

ICOMOS

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS
МЕЖДУНАРОДНЫЙ СОВЕТ ПО ВОПРОСАМ ПАМЯТНИКОВ И ДОСТОПРИМЕЧАТЕЛЬНЫХ МЕСТ

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Paris, 16 April 2021

Consultation: Draft Policy on Cultural Heritage – comments by ICOMOS

Dear Madam Prosecutor,

ICOMOS (the International Council on Monuments and Sites) is a unique non-governmental, not-for-profit international organisation committed to furthering the conservation, protection, use and enhancement of the world's cultural heritage. It is dedicated to the development of common doctrines, the evolution and dissemination of knowledge, the creation of improved conservation techniques, and the promotion of cultural heritage significance. It has built a solid philosophical, doctrinal and managerial framework for the sustainable conservation of heritage around the world. As an official advisory body to the World Heritage Committee for the implementation of the UNESCO World Heritage Convention, ICOMOS evaluates nominations and advises on the state of conservation of properties inscribed on the World Heritage List. ICOMOS is a founding member of the Blue Shield, together with ICOM, ICA and IFLA.

ICOMOS strongly welcomes the initiative of the Office of the Prosecutor of the International Criminal Court (ICC) to prepare this enlightened Draft Policy on Cultural Heritage. It is a milestone for the protection of cultural heritage and associated communities throughout the world. The Policy demonstrates and substantiates that when cultural heritage is at risk, people and communities are at risk, and their heritage and its transmission to future generations are also at risk.

ICOMOS wholeheartedly confirms its willingness to collaborate with the ICC as a professional organisation, advisory body for the World Heritage Convention and civil voice for cultural heritage, its protection, care and living conservation.

ICOMOS acknowledges the many common views between the Office of the Prosecutor and ICOMOS on the importance, significance and role of cultural heritage in the identity and lives of communities and humanity as a whole.

In welcoming the Draft Policy in detail and spirit, ICOMOS notes in particular the following:

- The Draft Policy takes a global approach to cultural heritage, embracing its intangible and tangible dimensions and articulates a strong connection between cultural heritage, people and communities.
- Through the Draft Policy the ICC commits to combatting all types of crimes in a prompt manner (paragraph 95), at all stages of its work “...*preliminary examination, investigation, prosecution, and—when so invited—reparations*” (paragraph 5), and to strengthen its ability and those of its partners to close the impunity gap (paragraph 121).
- The scope of the Draft Policy includes crimes against or affecting cultural heritage, as they all affect people and communities (paragraph 95). Paragraph 95 goes on to state that “... *the Office will engage with... international and non-governmental organisations at an early stage, in order to verify the information available to prevent the recurrence of crimes.*” It reveals the cultural heritage dimension of different crimes, including for example sexual and gender-based crimes and cultural heritage (paragraph 71).
- Paragraph 19 sets out the Draft Policy and Office's intention to enhance the protection of cultural heritage including, as appropriate, “...*by raising awareness on these issues with external partners, and by fully exercising its centrality to the community of practice dedicated to the protection of cultural heritage.*”
- Through the Draft Policy and its implementation the ICC aims to strengthen accountability for cultural heritage crimes, “... *thus contributing to their prevention and the development of international jurisprudence*” (paragraph 106).

ICOMOS used the consultation process as an opportunity to gather preliminary responses from a number of our specialist International Scientific Committees and Working Groups, notably on rights-based approaches, areas of extreme conflict impact on cultural heritage, and risk preparedness. All the detailed feedback commentary are not included in this submission. Therefore, in recognising the potential positive influence and effect of this Draft Policy, ICOMOS would welcome the opportunity to elaborate on these in greater detail with the ICC and preferably prior to the final adoption of the Policy. Meanwhile ICOMOS would like to make the following preliminary suggestions:

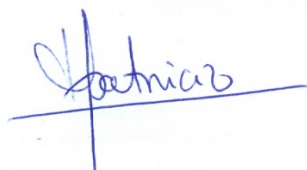
- In addition to the examples from Syria, Iraq, and Mali (paragraph 2), a reference to the cultural heritage destruction in Yemen and Myanmar should be considered.
- Definitions and terminology:
The Draft Policy uses the term 'cultural heritage' instead of the term 'cultural property'. This new and inclusive approach is welcomed and applauded (paragraph 14 and following).
Expressions like 'value', 'significance' and 'interpretation' have different meanings and application. Cultural heritage can only be defined in relation to its values, who values it and why: this could be more clearly articulated in the Policy.
For consistency, ICOMOS suggests to include the terms 'historic cities', 'archaeological sites' and 'digital artefacts' in paragraph 16. Also the term 'landscape' would preferable to use over 'natural landscape' as it better incorporates communities and livelihoods (paragraph 67).
- The Draft Policy elaborates on the importance of evidence to achieving successful outcomes. ICOMOS notes this is a complex task requiring informed processes and approaches. There are opportunities for effective collaboration between the ICC and ICOMOS on training (collecting evidence, cultural heritage terminology (paragraph 130)) and availing of ICOMOS professional network expertise.
- Sanctions: Consideration could be given to incorporation and application of the principle that if there is economic gain arising from the crime (e.g., illicit trafficking), such benefits should be seized.
- Alternative forms of dispute resolution and prevention: The particular characteristics of cultural heritage can make it suitable to mediation and other alternative dispute resolution and further reference to this may be helpful within the Policy. The value of such approaches is to encourage prevention.

In conclusion, ICOMOS accepts the invitation extended in the Policy for other organisations to assist in implementation. ICOMOS and Blue Shield, of which ICOMOS is a founding member, are referenced in the draft document (paragraphs 117 and 99). ICOMOS and its members are very happy to work with the Court in peacetime, to increase awareness, documenting cultural heritage, and, of course during all stages of the investigation and prosecution process (paragraphs 92, 95, 102, 109, 110, 122).

ICOMOS' expertise is multi-disciplinary and extends across the globe. There are many areas of activity within ICOMOS which can provide methodologies, assessment, mediation, practice, training and other tools essential for successful application of this significant and seminal Policy.

We remain at your disposal through our International Secretariat in Paris (secretariat@icomos.org) who can coordinate any future ICOMOS contributions you may require.

Yours sincerely



Teresa Patricio
President