

International Criminal Court
Draft Policy on Cultural Heritage | 22 March 2021

Opinion by Antoon De Baets | 13 April 2021

Dear Office of the Prosecutor,

Thank you very much for distributing the ICC's [Draft Policy on Cultural Heritage](#) (22 March 2021) for comment.

After cultural aspects were removed from the genocide definition during the *travaux préparatoires* of the Genocide Convention in 1946–1948, as a historian I greatly appreciate the reappearance of the cultural dimension of atrocity crimes in a thoughtful and balanced form in this document.

Please find some observations on it below:

- The policy document speaks throughout about evidence but it does not identify distinct stages in the collection of archives, records, and evidence. It seems to me that five stages can be distinguished:
 1. Archives that constitute cultural heritage in themselves.
 2. Archives that document cultural heritage.
 3. Archives that document crimes against or affecting cultural heritage.
 4. Archives that document crimes against or affecting cultural heritage and become forensic evidence.
 5. Archives that contain forensic evidence of crimes against or affecting cultural heritage.

The policy document speaks about category 4 (and, implicitly, in the section about Institutional Development, about category 5), but it does not mention the first three categories. In my view, they deserve explicit and separate mention as forms of cultural heritage. In this regard, cooperation could be sought with the International Council on Archives.

- The policy document emphasizes the importance of age groups and gender groups and the role of community leaders in cultural heritage issues. In particular, it mentions the roles of
 - children “as the conduit of cultural heritage to future generations” (§ 85),
 - women “as oral transmitters of the community’s culture” (§ 71),
 - religious and spiritual leaders (§§ 59, 69, 71, 78, 81, notes 105, 113),
 - past generations and tradition (§§ 15, 69–72).

In contrast, it mentions the role of the elderly (§ 73) only in passing and unrelated to the ideas of intergenerational conduit, leadership, and tradition.

It is well-known that bearers of tradition and heritage can become targets of human rights violations and that, in times of war and genocide, pregnant women and children are often killed for the mere fact that they represent future generations. However, it also happens, especially in the case of genocide of indigenous communities, that the elderly are targeted *as elderly*. Usually, the elderly are the leaders of such communities and killing the former is a strategy to destroy the latter. But the elderly are also sometimes killed because they represent past generations and are the guardians of cultural memory (in particular oral memory). According to their killers, they must die in order to break the chain of

transmission from past to present and future generations. One is reminded of the proverb “When an old person dies, it is a library that burns.”

See, for example, the report of the Comité pro Justicia y Paz de Guatemala, *Human Rights in Guatemala* (1984), page 18: “[T]he elders of the community are murdered with exceptional cruelty in order to destroy the people’s links with their past. . . . [T]he elders are the trustees of the people’s history, culture and beliefs, and responsible for transmitting them to coming generations.” This idea is also expressed in Human Rights Office of the Archdiocese of Guatemala, ed., *Guatemala: Never Again! Recovery of Historical Memory Project* (New York: Maryknoll, 1999), 48, and *Guatemala: Memoria del silencio: Informe de la Comisión para el Esclarecimiento Histórico*, vol. 5, *Conclusiones y recomendaciones* (Guatemala: Oficina de Servicios para Proyectos de las Naciones Unidas, 1999), § 62.

- Finally, I take the liberty to attach “Iconoclastic Breaks with the Past,” a chapter from my book *Crimes against History* (London: Routledge, 2019), 61–76, in which I present a typology of iconoclasm based on thirteen post-1945 cases (Afghanistan, Azerbaijan, Cambodia, China, Iran, Iraq, Mali, Pakistan, Romania, Saudi Arabia, Syria, Sudan, and Yugoslavia). This may be useful as background to the policy document.

With deep appreciation for all your work and with best wishes,

Antoon De Baets