The Marrakesh Treaty and Domestic Internalisation in Vietnam: From Commitments to Implementation Barriers

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ABSTRACT

Vietnam has internalised the Marrakesh Treaty through Article 25a of the 2022 Intellectual Property (IP) Law and Decree No. 17/2023/ND-CP, representing a landmark shift in the legal protection of the right to access information for persons with disabilities. This study employs legal analysis and case studies to evaluate the effectiveness of transforming international commitments into domestic regulations. The findings reveal that while a foundational legal framework is established, a significant "implementation gap" exists due to a lack of detailed guiding documents, legal uncertainty, and financial, technological, and awareness barriers. The article proposes a synchronised system of solutions from institutional refinement to resource assurance to transform text-based regulations into positive practical changes and eliminate the "book famine" for the disabled in Vietnam.

KEYWORDS: *Marrakesh Treaty; internalisation; authorized entity; persons with disabilities; implementation barriers*

1 INTRODUCTION

Globally, the "book famine" has long acted as a severe, invisible barrier to knowledge and social integration for millions of print-disabled individuals. According to the World Blind Union, less than 1% of works in developing countries are converted into accessible formats like Braille or audiobooks [1] . In this context, the Marrakesh Treaty (2013) serves as a historic "catalyst," creating the first international legal framework to address this via the "Authorized Entity" (AE) mechanism. These entities are permitted to produce and exchange accessible copies across borders without infringing on copyright.

Vietnam currently has over 7 million persons with disabilities, accounting for 7.06% of the population[2]. A report by the Vietnam Blind Association and UNDP (2022-2023) highlighted that 62.1% of print-disabled respondents found science materials in accessible formats extremely scarce or non-existent [3]. Furthermore, 94.6% expressed a need for audiobooks, and 86.9% required Braille[4]. Vietnam officially joined the Marrakesh Treaty on 6 March 2023 and internalised it via Article 25a of the 2022 Law on Intellectual Property[5] and Decree No. 17/2023/ND-CP [6]. However, a critical question remains: has this internalisation created an effective mechanism for "Qualified Organisations" (Vietnam's term for AEs) to operate, or do systemic barriers render these regulations merely formalistic.

2 LITERATURE REVIEW

Researching the origin and human rights significance of the Marrakesh Treaty, scholars emphasise that this is the first international treaty within the framework of the World Intellectual Property Organization (WIPO) to place human rights above purely commercial interests. Helfer (2017) provides a profound analysis of the political-legal struggle leading to the Treaty's birth, asserting that it is a "systemic adjustment" aimed at rectifying the inherent imbalance between copyright protection and social needs [7]. WIPO (2016) offers a comprehensive view of the negotiation context and core principles, confirming that the Treaty is not only an intellectual property legal tool but also a vital instrument for implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD) [8].

Regarding the "Authorized Entity" mechanism, Craveiro (2015) early on identified the pivotal role of libraries and non-profit organisations as potential Aes [9]. They analyse operational models, technical capacities, and the financial and personnel barriers these organisations face in both developed and developing countries, providing a panoramic view of what an AE in Vietnam needs to prepare to operate effectively.

Sganga (2018) delves into the legal criteria for recognising an entity as an AE, pointing out the flexibility the Treaty grants member states in designing this mechanism [10]. The author emphasises that the ability of nations to recognise NGOs, public libraries, and specialised state agencies has created a diverse and flexible network. However, this study also warns that overly strict or vague regulations at the national level could neutralise the Treaty's effectiveness a point to be noted for the development of guiding documents in Vietnam. Particularly, the cross-border exchange mechanism the most groundbreaking feature of the Treaty is analysed in detail by Grosse Ruse-Khan (2016) in relation to the principles of the international trade system and intellectual property law. He stresses that this mechanism creates a global "common space" for works, helping to avoid wasting resources due to duplicate copying in multiple countries. [11] This research highlights the key value for AEs in countries like Vietnam to access vast digitised repositories from developed nations.

Delia Ferri , Giulia Rossello (2023) use survey data from six European countries to show that visually impaired people using Braille printers have more feasible access to materials than other formats, [12]. Margot E. Kaminski (2015) expands the perspective on AEs, encouraging the participation of many organisations to broaden access for persons with disabilities [13]. This study suggests an inclusive recognition mechanism for Vietnam that does not create unnecessary administrative burdens to encourage social participation in this field,.

Researching implementation processes and barriers, Giblin (2014) identifies a series of common challenges, including delays in domestic law amendments, ambiguity in identifying and recognising AEs, high conversion costs, and outdated technology [14]. Sampsel points out that Technological Protection Measures (TPMs/DRM) can accidentally become barriers to legal conversion. Beyond legal aspects, research on social barriers is gaining more attention. Fukuyama, in a study on social capital, points out the importance of building trust between stakeholders, emphasising the need to raise awareness within the disabled community and among rights holders. Furthermore, perception barriers from both the disabled community and copyright owners continue to be a significant bottleneck that needs addressing through communication campaigns and policy dialogues.

In Vietnam, the report "Current State of Access to Publications for Print-Disabled Persons in Vietnam" by the Vietnam Blind Association and UNDP provides vivid evidence of the unmet needs of persons with disabilities,. Articles in mass media and specialised journals have also begun to popularise the new regulations, contributing to raising social awareness.

The literature review shows that while international research has clarified the values, mechanisms, and general challenges of the Marrakesh Treaty, a specific gap remains regarding the Vietnamese context. Most studies in Vietnam have only stopped at providing information about ratification or preliminary analysis of IP law regulations prior to 2022. There has been no in-depth, systematic research analysing the internalisation of the key "authorized entity" regulations or a comprehensive assessment of implementation barriers in Vietnam.

3 METHODOLOGY

This study employs a qualitative research design that integrates multiple analytical approaches to ensure a comprehensive assessment of Vietnam's internalisation of the Marrakesh Treaty and its practical implementation challenges.

First, documentary analysis is used as the core method. The study systematically reviews primary legal documents including the Marrakesh Treaty, the 2022 amended Intellectual Property Law, and Decree No. 17/2023/ND-CP along with secondary materials such as reports from WIPO, the World Blind Union, and domestic institutions. This method enables the identification of Vietnam's degree of alignment with international obligations and the normative structure governing Authorized Entities (AEs) or "Qualified Organisations."

Second, comparative legal analysis is applied to contrast the Treaty's regulatory philosophy particularly its functional and flexible definition of AEs with Vietnam's more formalised and institutional approach. This comparison helps reveal divergences, structural constraints, and potential misalignments that affect the effectiveness of internalisation.

Third, policy analysis is conducted to examine institutional, administrative, and systemic barriers in implementation. This includes evaluating procedural requirements, resource allocation mechanisms, technological conditions, and the broader governance context affecting both state and non-state actors operating as AEs.

Finally, a multidisciplinary perspective combining legal studies, public policy, and disability studies is employed to ensure that the analysis goes beyond technical legal compliance. This approach situates the Marrakesh Treaty within a human rights framework, emphasising the lived experiences of persons with print disabilities, the socio-technical environment of accessible publishing, and the equity implications of policy choices.

Collectively, these methods provide a holistic foundation for assessing both the legal transformation process and the practical "implementation gap" in Vietnam's efforts to eliminate the book famine for persons with disabilities.

4 RESEARCH RESULTS AND DISCUSSION

4.1 The Internalisation of the Marrakesh Treaty in Vietnam

Vietnam's legal framework has achieved formal compatibility with the Treaty. Article 25a of the 2022 IP Law establishes the legal basis for AEs, allowing them to produce accessible copies without permission.

A defining feature of the Treaty is its functional approach to AEs. Article 2(c) uses the broad term "entity" rather than "legal person" to include government agencies and non-profits regardless of their specific legal structure [5]. This flexibility allows nations to recognize entities like national libraries or long-standing blind associations that may not have formal registrations.

In contrast, Vietnam's internalisation focuses on "Qualified Organisations," implying a subject with a specific structure and legal status. Decree 17/2023/ND-CP lists organisations such as the Vietnam Blind Association, Disability Support Funds, and public libraries as being automatically recognised [6]. Under Vietnamese law, including the 2015 Civil Code, these entities must possess legal person status to operate. While this ensures legal certainty and accountability, it may act as a "bottleneck" for smaller community initiatives or local libraries with limited resources. Thus, in Vietnam, legal personality is a matter of practice requirement, reflecting a civil law preference for state management and transparency.

4.2 Rights and Obligations of Authorized Entities

The internalisation of the Marrakesh Treaty marks a clear shift in Vietnam from a permission-based model to a rights-based mechanism that recognises the legitimate need of persons with disabilities to access knowledge [15]. Authorized Entities (AEs) are now empowered to reproduce, convert, and distribute works into accessible formats for eligible beneficiaries without seeking prior approval. This includes domestic reproduction as well as participation in cross-border exchanges, enabling Vietnam to make use of large international repositories previously inaccessible under the territorial nature of copyright law.

Alongside these expanded rights, AEs must fulfil several obligations to ensure the system functions responsibly. In accordance with WIPO guidelines [8], they are required to apply "due care," ensuring accessible copies are delivered solely to eligible beneficiaries and safeguarded from unauthorised sharing. Vietnamese law further requires AEs to maintain proper documentation, follow reporting duties, and comply with inspections under the responsible authorities. These requirements aim to balance access needs with the protection of copyright owners. Although such obligations reinforce transparency and accountability, they may introduce administrative burdens for smaller organisations, which need additional support to exercise their rights effectively within the new legal framework.

4.3 The Existing Support Ecosystem and Comparative Barriers

Vietnam currently operates through a dual ecosystem of state institutions and social organisations working as Authorized Entities. The Vietnam Blind Association (VBA) remains a core actor with a wide national network and deep practical understanding of beneficiary needs [16]. Its long-standing experience, community reach, and centralised production model give it certain advantages, although it continues to face financial instability and limited technological capacity [17].

On the state side, public libraries and specialised educational centres provide foundational support. The Hanoi Library, for instance, has invested in Braille printers, DAISY software, and a dedicated studio [17], demonstrating how targeted investment can significantly enhance service provision. Yet this level of development is uneven across the country, with many provincial libraries lacking dedicated budgets, specialised staff, and modern infrastructure, leading to substantial regional disparities.

Overall, the two main types of AEs complement each other but also reflect contrasting limitations: the VBA possesses strong community links but struggles with outdated equipment and unstable funding, while public libraries benefit from stable state support but lack specialised expertise and technological readiness [18]. These differences create a persistent "capacity gap," making effective implementation dependent on stronger coordination, more consistent resource allocation, and a clearer strategy for developing technology and human expertise nationwide.

Table 1. Comparison of Some Barriers in Implementing the Marrakesh Treaty by Two Main Authorized Entities in Vietnam

Tab. 1. Porównanie wybranych barier we wdrażaniu Traktatu z Marrakeszu przez dwa główne upoważnione podmioty w Wietnamie

Criteria	Vietnam Blind Association (VBA)	Public Library
Operational Model	Central social organization, centralized production model: Operates as a "production and distribution center," with legal status as a socio-professional organization functioning nationwide [17]. - Mixed financial model (state	Public service unit, point-of-service model: Operates as a public "service delivery point," obligated to serve all user groups, including persons with disabilities [18]. - Establishes specialized reading rooms [19]. - Resources

	budget, projects, sponsorships). - Extensive distribution network reaching local association levels.	mainly from the state budget.
Finance	- Dependent on unstable project funding sources, a common challenge for social organizations in Vietnam [20]. - High costs for specialized materials and maintenance of accessible book production equipment [21].	- State budget is a general budget, lacking specific allocations and sufficiently large funding for specialized services, a limitation of many public libraries [22]. - Difficulties in investing in technology upgrades.
Technology	- Production technology is outdated, heavily reliant on manual processes. - Limited productivity, difficulties in scaling up mass production to meet demand.	- On-site production capacity is very limited or non-existent. - Technology infrastructure has not been invested in to build truly accessible digital libraries according to international standards.
Human Resources	- Has a specialized team with deep expertise on blindness. - Lacks high-level technical experts in information technology and complex digital book formats (e.g., EPUB 3).	- Staff specialized in general library science. - Often lack advanced skills in assistive technology and effective methods of serving users with disabilities [23].

5 IMPLEMENTATION BARRIERS IN VIETNAM

Despite the legal foundation, several systemic challenges hinder implementation:

Institutional Barriers: There is a significant "implementation gap" due to a lack of detailed circulars to guide Article 25a. This creates legal uncertainty, resulting in a chilling effect where organisations hesitate to act for fear of legal risks. Furthermore, Vietnam lacks national technical standards for Accessible Format Copies (AFC), such as DAISY or EPUB 3, hindering international interoperability. The absence of a national Clearing House also leads to duplication of production and wasted resources.

Financial Barriers: Producing high-quality accessible copies requires significant investment in hardware and skilled human capital. Most Vietnamese AEs rely on precarious project-based funding, which prevents long-term strategic planning.

Technical Barriers: Conversion processes remain largely manual. There is a lack of localized automated tools and a failure to adopt a "born accessible" publishing culture. Furthermore, data on print-disabled individuals is fragmented across various ministries, complicating beneficiary verification.

Awareness Barriers: Copyright owners often fear that accessible copies will leak online, leading to non-cooperation. Meanwhile, many beneficiaries are unaware of their legal rights or how to access services, turning these rights into "passive rights".

6 RECOMMENDATIONS

First, Vietnam needs to quickly issue a Circular detailing and guiding the implementation of Decree 17/2023/ND-CP [6], which should standardise administrative procedures regarding activity notifications, reporting regimes, and simplify procedures for verifying beneficiaries. More importantly, this document needs to establish a legal immunity mechanism (civil and criminal) for AEs when they have demonstrated compliance with the correct appraisal process regarding subjects and purposes of use, ensuring legal safety for public service units and social organisations involved,. Simultaneously, it is necessary to coordinate with the Ministry of Science and Technology to build and announce National Standards (TCVN) for accessible formats, creating a legal basis for recognising the legality and compatibility of copies in international exchange activities.

Second, to overcome fragmented management, a state focal point management mechanism must be established. The Copyright Office of Vietnam should play a central role in managing the "National Data System on Accessible Format Works". Building this centralised database is a technical-legal solution to prevent wasting resources due to overlapping tasks (multiple units converting the same work) and is a prerequisite for implementing the mutual recognition mechanism when connecting with WIPO’s Accessible Books Consortium (ABC), ensuring the legality of importing copies as prescribed by the Law on Intellectual Property.

Third, it is necessary to innovate financial mechanisms, shifting from a subsidy and aid mechanism to a "State-ordered public service provision" model. Based on Decree No. 32/2019/ND-CP, managing ministries should include the production of accessible format publications in the List of public services using the state budget. At that point, AEs will be assigned tasks, ordered, or bid for by the State, ensuring a regular and stable budget according to the Law on the State Budget. Additionally, Corporate Income Tax incentives should be applied to encourage publishers to fulfill social responsibilities by adopting accessible publishing workflows or transferring work usage rights for public benefit.

Fourth, the effectiveness of law enforcement depends on propaganda, dissemination, and legal education to balance the interests of copyright owners and the access rights of persons with disabilities. The State should encourage the adoption of the "Born Accessible" model while stepping up communication so that persons with disabilities are fully aware of their legal rights and interests protected by law. For copyright owners, awareness and a deep understanding of corporate social responsibility must be raised, clearly recognising that supporting access for the disabled is not just a legal obligation but a valuable social contribution. Furthermore, dissemination regarding the effectiveness of Technological Protection Measures (TPMs) should be enhanced to create social consensus and promote the responsibility of providing copies as required by law.

Fifth, regarding organisations supporting persons with disabilities: There is a need to improve capacity and professionalisation by actively investing in standardising operational processes and applying international technical standards such as EPUB 3 to ensure interoperability and readiness for cross-border exchange. Simultaneously, network governance and policy advocacy should be strengthened; organisations need to form a closely coordinated network to share resources and experiences to create a common voice. These organisations should act as "policy entrepreneurs", actively collecting practical evidence and participating in consultations to perfect the legal framework based on the community's actual needs

7 CONCLUSION

The internalization of the Marrakesh Treaty in Vietnam has established a foundational legal framework, signaling the State’s strong commitment to ensuring the right of persons with disabilities to access knowledge. Nevertheless, a considerable gap persists between legal provisions and practical implementation. Administrative procedures, the requirement of legal personality, and limitations in financial, technological, and human resources have constrained the effectiveness of “eligible organizations.” This demonstrates that legal domestication is only the initial step and remains insufficient to fully address the long-standing “book famine”.

To bridge this implementation gap, Vietnam requires a comprehensive strategy: refining institutions toward greater transparency and flexibility, securing financial and technological resources, enhancing human capacity, and fostering multi-stakeholder cooperation among the State, social organizations, and the international community. Only through substantive implementation of these measures can legal provisions be transformed into tangible improvements, thereby advancing human rights and building an inclusive knowledge environment for persons with disabilities in Vietnam.

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Traktat z Marrakeszu a krajowa internalizacja w Wietnamie: od zobowiązań do barier wdrożeniowych

Wietnam wdrożył postanowienia Traktatu z Marrakeszu poprzez artykuł 25a Ustawy o własności intelektualnej z 2022 r. oraz Dekret nr 17/2023/ND-CP, co stanowi przełomową zmianę w prawnej ochronie prawa osób z niepełnosprawnościami do dostępu do informacji. Niniejsze opracowanie wykorzystuje analizę prawną oraz studia przypadków, aby ocenić skuteczność przekształcania zobowiązań międzynarodowych w regulacje krajowe. Wyniki wskazują, że choć ustanowiono podstawowe ramy prawne, to istnieje istotna „luka wdrożeniowa" wynikająca z braku szczegółowych dokumentów wykonawczych, niepewności prawnej oraz barier finansowych, technologicznych i świadomościowych. Artykuł proponuje zsynchronizowany system rozwiązań od udoskonalenia instytucjonalnego po zapewnienie zasobów - w celu przekształcenia przepisów opartych na tekście w rzeczywiste pozytywne zmiany oraz wyeliminowania „klęski książkowej" dotykającej osoby z niepełnosprawnościami w Wietnamie.

Słowa kluczowe: Traktat z Marrakeszu; internalizacja; upoważniony podmiot; osoby z niepełnosprawnościami; bariery wdrożeniowe