

COLLECTION development and strategies

Strategies

Testifying as a Means of Protection

*The position of
Handicap International*

February 2002

**HANDICAP
INTERNATIONAL**

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The collection Strategies is aimed at presenting the viewpoint and position of Handicap International through comprehensive texts on ethical, political and social questions relating to international solidarity. The texts published are updated on an annual basis and according to major events.

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Any requests for information, comments and contributions concerning the texts published in the collection

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1. Humanitarian responsibility: legitimacy of the testimony

The **responsibility** of a humanitarian organization is based on the policies and mechanisms it adopts. It must be “capable of responding” to the challenges posed by conflicts, catastrophes and underdevelopment, but it must also answer for its actions and face the consequences of its interventions.

To participate in international life, to enter into dialogue and to negotiate with the different States, to intervene between governments and their population, to act amidst societies and groups of human beings means, indeed, to fulfil institutional, professional and ethical obligations, taking into account customs, norms, national and international laws, which are in constant evolution.

By acting in countries affected by a crisis or in conflict areas, Handicap International very often confronts the terrible living conditions imposed upon the civilian population and, sometimes, the serious violations of human rights or of international humanitarian law.

To respond to these situations and to help towards enhancing the protection of the population under threat, one method of action used by the organization is the provision of testimony.

In situations of conflict, humanitarian assistance aimed at helping individuals according to their level of suffering and at bringing relief, giving priority to those in most urgent distress, should not be interpreted as material support for either of the parties involved.

Likewise, testimony, as a measure to protect people against serious violations of their rights, must not be understood as a biased act aimed at favouring one party at the expense of the other.

Assistance and testimony cannot be based on a restrictive interpretation of neutrality that would lead to abstention from providing protection or relief under the pretext of not favouring anyone.

Neutrality and impartiality, properly understood, are based on two principles that go hand in hand:

- to abstain from participating in hostilities and in political, religious, racial and ideological controversy;
- to make international norms prevail and help States honour their obligations and fulfil their commitment to protect populations in times of peace as well as in times of war.

1.1. Protection of the population and testimony

From a humanitarian point of view, the concept of **protection** is aimed at ensuring respect for people and their rights, as envisaged by the different international instruments relating to human rights or to international humanitarian law¹.

Consequently, protection comprises all activities aimed at:

- preventing the violations of human rights or reducing their consequences;
- restoring people's dignity, accompanying them in their return to satisfactory living conditions, through relief, reparation and physical as well as social rehabilitation measures;
- restoring an environment conducive to **respect** and to the **exercise** of fundamental rights.

If humanitarian organizations act to provide care and services to people in distress and to victims, very often they are equally engaged in the development of norms and of national and international institutions, aimed at ensuring, under a long term perspective, the living conditions of the population.

Testimony is a useful means towards public and political mobilisation serving to prevent risks and improve the political, legal and social environment.

1.2. Definitions of testimony

To testify is to report on a situation, but more than a simple listing of the facts, to witness

a situation aims at sensitising those that may act upon the order of things, with a view to obtaining their commitment and achieving a notable improvement of the situation.

In that respect, three types of testimony can be established:

1) **the testimony of solidarity**, consisting of reporting on the living conditions, demands and projects of individuals or of a population engaged in a struggle to satisfy their vital necessities, and the recognition or the defence of their rights, with a view to gaining support for their cause;

2) **the testimony of exposure**, aimed at publicly informing the population of violations for the purpose of putting pressure on the authorities concerned with a view toward having them honour their obligations and protect individuals or the population under threat;

These types of testimony, that fit into the framework of advocacy, are the subject of opinion and lobbying campaigns. The advocacy actions that accompany the provision of assistance to the population in fact can combine the mobilisation of public opinion, dialogue with the authorities, and initiatives aimed at persuasion.

3) **judicial testimony** is of a different nature and fits into the framework of the legal proceedings initiated by the courts that try cases involving serious violations of human

1. *Treaties concerning international humanitarian law: the Geneva Conventions and additional protocols. Treaties concerning human rights: various conventions on genocide, civil and political rights, economic and social rights, racial discrimination, torture and other cruel, inhuman and degrading treatment, discrimination against women, and the rights of children. Treaties concerning refugees.*

rights and of humanitarian law (in particular, genocide, crimes against humanity and war crimes). In this context, the testimony contributes to establishing the truth, naming those

responsible and seeking reparations for the damages suffered by the victims.

2. The practice of testimony

2.1. Professionalism of the testimony approach

Testimony, as a complement to the provision of assistance, is only useful and credible if it meets certain conditions:

- 1) to form part of a global strategy which, according to the possibilities, combines assistance, dialogue with the authorities and public pressure, with the aim of helping and protecting people and defending or promoting their rights;
- 2) to respond with independent and impartial action, despite the difficulties inherent in complex political situations and other sorts of pressures;
- 3) to be conducted in a professional manner, namely, with caution and rigour.

In a number of cases, the testimony also means questioning the responsibility of people or institutions and could carry risks² for those involved, for the durability of the programmes carried out in the field or for

the image of the association. These risks must be managed. It is a question of respecting the principles of responsibility and impartiality that motivate the action, but also, through professionalism, to ensure the pursuit of the initial objectives, avoid drifting off, control the risks for victims, third parties, the organization, the programmes and the staff of Handicap International.

2.2. From acknowledgement to action

The association has a moral and legal responsibility concerning serious offences and common law crimes³ that it could become aware of, and that may be committed by individuals, national or foreign, whatever their status, acting within or around its programmes. As a humanitarian actor, it has a particular responsibility in the face of facts relating to genocide, war crimes or crimes against humanity.

2.2.1. Defining the violations

Serious violations have been clearly defined and established by the different internatio-

2. At the same time, not to give testimony in cases of serious violations, with full knowledge of the facts, also carries risks: both in terms of legal responsibility and of image, particularly if silence, confidentiality or passivity are interpreted, de facto, as forms of dissimulation or complicity.

3. For example: murder, paedophilia, trafficking of persons, arms or drug trafficking, etc.

nal courts of law set up in the course of the recent decades⁴:

• **Genocide**

Genocide is an act committed with the intention to destroy (in whole or in part) a national, ethnic, racial or religious group as such.

The following crimes constitute genocide: murder, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction, imposing measures intended to prevent births, forcibly transferring children, etc.

• **Crimes against humanity**

A crime against humanity is an act perpetrated in the context of a widespread or systematic attack directed against any civilian population. It can be committed in time of peace.

The following elements are examples of crimes against humanity: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape, sexual violence in all forms, persecution, enforced disappearance, apartheid, or other similar inhuman acts wilfully causing great suffering.

• **War crimes**

A war crime is a violation of laws and customs of war (international or internal conflicts).

The following elements are examples of war

crimes: wilful killing, torture and inhuman treatment, rape, wilfully causing great suffering, attempt against the physical integrity, destruction and appropriation of property, compelling service of prisoners of war in hostile forces, unlawful deportation and confinement, taking hostages, deliberate attacks against the civilian population, deliberately launching attacks against humanitarian assistance or peacekeeping missions, all forms of sexual violence, and using, conscripting or enlisting children.

2.2.2. Reporting a serious violation

Handicap International's staff witnessing any such violations in the areas of intervention, must report to the organization's headquarters, where a decision will be made as to whether to bring about a witnessing action⁵.

The report should present, among others:

- the **sources of information** and their reliability;
- the **nature and chronology of the facts**: violations committed (dates, places, nature, number or frequency of the acts perpetrated, number and identity of the people concerned, information or documents contributing to clarify the situation).

The management of Handicap International, on the basis of a study jointly carried out by those responsible in the field (people concerned, programme manager) and at headquarters (desk officer, board of directors, relevant departments), will judge on the

4. The definitions of these violations and the main crimes they refer to are listed here. For a more detailed description, read the "Elements of Crime", a text written by the Preparatory Commission of the International Criminal Court, which completes the statutes (www.un.org/icc).

5. The statutes of Handicap International (article 1st, paragraph 4) state that: "The association may give an account of, or make public, any situation contrary to human rights."

credibility and feasibility criteria and decide on the course to follow.

The decision to give testimony and the form it could take are assessed on the basis of:

- the accuracy and reliability of the testimony;
- the nature and seriousness of the facts reported;
- the political environment;
- the existence of similar positions of specialised organizations operating in the country concerned;
- the institutional and professional position of Handicap International in the country or region concerned;
- the security of people involved (Handicap International personnel, victims and third parties).

All Handicap International personnel undertake to respect the confidentiality of sensitive information, to respect anonymity, to take all the necessary precautions with regards to people directly involved (victims, sources of

information, supposed perpetrators) and to abstain from giving any public declaration outside the framework of the decisions that may be taken.

2.2.3. Possible courses of actions

Different ways of action may be explored, and combined, or used in isolation.

On the basis of a strategy to be prepared, the organization will decide, as the case may be:

- to make the information public (mobilization of public opinion, of the media, of relevant national and international authorities);
- to provide the information to another organization which is specialised in the protection of human rights and in the denunciation of violations;
- to transmit them to the relevant court.

The orientations and decisions will ensure, as their main objective, the enhanced protection of the population under threat and assistance to the victims.

3. Conclusion

From a humanitarian point of view, testimony of solidarity or of exposure, as well as judicial testimony, should contribute to prevent the occurrence of violations, to reduce their number and severity, and to limit their disastrous consequences for the population.

At the service of justice and social progress, the testimony must also contribute to restore the dignity and rights of human beings.

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