VIP TREATY AND MOROCCO AS A MODEL FOR NORTH AFRICAN COUNTRIES

A. Valorizing the skills of visually impaired persons and persons with print disabilities

For the moment, the different centres of the Alaouite Organization for the Protection of the Blind in Morocco (OAPAM) provide a high quality education that, in line with international standards, results in a high percentage of success in the Baccalaureate among visually impaired persons in

Morocco. Many visually impaired persons are excellent teachers of religious sciences in institutions of classical education (*attaalim al-atiq*) and other disciplines; some are gifted artists, and others are singers or talented musicians. The effective implementation of the different provisions of the Marrakesh Treaty and the open access to published works in adequate format copies, especially with the digital revolution, will undeniably open up new horizons for the cultural emancipation and artistic expression of the visually impaired in this country. They will also enhance the efforts of Morocco in the fight against illiteracy, in general, and Braille illiteracy, in particular.

Thanks to the Treaty, instead of being passive consumers, visually impaired persons will be empowered to produce their own creative works, based on accessible material and on their own gifts, since there will be fewer or no legislative or technical barriers. Besides, these persons will, it is to be hoped, be promoted at the economic level, since the new provisions will allow them to use their skills and have access to the labour market.

In this case, the potential skills of visually impaired persons and persons with print disabilities in the economic, educational and artistic fields will benefit not only Morocco, but also the whole world thanks to the fluid exchange and circulation of works, provided for by the clauses of this Treaty.

B. Offering the example to developing countries

Two main factors have been crucial in helping Morocco to be more committed, at the legislative level, to the situation of the blind and the visually impaired:

First, Morocco has always reacted positively to international treaties and agreements in this domain and has also been more active in its trade and economic interactions with developed countries. Such interactions have been continually pushing and even urging Moroccan lawmakers to continuously reconsider and review their national legislation. For example, the Free Trade Agreement between Morocco and the United States in 2004 was decisive and resulted in Morocco passing some copyright laws, in order to harmonize its legal system with the more advanced American one. Some even think that the latest Moroccan 34-05 Law on Copyright, which was issued in 2006, was brought about by this bilateral agreement.

Second, hosting international agreements and conventions has also played an important role in making Morocco more involved in the actual making of such treaties and paying them more attention and importance.

¹³ WIPO's VP/DC/5, 14 June 2013. The Moroccan organizations admitted are l'Association marocaine pour la réadaptation des déficients visuels (AMARDEV); la Ligue Braille Maroc (LBM); and l'Organisation alaouite pour la promotion des aveugles au Maroc (OAPAM).

Though Morocco benefits from a kind of political, economic, and social stability when compared to some neighbouring countries, this awareness of the new opportunities offered by the Marrakesh Treaty for the visually impaired and print disabled is not wholly particular to Morocco. Neighbouring countries, especially those of the Arab Maghreb (or the Arab World in general), can follow suit and implement the same measures to benefit from this Treaty in the same way.

In addition, WIPO stands ready to organize joint training sessions in Morocco or in some of the neighbouring countries to help both Moroccan officials, non-governmental agencies and the 'Authorized Entities' concerned with the rights of the visually impaired to maximize the benefits of the Treaty and to help Moroccan and regional lawmakers to make related laws tailored to the situation of their countries.

V. CONCLUSION

The signing of the Marrakesh VIP Treaty in June 2013 was nothing short of a miracle. But if progress stops here, it will be just another thwarted agreement. American singer, Stevie Wonder, at the closing ceremony of the Conference, was acutely conscious of this situation when he declared:

While the signing of this treaty is a historic and important step, I am respectfully and urgently asking all governments and states to prioritize ratification of this treaty so that it will become the law of the land in your respective countries and states.¹⁴

This Treaty has brought unprecedented opportunities for these persons, especially by facilitating easier and more fluid exchange and circulation of published works. Morocco must create all the necessary legislative, administrative and logistic conditions for the effective and fruitful implementation of the provisions of this Treaty. At the international level, WIPO must call on developed countries to sign and ratify the Marrakesh Treaty and to work for its entry into force.

¹⁴ 'Stevie Wonder Hails Landmark WIPO Treaty Boosting Access to Books for Blind and Visually Impaired Persons' (Marrakesh/Geneva 28 June 2013) PR/2013/742 <http://www.wipo.int/pressroom/en/articles/2013/article_0018.html> accessed 05 January 2014

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