

# Did the ICTY Fail the Victims?

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...)  
*Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,*

*Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,*

(...)

UN SC Res  
827 (1993)

Prosecutor v.  
Furundžija,  
Judgement,  
10.12.1998.

288. It is the mandate and the duty of the International Tribunal, in contributing to reconciliation, to deter such crimes and to combat impunity. (...)

86. (...) retribution is better understood as the expression of condemnation and outrage of the international community at such grave violations of, and disregard for, fundamental human rights at a time that people may be at their most vulnerable, namely during armed conflict. It is also recognition of the harm and suffering caused to the victims (...)

Prosecutor  
v. M.  
Nikolić,  
Judgement  
, 2.12.2003.

Do the people of former Yugoslavia perceive the ICTY as  
a just tribunal?

Are the verdicts widely accepted and approved of?

Are the victims satisfied?

# 1. Reparations

PUNISHMENT BASED JUSTICE IS NOT  
ENOUGH

- Restitution of property – yes
- Reparations for physical or emotional injury - no



RPE - ICTY

Rule 105

Restitution of Property

(A) After a judgement of conviction containing a specific finding as provided in Sub-rule 98 ter (B), the Trial Chamber shall, at the request of the Prosecutor, or may, proprio motu, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.

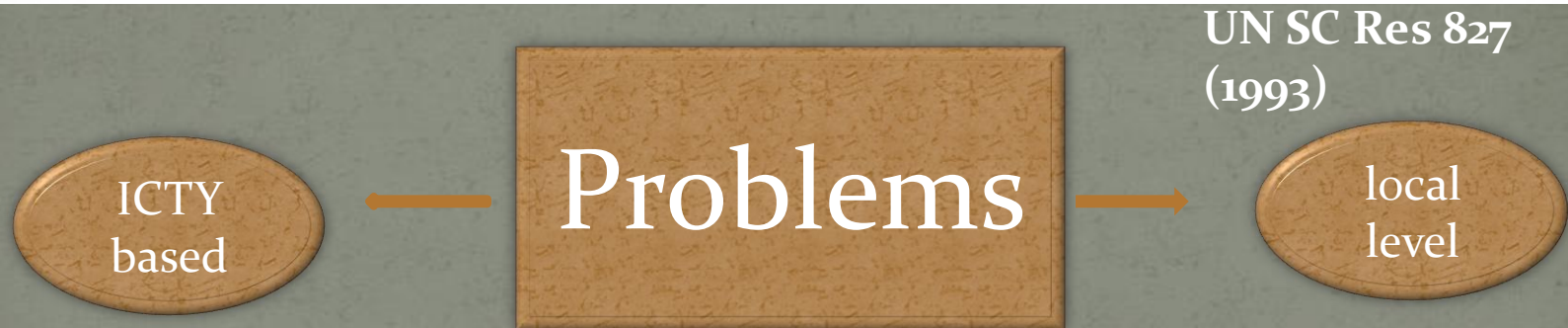
(D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

# Reparations

(...)

7. *Decides also that the work of the International Tribunal shall be carried out **without prejudice to the right of the victims to seek**, through appropriate means, **compensation** for damages incurred as a result of violations of international humanitarian law;*

(...)





# ICTY based problems

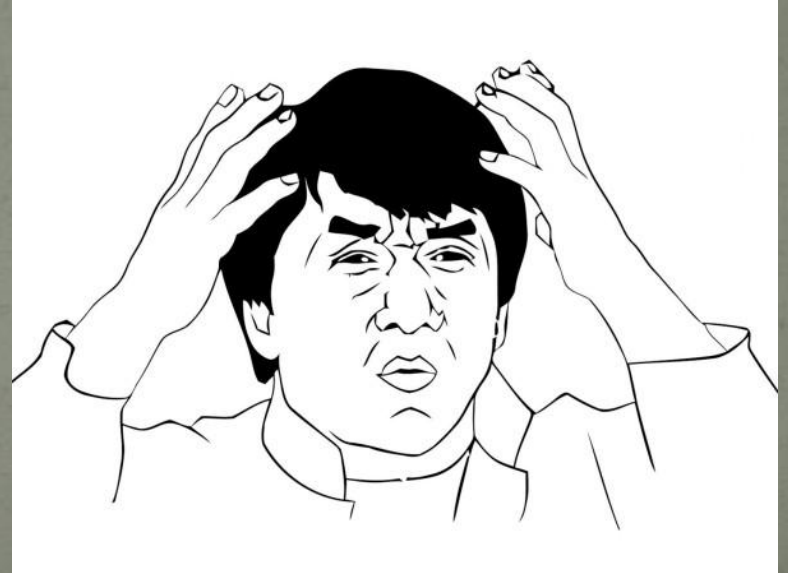
- No right of access to evidence presented during the proceedings before the ICTY
- Cannot demand to be informed of the progress of the proceedings before the ICTY

# Local level problems

- Domestic legislation and reparations policy
- Will the resources extracted from the perpetrator be sufficient?
- Political good will of a specific state to assume responsibility instead?

## 2. Difficulties in understanding the law

- j.c.e. I, II, III
- role of the judges
- witnesses



### 3. Location of the Tribunal

**Victims: BiH and Croatia**  
**Trial: Netherlands**

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**Victims: Sierra Leone**  
**Trial: Sierra Leone**

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## 4. Length of the proceedings

*Justice delayed is justice denied.*

# 5. Politization

## 6. Prosecutor's discretion not to prosecute and charges bargaining



# Suggested Solutions

- International Claims Commission (?)
  - Trust fund (?)
- Prosecutor must notify the victims of the reasons behind the decision not to prosecute



# But...

- Number/nationality of persons convicted
- Possibility of returning home
- Repaired houses
- State support

# Real questions?

- Is the problem in the system or outside the system?
- Did the international community fail to sufficiently value the conflict in former Yugoslavia?
- If the ICTY helped in establishing peace among the people of former Yugoslavia, is this peace permanent?

Thank you!