The Impacts of Litigation in relation to Systematic and Large-Scale Atrocities committed by the Dutch Military Forces in the 'Dutch East Indies' between 1945-1949

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impact

In the title, Dutch East Indies is purposely placed in between quotation marks to underline that even though the Dutch Court considers the territory of Indonesia still under colonial rule between 1945-1949, and thus refers to the Dutch East Indies when discussing the atrocities committed, this is strongly disputed by others who consider Indonesia to be independent since 17 August 1945.

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Table of contents

1. Preface

The colonial past of the Netherlands has been under scrutiny since 2008. Acknowledgement of historical injustices committed by the Netherlands in former colonies such the Dutch East Indies, Suriname, and the Dutch Antilles continues to be a topic of heated public debate. Underlying this discussion is the failure to recognize slavery and colonialism as part of the collective memory of Dutch society. The discussion shows that unacknowledged historical injustices can reinforce injustices in present-day society. Therefore, a correct reflection of history in the collective memory of society is instrumental to ensure tolerance and inclusiveness. For that, political acknowledgement of historical injustices is key. But governments are not always eager to acknowledge historical injustices, afraid of the claims that may result from it. Victims, interest groups and lawyers may therefore resort to litigation to enforce acknowledgement and redress of historical injustices before courts.

This report discusses the impact of litigation against the Dutch government for the atrocities committed by Dutch military forces in the Dutch East Indies between 1945-1949, when the Dutch tried to restore their colonial rule.[1] The interest group Committee of Dutch Debts of Honour (the Committee), established in 2007 by Jeffry Pondaag, and its lawyer Liesbeth Zegveld, first tried - to no avail - to establish a dialogue with the Dutch government to reach an out-of-court settlement for the victims consisting of apologies and compensation. When the Dutch government failed to acknowledge their request for reparation, civil proceedings were initiated against the Dutch State before the Dutch civil court in The Hague.

The civil suits that were brought against the Dutch State relate to the summary executions of men in the village of Rawagede and in South Sulawesi, a torture case and a rape case, all committed by Dutch military forces in the Dutch East Indies between

[1] The date of independence of Indonesia continues to be disputed. As this report analyses the impact of the court cases, it follows the reasoning of the Dutch Court that Indonesia became independent on 27 December 1949. The authors like to emphasis, however, that there are strong arguments to counter-argue this claim, but this discussion beyond the scope of the research. See further under section 2 background to the cases.

Left page photo (part): 'Cleansing action on the way to Piyungan, 26 April 1949', Kossen Collection, BC594, Image Bank WWII, NIOD, Amsterdam.

1945-1949. While nearly 60 victims are, or have been[2], represented in these court cases, it is only a fraction of the total number of victims that seek reparation.[3]

The objective of this report is to provide an overview of the litigated cases (i.e. the Rawagede case, the South Sulawesi cases, the Peniwen case, the East Java torture case and the East Java rape case) and to assess the positive and negative effects of these legal proceedings. Legal proceedings were ongoing at the time of the publishing of this report and updates can be found on the Nuhanovic Foundation's website. This report makes use of the framework developed by Helen Duffy (2018) to assess impact in the context of strategic human rights litigation.[4] The impact of the litigated cases is discussed on the basis of the most prominent levels Duffy distinguishes, being impact on: (1) the victims and survivors; (2) the law; (3) political and social change; and (4) democracy and the rule of law.[5] Considering the specific scope of the research, the report is mainly based on desktop analysis, complemented with interviews and court attendance.

The report is organized as follows: first, a background is given to the litigated cases in section 2 and 3. The Rawagede case, South-Sulawesi cases, the Peniwen case, East Java torture case and East Java rape case are discussed in more detail in section 4. The analysis focuses on the impacts that these cases have had based on Duffy's framework in sections 5 to 8, followed by the conclusion with some final remarks in section 9.

[2] After the Court decided in the South-Sulawesi Children's case in November 2017 that the reasonable period of time within which victims can claim compensation elapsed, several claims were withdrawn. See section 4.6 for an extensive discussion of this case.
[3] In 2017, around 600-650 widows and children still sought reparation (confidential source, on file with the authors).
[4] Duffy, Helen, Strategic Human Rights Litigation: Understanding and Maximising Impact (Hart Publishing 2018).
[5] Duffy, Helen, 'Strategic Human Rights Litigation: "Bursting the Bubble on the Champagne Moment,"' Inaugural Lecture, 13 March 2017, p. 5.

2. Background to the cases

From 1816 until the 1940s,[6] the Dutch East Indies was a colony of the Netherlands. During the Second World War, when the Netherlands came under German occupation, Japan occupied the Dutch East Indies and the Dutch withdrew. Amidst a power vacuum that emerged after the capitulation of Japan in 1945, President Soekarno and Vice-President Hatta proclaimed the Republic of Indonesia on 17 August of that year. Yet, the Dutch Government failed to recognize the declaration of independence and claimed the territory as its own. What followed was a period of extreme violence (1945-1949) during which Indonesian independence fighters defended the Republic of Indonesia, while the Dutch Government tried to restore its colony. In an attempt to break the spirit and the guerrilla tactics of the independence fighters, Dutch forces committed "structural and excessive violence" against the civilian population.[7] During this four year period, around 150,000 Indonesians (civilians and soldiers) and about 5,000 Dutch soldiers died.[8] Under great international, diplomatic and economic pressure, the Netherlands finally formally acknowledged the independence of the Republic of Indonesia on 27 December 1949.

The exact date of Indonesia's independence remains up until this date a topic of debate, with important historical and legal implications.[9] On the one hand, you have those who argue that the Republic of Indonesia was established on 17 August 1945,

[6] The precise colonial period of the Dutch East Indies is disputed. Whereas some mark the ending of the Dutch East Indies with the capitulation of the Japanese and the subsequent proclamation of independence of Indonesia in 1945, others see the transfer of sovereignty by the Dutch government in 1949 as marking the end of the colonial period.
[7] Limpach, Rémy, *De brandende kampongs van Generaal Spoor* (Amsterdam: Boom, 2016), pp. 737-746, in particular p. 738.
[8] Immler, Nicole L., 'Human Rights as a Secular Social Imaginary in the Field of Transitional Justice: The Dutch-Indonesian 'Rawagede Case', in: Hans Alma and Guido Vanheeswijck (eds.), *Social Imaginaries in a Globalizing World* (Berlin/Boston: De Gruyter 2018), p. 199. Note that the total number of victims during Dutch colonial rule in Indonesia is estimated to be between 600,000 and 1,000,000. See Raben, Remco, 'On Genocide and Mass Violence in Colonial Indonesia', in: Bart Luttikhuis & A. Dirk Moses (eds.), *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia* (London & New York: Routledge, 2014), pp. 329-347.
[9] Bank, Jan, 'An Awkward Anniversary Indonesia and the Netherlands: Decolonisation Fifty Years On', *The Low Countries* 4 (1996-1997), pp. 91-96; De Doorbraak, Harry Westerink, 'Dutch study on the colonial war in Indonesia: "The students mark their own homework", 2 July 2017; NOS, 'Indonesië wil erkenning onafhankelijkheidsdag', 8 September 2013.

since the Netherlands was already defeated by Japan and the legitimate proclamation of independence was the outcome of the power vacuum after the capitulation of Japan. This reading is not only voiced by Indonesia, but also acknowledged by other States. On the other hand, you have those who argue that it was only when the Netherlands formally acknowledged the independence of the Republic of Indonesia on 27 December 1949 that the sovereignty of the colony Dutch East Indies came to an end.[10] This is an important discussion since both arguments have consequences for the way in which the atrocities committed by the Dutch military forces between 1945-1949 can be qualified. If acknowledging 17 august 1945 as the date of Indonesia's independence, the actions of the Dutch military would classify as an unlawful intervention in the sovereignty of another State.[11] By acknowledging 27 December 1949 as the date of Indonesia's independence, the military actions of the Dutch military would only be considered unlawful when these would amount to excessive violence since the colony of the Dutch East Indies was still in place. Thus, any forceful action to suppress a violent uprising within the territory by Dutch military forces would be considered legal if the criteria of proportionality and necessity were met.[12] While this discussion is beyond the scope of this report, it is important to critically assess these assumptions when rethinking the historical injustices of our colonial past more broadly. As this report focusses on the litigated cases before the Dutch Court, it follows the Court's assessment of the situation. In the Rawagede case, the court concluded that the atrocities were committed in an area then still part of the Kingdom of the Netherlands.[13] Hence, the Court was of the opinion that it was only in 1949 that the sovereignty was formally handed over to the Republic of Indonesia.[14]

At the time of the atrocities, there was hardly any criminal and civil accountability. One exception was the civil case concerning the killing of Masdoelhak Nasoetion. On 21 December 1948, Adriana Nasoetion-Van der Have filed a claim against the Dutch State for 200,000 guilders in compensation for the summary execution of her husband Masdoelhak Nasoetion, the Government-Secretary of the Republic of Indonesia, by the Dutch military.[15] When the Dutch government failed to recognize liability for the unlawful act committed against her, the widow decided to summon the Dutch State. In 1953, the District Court of The Hague found the Dutch State liable for the unlawful conduct by its military forces and ordered the Dutch State to compensate her for the damages she had suffered.[16] While the Dutch State finally agreed to pay 149,000 guilders in a settlement, it continued to deny its liability. No criminal proceedings were brought against any of the persons that were directly or indirectly involved in the execution, despite extensive documentation of the event in national archives. While this case had the potential to open up other cases against the Dutch State, it would take almost 60 years before a new case (the Rawagede case) would be brought against the Dutch State for similar atrocities.[17] This long delay may have, in large part, been due to the difficulties involved in bringing a claim in civil proceedings. The widow of Masoelhak Nasoetion was born in the Netherlands and had family living there and was likely in a better financial situation given her marriage to a high-ranking government officer than other victims of similar atrocities. Other victims, many of whom were peasants, simply did not have the means, the knowledge and the connections to file a claim against the Dutch State.

The brutal violence of 1945-1949 only came to the attention of the general Dutch public in the 1960s. Then former Dutch military Joop Hueting revealed the atrocities in an interview aired on national television. In response to the heated debate that followed, the government initiated an official investigation which resulted in "*de Excessennota*" (Excesses note) in 1969. This report, drafted in only few months by a team of Dutch government officials on the basis of governmental archives, suggested that the described atrocities were only incidences of extreme violence (i.e. "excesses"), and not of a structural or systematic nature. Purposefully, the term "war crimes" was not used, to avoid comparisons with German and Japanese war crimes. Despite the fact that 110 factual or possible "excesses" were brought to light, many incidences of violence remained outside the scope of the report and the analysis lacked the necessary nuance.[18] While the *Excessennota* acknowledged the atrocities

[10] Formal stance of both the Netherlands and the UN, see for example: http://www.un.org/en/decolonization/nonselfgov.shtml#n
[11] Article 2(4) UN Charter refers to the prohibition on the use of force in the internal affairs of another state.
[12] In any case, this reading means that the violence between 1945 and 1949 by the State was committed against its own citizens.
[13] District Court of The Hague, Judgement of 14 September 2011, ECLI:NL:RBSGR:2011:BS8793 (Rawagede case), para 4.4.
[14] Idem.
[15] NRC, Frank Vermeulen, 'Hoe een weduwe de Nederlandse Staat deed buigen', 27 January 2017; Java Post, Frank Vermeulen, 'Hoe een weduwe de Nederlandse Staat deed buigen', 14 June 2018 (republication).
[16] Idem; Minister van Oorlog, Confidential Letter, 27 September 1950, conf. LA T 233 (National Archive).
[17] Human Rights Implementation Centre, *Measuring the Impact of Interights Strategic Litigation* (Bristol Law School, August 2013).
[18] Limpach, *De brandende kampongs*, pp. 29-30.

that had taken place, the Dutch Government took the position that no prosecution would follow for the crimes committed by Dutch militaries in the Dutch East Indies in the period 1945-1949.[19] The official stance of the Government was that while the Dutch military forces had been engaged in excesses of violence, it was only in response to and in the context of guerrilla attacks. After debate, Parliament concluded that "note was taken" of the *Excessennota*.[20] Thus, while the *Excessennota* led to some acknowledgement of the atrocities committed by Dutch militaries between 1945-1949 in the Dutch East Indies, it did not result in any form of accountability, be it civil or criminal.

In 1995, 25 years after the Excessennota was published, a documentary was broadcasted on national television about mass executions in Java, but a legal procedure to redress these historical injustices was still considered to be "unfeasible".

After 1969, books, photo exhibitions, and other public awareness events discussed the atrocities reported in the *Excessennota*, but without a major impact for those who had suffered directly from the atrocities. These efforts did little to influence public opinion, to establish truth, to raise awareness, and to start a dialogue about those black pages of Indonesian and Dutch history, let alone lead to any form of accountability or redress for the victims of the atrocities. In 1995, 25 years after the *Excessennota* was published, a documentary was broadcasted on national television about mass executions in Java, but a legal procedure to redress these historical injustices was still considered to be "unfeasible".[21]

[19] District Court of The Hague, Judgement of 14 September 2011, ECLI:NL:RBSGR:2011:BS8793 (Rawagede case), para 2.12. 'De conclusie, waartoe de Regering is gekomen, is dan ook dat in de overgrote meerderheid van de gevallen, en veelal de ernstigste, geen strafvervolgingen meer mogelijk zijn en dat in het enkele geval, waarin een strafvervolging nog kan worden overwogen, waarvan moet worden afgezien, omdat een daarop gericht vervolgingsbeleid afhankelijk van een toevallig beschikbaar zijn van een voldoende compleet dossier en het toepasselijk zijn van een enkele nog niet door de verjaring achterhaalde wettelijke bepaling willekeurig is. (...)" [summary of the statement in English: the government has concluded that in the large majority of cases, including the most severe ones, no prosecution is possible and in the occasional instance where prosecution is still possible, it is not going to be pursued because prosecution would be dependent on the availability of a comprehensive file.]

[20] District Court of The Hague, Judgement of 27 January 2016, ECLI:NL:RBDHA:2016:701, para 2.10 (East Java Rape case).

[21] Rawagede case (2011), para 2.14; Immler, *Social Imaginaries*, p. 199.

3. The move towards litigation

In 2007, Jeffry Pondaag and others established the Committee of Dutch Debts of Honour in the Netherlands, two years after the Indonesian branch was established in 2005. The Committee set as its goal, among others, the redress for the victims and an acknowledgment of the crimes of the past. The Committee reached out to the Dutch international human rights lawyer Liesbeth Zegveld in seeking recognition and compensation for the victims of the crimes.[22]

In case of an unlawful act committed by a State, victims, interest groups, and lawyers may express their claim in tort and may start a dialogue with the State to see whether an out-of-court settlement can be reached to remedy the damages as a result of the unlawful acts of the State. If this is unsuccessful or unattainable - for example because the government questions the validity of the claim - civil proceedings can be started against the State. Civil proceedings provide private parties the opportunity to sue other parties, including the State, for unlawful acts committed against them. Unlawful acts committed by State organs may result in establishing liability of the state (*state responsibility*) for the damages inflicted upon the victims and for paying compensation. To establish state responsibility for unlawful acts, it must be proven that the State committed an unlawful act against the victims, that there have been damages and that a causal link can be established between the unlawful act and the damages. Starting civil proceedings is, however, a costly and timely process and the outcomes are uncertain. Further, whereas a settlement agreement can be reached at the same time for many victims of similar atrocities, every single claim needs to be substantiated. Additionally, a civil claim in tort is subject to a statute of limitations. This means that the claim must be brought against the other party within a certain period of time after the unlawful act occurred. Only under very exceptional circumstances will the Court lift the statute of limitations, in line with the principles of fairness and reasonableness.

Between 2007-2009 the Committee and Zegveld undertook numerous efforts to negotiate with the Dutch Government to reach an out-of-court settlement for the

[22] The objectives and active members of the Committee of Dutch Debts of Honour can be found on the Committee's website, http://www.kukb.nl/main.php?id=2. While Jeffry Pondaag represents the Committee in the Netherlands, for the fieldwork in Indonesia Yvonne Rieger-Rompas is instrumental, following interview authors with Jeffry Pondaag (22 August 2018, Heemskerk).

Indonesian victims, but the government took the position that the claims of the victims were time-barred, and that the statute of limitations should be applied.

The unwillingness of the Dutch Government to accept responsibility motivated the decision to start civil proceedings against the State in 2009 before the Dutch Lower Court in The Hague.[23] The proceedings were initiated by the Committee, eight widows, a daughter, and the only male survivor of the summary executions in Rawagede.[24] For Pondaag, going to court was "the last avenue," as all other strategies for establishing the truth and to forcing people to listen had been unsuccessful.[25] Zegveld also indicated that going to Court was not her preferred route, but considering the circumstances and the severity of the atrocities in question, she felt there was no other option than to litigate.

While the preference had always been to reach an out-of-court settlement, with litigation being considered an ultimum remedium ("last resort"), the unwillingness of the Dutch Government to accept liability resulted in the decision to start legal proceedings against the State.

While the Dutch Government repeatedly insisted that the claims in the Rawagede case were time-barred due to the statute of limitations, in 2009 it allocated development aid (850,000 Euros) to the village of Rawagede to improve its infrastructure.[26] While this may have been considered by both the government and the general public as a kind gesture, it stood in sharp contrast to the colonial surplus for the Dutch East Indies that is estimated to be around 24 billion guilders.[27]

[23] Idem; Interview authors with Liesbeth Zegveld (24 September 2018, Skype).
[24] Interview Jeffry Pondaag (2018).
[25] Idem.
[26] Van den Herik, Larissa, 'Addressing "Colonial Crimes" through Reparation? Adjudicating Dutch Atrocities committed in Indonesia', *Journal of International Criminal Justice* 10 (2012), pp. 693-705, p. 696.
[27] Gordon, Alec, 'Netherlands East Indies: The Large Colonial Surplus of Indonesia, 1878-1939', Journal of Contemporary Asia 40:3 (2010), pp. 425-443. Colonial surplus refers to the capital gained by the colonizing power, with underdevelopment being a common consequence for the nation under its regime.

Photo: Marjolein van Pagee

Lawyers Brechtje Vossenberg (l) and Liesbeth Zegveld (r) with their clients Andi Monji Monjong and I Talle at the District Court of The Hague, June 2019.

The development aid was explicitly not referred to as reparation money, and a commemoration plaque at the planned school building – a symbolic gesture demanded by the Dutch widows' representatives – was rejected. This once more emphasised that the Dutch government was not willing to take responsibility for the summary executions and other atrocities.

Thus, while the preference had always been to reach an out-of-court settlement, with litigation being considered an *ultimum remedium* ("last resort"), the unwillingness of the Dutch Government to accept liability resulted in the decision to start legal proceedings against the State, due to, as Zegveld and Pondaag stated, the severity of the crimes committed.[28]

[28] Interview Pondaag (2018); Interview Zegveld (2018).

4. The litigated cases – claimants, requests and outcomes

In all cases against the Dutch State, claimants sought legal recognition of the Dutch State's liability for the unlawful acts, and compensation for the damages and the costs of the legal proceedings. The Rawagede case has been considered the most ground-breaking case, as the reasoning of the Court opened up the possibility for similar cases to be brought against the Dutch State. From a legal perspective, the South-Sulawesi case has been the most interesting case so far. At the time of the Rawagede case, the Dutch Government still asserted that the statute of limitations would make it impossible to successfully litigate the claims, and did not dispute the unlawfulness of the atrocities committed in Rawagede by Dutch military forces. After the statute of limitations was lifted in the Rawagede case, the Dutch Government changed its strategy in the South Sulawesi case and disputed the claims not only on procedural grounds (statute of limitations) but also on substantial grounds (the claims itself), resulting in several legal hurdles for the claimants. However, the statute of limitations was also lifted in the South Sulawesi case. Most importantly, the South Sulawesi case demonstrated the difficulties of obtaining and presenting evidence in a present-day court in relation to atrocities committed during a chaotic violent conflict, that took place in a different cultural context more than 60 years ago.

4.1. The Rawagede case (2007-2011)

The massacre in the village of Rawagede is one of the atrocities listed in the *Excessennota* and the first case brought against the Dutch State by the victims and the Dutch Committee for Dutch Debts of Honour. On 9 December 1948 hundreds of men were summarily executed as part of a Dutch military operation in response to allegations that a terrorist underground movement had developed in Rawagede. While the State set the death toll at 150, the local population claimed that 431 men had been killed.[29] A UN investigation concluded that the actions by the Dutch State were "deliberate and ruthless".[30] During the operation, Dutch military forces en-

[29] Zegveld, Liesbeth, 'Apologies and the Dutch East Indies', speech during 4th meeting of Road to Justice series 2014, De Balie, Amsterdam, 7 May 2014, p. 6. Available at: https://www.niod.nl/en/roads-justice/apologies-and-Dutch East-indies.
[30] Rawagede case (2011), para 2.6.

Left page photo (part): 'Cleansing action on the way to Piyungan, 26 April 1949'. Kossen Collection, BC594, Image Bank WWII, NIOD, Amsterdam.

countered no weapons, indicating minimal resistance on the side of the population, bringing into question the necessity and incentive for such violence.[31]

The Committee of Dutch Debts of Honour visited Rawagede in 2007 and informed the villagers of the possibility to hold the Dutch State to account for the damages suffered as a result of the executions. Ten victims decided to join the Committee in a quest for accountability and compensation. On 8 September 2008, Zegveld sent a letter to the Dutch Government on behalf of the victims, holding the State accountable for the Rawagede executions and requesting compensation and recognition. But to no avail. Subsequently, the Dutch State was summoned before Court on 30 November 2009.[32]

The Court stated that upholding the limitation period was unacceptable in the given the circumstances, based on the principles of reasonableness and fairness.

The claimants requested the Court to establish that the Dutch State had acted unlawfully towards the claimants being (1) eight widows whose husbands had been executed; (2) one male survivor of the executions; (3) one daughter whose father had been executed; and (4) the Committee of Dutch Debts of Honour on behalf of all the other victims who suffered as a consequence of the summary executions and other atrocities committed during that period.[33] The claimants requested the Court to hold the Dutch State liable for the damages and for the costs of the legal proceedings.[34]

While not disputing the events nor its responsibility, the Dutch State argued that the claims were time-barred and therefore inadmissible. In its view, no claims could be brought against the Dutch State for any of the unlawful acts committed at the time.[35]

[31] Hoffenaar, Jan, 'De Indonesische kwestie (1945-1949). De Nederlandse militaire inbreng nader bekeken', *Militaire Spectator* 156(4) (1987), pp. 172-179, p. 174.
[32] Rawagede case (2011), para 2.17.
[33] Idem, para 3.1.
[34] Idem.
[35] Idem, para 4.3.

However, on 14 September 2011, the Court decided against the State. The Court stated that upholding the limitation period was unacceptable in the given the circumstances, based on the principles of reasonableness and fairness. The Court acknowledged that due to their social, political, economic, and societal position, the victims never had had access to justice.[36] On the basis of lack of access to justice as well as the gravity of the atrocities – similar to considerations in claims arising out of the Second World War – the Court concluded that the statute of limitations could not be upheld in relation to those claimants who were directly affected. The "directly affected" were, according to the Court, the widows and the man who was wounded during the summarily executions, but not the child who was born after the execution of her father.[37] The Court reasoned that "the next generation" was affected to a lesser extent by the actions undertaken by the Dutch State than "those directly affected".[38] Therefore, the Court upheld the statute of limitations towards the claim of the daughter. In addition, the claim by the Committee was considered inadmissible. The Court wrote that the Committee did not exist during the time of the executions and had therefore not suffered damages. The Court also stated that it was unclear who exactly was represented by the Committee.[39]

In conclusion, the Court found the Dutch State responsible for the damages of those claimants directly affected by the summary executions in Rawagede on 9 December 1947, being the widows and the wounded. The exact damages were to be determined in a separate civil procedure for the determination of damages (*Schadestaatprocedure*).[40]

The Dutch State did not appeal the decision of the Court, which was considered to be an "honourable thing to do and was appreciated by the victims".[41] However, no civil procedure for the determination of the damages followed. Instead, the State decided to negotiate a settlement with the now nine widows of Rawagede (the ninth being the widow of the only male survivor, who had died after the claim commenced) outside of court. Following negotiations, the State agreed to pay each widow 20,000 Euros of compensation, plus the costs of the legal proceedings, and

[36] Idem, para 4.13.
[37] Idem, paras 4.14, 4.17 and 4.19.
[38] Idem, para 4.17.
[39] Rawagede case (2011), para 4.20.
[40] Idem, para 4.26.
[41] Zegveld 2011.

to extend their formal apologies as form of recognition.[42] This formal apology was provided during a remembrance ceremony in 2011 in Balongsari village, formerly known as Rawagede.[43] To the widows, the apology was the most important aspect of the settlement, with compensation being of lesser significance, as will be discussed in more detail below when analysing the impact of the cases on the victims (section 6).

To the widows, the apology was the most important aspect of the settlement.

As a result of the Rawagede case, the Dutch State decided to offer settlements to the widows of victims of similar atrocities, including those in South Sulawesi. The settlement and its impact on the South Sulawesi litigation is discussed in detail below.

4.2. South Sulawesi widows and children case (2012-present)

The case concerning South Sulawesi (then *Zuid Celebes*) involved similar summary executions of men as had happened in Rawagede. In late 1946 and early 1947, Dutch military forces, under command of Captain Raymond Westerling, conducted so-called "cleansing actions" in South Sulawesi, during which many men suspected of nationalist terrorist activities were summarily executed. The executions took often place in public and were witnessed by the population, including children. Public executions were thought to suppress nationalism and coerce the population into submission to Dutch authority.[44]

Following the successful outcome of the Rawagede case, ten widows and children of men who were executed in South Sulawesi submitted a letter to the Minister of Foreign Affairs, dated 7 May 2012, holding the Dutch State liable for the damages resulting from the unlawful execution of their husbands and fathers.[45] The letter was co-signed by the Committee, who requested a general solution for all victims of atrocities committed in South Sulawesi. As the Dutch State did not respond to the letter, 18 claimants – consisting of 10 widows, six children, one directly wounded and the Committee – summoned the State to Court in a letter of 13 July 2012.

Following the settlements with the nine widows of the summarily executed men in Rawagede, the Dutch State decided to provide the same opportunity to the widows of the executed men in South Sulawesi. By cabinet decision of 26 April 2013, Minister for Foreign Affairs Timmermans stated that the Dutch State would respond to similar claims for a similar settlement, including compensation and apologies.[46] Later that year, the Dutch State settled with ten widows of South-Sulawesi, and their civil claims were withdrawn.

Following the settlements with the nine widows of the summarily executed men in Rawagede, the Dutch State decided to provide the same opportunity to the widows of the executed men in South Sulawesi.

On 30 August 2013, Prime Minister Rutte publicly announced that in cases of summary executions, the Council of Ministers had decided to formally apologize and to treat any future claim in a similar way.[47] Two weeks later, the Dutch Ambassador in Indonesia publicly apologized in Jakarta on behalf of the Dutch Government to all the Indonesian widows, in particular those of South Sulawesi.[48]

The settlement procedure of the Dutch Government was announced in the *Staatscourant* on 10 September 2013.[49] The procedure was made available to widows in similar positions as the widows of Rawagede and South-Sulawesi, for example the widows whose husbands were summarily executed in Sumatra.[50] The State

[42] East Java rape case (2016), para 2.12. The only survivor of the summarily executions who was also one of the claimants in the case, passed away before the compensation had been awarded by the Dutch Government.
[43] Prakken d'Oliveira, 'Nederlandse Staat compenseert negen nabestaanden van het bloedbad Rawagede en biedt excuses aan', 5 December 2011.
[44] District Court of The Hague, Judgement of 11 March 2015 (interlocutory), ECLI:NL:RBDHA:2015:2442 (South Sulawesi widows and children case), paras 2.3-2.5.
[45] South Sulawesi widows and children case (2015), para 2.16.
[46] Idem, para 2.15: *"In de toekomst zal de Staat bij gelijke gevallen ook de gelijke schikking en spijtbetuiging willen toepassen."*
[47] South Sulawesi widows and children case (2015), para 2.17.
[48] Idem, para 2.18.
[49] Idem, para 2.19, *Bekendmaking van de Minister van Buitenlandse Zaken en de Minister van Defensie van 10 september 2013, nr. MinBuZa.2013-256644, van de contouren van een civielrechtelijke afwikkeling ter vergoeding van schade aan weduwen van slachtoffers van standrechtelijke executies in het voormalige Nederlands-Indië van vergelijkbare ernst en aard als Rawagedeh en Zuid Sulawesi (Staatscourant 2013: 25383).*
[50] In one case the State has provided compensation for a widow whose husband has been summary executed in Sumatra, see: De Telegraaf, 'Weduwe uit Sumatra krijgt schadevergoeding', 4 May 2017. No cases are brought forward in relation to the Sumatra executions and will not likely follow in the future, according to Liesbeth Zegveld. See: Interview Zegveld (2018).

still took the position that the claims were time-barred, but was prepared to pay compensation of a lumpsum of 20,000 Euros to each widow. Claimants who meet the criteria for settlement can apply for compensation until 11 September 2019.[51] In April 2019, victim representatives requested for an extension of two years. In July 2019 the Dutch government indicated that the settlement would indeed be extended for the widows but this would not be applicable to the children of the executed men of Sulawesi as long as a final decision in their case was still pending.[52]

On 18 September 2013, 17 requests of South Sulawesi widows for an out-of-court settlement agreement had been filed. To ensure that their rights were guaranteed, the 17 widows also summoned the Dutch State before Court. While the Dutch State offered settlements to seven of the widows, the offers did not cover the costs of the legal proceedings (in contrast to the settlements with the widows of Rawagede) and therefore were not accepted by the victims.[53]

In total, 23 claimants were represented in joint procedures, including five children and 17 widows of summarily executed men, and the Committee for Dutch Debts of Honour.[54] They requested the Court to establish that the Dutch State was accountable for the summary executions in South Sulawesi and liable for the damages suffered due to this unlawful conduct. Furthermore, they requested compensation of 20,000 Euros, based on loss of livelihood, and the costs of the legal proceedings.[55]

In line with the Rawagede decision, the Court confirmed that the limitations could not be upheld in relation to the widows' claim. This would be in violation of the principles of good faith (reasonableness and fairness) as their claims are submitted within a reasonable period of time after they had become aware of the possibility of filing a claim against the State.[56] Yet, contrary to the Rawagede decision, the Court argued that the statute of limitations could not be upheld in relation to the claims of the children of the executed men. The Court considered that in Dutch civil law, both old and new, spouses and children are treated equally as being the "directly affected" relatives of the deceased.[57] The determinant criterion as to whether or not to uphold limitations is whether the most directly affected were dependent on the deceased for their livelihood.[58] The children in the current case were born before the death of their fathers.[59] Therefore, the Court reasoned that the children were as affected by the deaths of their fathers as the widows. Some children even witnessed the executions and were at a very critical age of development at the time.[60] The claim of the Committee of Dutch Debts of Honour for compensation for all other victims of the atrocities was rejected. The Court reasoned that due to the general nature of the claim, it was unclear who exactly the Committee represented.[61]

In the Rawagede case the Dutch State only disputed the claims on the basis of the statute of limitations. In the South Sulawesi case however, the Dutch State disputed the claims on substantial grounds on all counts, including whether the claimants had indeed been the widows or children of the alleged executed men and whether the men had actually been summarily executed by the Dutch military.

[51] South Sulawesi widows and children case (2015), para 2.17. Since July 2014, the passing away of the claimant is not a bar for reaching a settlement agreement. The deadline was initially 11 September 2015 and was twice extended to the current deadline. *Bekendmaking van de Minister van Buitenlandse Zaken en de Minister van Defensie van 23 augustus 2017, nr. MinBuZa.2017.977704, inzake verlenging van de termijn waarbinnen een verzoek kan worden gedaan tot toepassing van de contouren van een civielrechtelijke afwikkeling ter vergoeding van schade aan weduwen van slachtoffers van standrechtelijke executies in het voormalige Nederlands-Indië van vergelijkbare ernst en aard als Rawagedeh en Zuid Sulawesi* (Staatscourant 2017: 49006).
[52] Tweede Kamer der Staten Generaal, vergaderjaar 2018-2019, motie van het lid Karabulut, nr. 32 735, nr. 259, 1 July 2019; Kamerbrief over de civielrechtelijke regeling naar aanleiding van standrechtelijke executies in het voormalige Nederlands-Indië, 3 July 2019, BZDOC-1201041128-15.
[53] South Sulawesi widows and children case (2015), para 2.27.
[54] South Sulawesi widows and children case (2015) (consisting of three joint procedures C/09/428182/HA ZA 12-1165, C/09/458254/HA ZA and C/09/467029/HA ZA 14-653) and the South Sulawesi widows case (2016) (consisting of three joint procedures being C/09/472892 / HA ZA 14-1020 and C/09/472901 / HA ZA 14-1021) are later merged in the Joint South Sulawesi widows and children case (2018). District Court of The Hague, Judgement of 27 July 2016 (interlocutory), ECLI:NL:RBDHA:2016:8635 (South Sulawesi widows' case). District Court of The Hague, Judgement of 31 January 2018 (interlocutory), ECLI:NL:RBDHA:2018:813 (joint South Sulawesi widows and children case). Another case concerning solely children of South Sulawesi will be dealt with separately below.
[55] Idem, paras 3.1-3.4.
[56] South Sulawesi widows' case (2016).
[57] Idem, para 4.26.
[58] South Sulawesi widows and children case (2015), para 4.26.
[59] Idem, para 4.27.
[60] Idem, para 4.28.
[61] Idem, paras 2.67-2.70.

In the Rawagede case the Dutch State only disputed the claims on the basis of the statute of limitations. In the South Sulawesi case however, the Dutch State disputed the claims on substantial grounds on all counts, including whether the claimants had indeed been the widows or children of the alleged executed men and whether the men had actually been summarily executed by the Dutch military. The Court decided that the widows and children needed to provide more proof as to whether they were genuinely the children and widows of executed men. The Court found that the written witness statements and statements of village chiefs were insufficiently verifiable and, in some cases, unreliable.[62] The Court decided to appoint an expert to provide evidence that the men buried at the honour cemeteries were indeed victims of summary executions.[63] According to the Court, de facto burial at these sites, as well as inclusion on a list of victims of Bulukumba ("*lijst met 214 slachtoffers van Bulukumba*") insufficiently established the circumstances under which the men had died.[64] Hence, more evidence was needed to proof that the men who were buried at the honour cemeteries had died as a result of summarily executions by the Dutch military. The Court asked the parties to propose an expert to conduct further investigations. The Court also ruled that it would not accept the requested lump sum of 20,000 Euros for compensation. Instead, the Court requested further evidence to determine the actual amount of compensation to be awarded to the individual claimants for their actual loss of livelihood.[65] Hence, the Court followed the argumentation of the State that the claimants could not receive the amounts rewarded to the Rawagede and other South-Sulawesi widows, since settlement agreements were not considered to be precedent-setting.[66]

The subsequent interlocutory judgements of 2016 demonstrated the difficulties that Indonesian victims faced when attempting to collect evidence to substantiate their claims.[67] The difficulties predominantly arose due to the context in which the atrocities had occurred. Evidence that would be sufficient in the Indonesian legal context to prove, for example, the relationship between husband and wife, turned out not to be sufficient in the Dutch court.[68] The supporting evidence that the claimants presented was considered insufficient due to typing errors and multiple different spelling of the same names as Indonesian names can be spelt in a variety of ways. The testimonials presented by witnesses contained similar problems. The claimants requested that the witnesses be interviewed by an anthropologist in order to bridge this cultural gap, but the Court determined that this was a sole competence of judges.[69] Ultimately, the Court appointed historian Mr. Robert Cribb, an expert on the Indonesian independence war, to investigate whether the men buried at the honour cemeteries and listed among the 214 victims of Bulukumba were indeed summarily executed, and the husbands and fathers of the claimants in the case.[70]

Both in the interlocutory judgement of 2016 and 2018, the claimants asked for an investigation to be conducted into the Dutch national archive.[71] The claimants argued that it was unclear why Cribb had not conducted research in the Dutch national archive and asked for another expert to be appointed.[72] The Court ruled that it would not appoint another expert since the national archives are open to the public and the claimants could consult the national archives to find supporting evidence. The Court decided that the children and widows would be allowed to bring in more witnesses in order to provide further evidence. Witnesses were heard via Skype hearings and a final decision is still pending. An interlocutory appeal was held at the request of the State on 27 June 2019, even though the case has not yet been decided on its merits. In this appeal, the Dutch State disputed once more the lawfulness of the lifting of the statute of limitations. However, in October 2019 the Court of Appeal once more decided that serious war crimes are not subject to the statute of limitations.

The case has become a lengthy procedure, that has been ongoing for more than six years. This is worrying considering the age of the claimants and others affected. In a letterto the Ministries of Defense and Foreign Affairs, the Committee of Dutch Debts of Honour outlined that the evidence that the Court had requested regarding the claimants' relationships with the executed men and whether these men had indeed been executed, was oftentimes almost impossible to obtain.[73] This, according to the Committee, had led to significant discouragement and disappointment among the elderly victims who had been seeking justice during their entire life.[74]

[62] Idem, para 4.45.
[63] Idem, paras 4.45-4.46.
[64] Idem, para 4.45.
[65] Idem, para 4.81.
[66] Idem, para 4.74.
[67] An interlocutory judgement is a judgment given at an intermediate stage of the court proceedings and is used to provide a temporary or provisional decision on an issue, pending the final judgement.
[68] South Sulawesi widows and children case (2016), paras 2.51 and 2.71.
[69] Idem, para 2.42.
[70] Idem, paras 2.35-2.38.
[71] Idem, para 2.38; Joint South Sulawesi widows and children case (2018), paras 2.10-2.12.
[72] Joint South Sulawesi widows and children case (2018), para 2.14.
[73] Pondaag, Jeffry, 'letter to Minister Bert Koenders and Minister Jeanine Hennis-Plasschaert' (Committee of Dutch Debts of Honour, 2016).
[74] Idem.

4.3. The Peniwen case (2015)

This case concerns the summary execution of the claimant's husband in Peniwen (East Java).[75] On 7 April 2014 the widow applied for a settlement of her claim under the settlement procedure provided by the Dutch State. She also summoned the Dutch State to secure her rights in case the request for settlement was unsuccessful.[76] In July 2014, the State offered a settlement which the widow refused, because it did not include compensation for the costs of the legal proceedings. After the widow had passed away, the legal representatives pursued her case before Court on her behalf and requested the Court to establish that the Dutch State had acted unlawfully against the widow because of the summary execution of her husband by Dutch military forces. The claimant requested 20,000 Euros of compensation and the costs of the legal proceedings.

The Court followed the reasoning in the Rawagede case, concluding that the statute of limitations could not be upheld based on the principles of reasonableness and fairness. Hence the claim of the widow was not time-barred since that would be in violation of good faith.[77] Since the Dutch State did not dispute the claim substantially (i.e. whether the husband of the claimant was actually summarily executed), the question that remained, concerned the amount of compensation that should be awarded. The Court rejected the sum of 20,000 Euros compensation requested by the widow. Instead, the Court decided that the exact amount of material damages (i.e. loss of income) should be determined on the basis of the income of the husband at the time, taking into account how the income would have developed under normal circumstances, how much of the income would have been available for the claimant, the moment the income would have ended, the life expectancy of the husband, whether the claimant had been remarried and whether she had been able to provide for her own income after her husband's death, with or without the support of others.[78] After negotiations, the widow agreed to a settlement of 20,000 Euros compensation.

After negotiations, the widow agreed to a settlement of 20,000 Euros compensation.

4.4. East Java rape case (2015-present)

This case concerns the rape of the claimant by Dutch military forces during the so-called "cleansing operations" in the Malang region of East Java. On 19 February 1949, Mrs. Tremini, 18 years old, was at home with her cousin when they heard gun shots, and both hid under the bed. The Dutch military approached the house, ordering them to "get out." Five Dutch soldiers entered and one after the other raped Mrs. Tremini under threat of their weapons. After the gang rape, the soldiers left the house and Mrs. Tremini and her cousin climbed back under the bed and hid in fear.[79]

On 23 January 2015, legal representatives of Mrs. Tremini summoned the Dutch State before Court and requested the Court to establish that the Dutch State had acted unlawfully against her and as a result is liable for the damages.[80] On these grounds the victim claimed 50,000 Euros in compensation as well as the payment of the costs of the legal proceedings. The Dutch State argued that the claim is time-barred and therefore inadmissible.[81] Further, the State disputed the alleged unlawful act committed against the claimant.

In line with its reasoning in the Rawagede case, the Court stated, that although the claim was filed after the legal limitation period had expired, applying the limitation could, under certain circumstances, be considered unacceptable because of principles of reasonableness and fairness. The Court emphasized that this was not only compatible with current civil law, but also with the applicable law at the time of the events.[82] The Court further stressed that every case needed to be assessed on its own merits to determine whether applying the limitation period in that particular case would be considered in violation of good faith.[83]

The Court found that upholding the limitation would be in violation of good faith. The conclusion was based on the severity of the acts, the fact that the claimant could not

[75] District Court of The Hague, Judgement of 11 March 2015, ECLI:NL:RBDHA:2015:2449 (Peniwen case). This case is only shortly discussed since both the claim and the Court's reasoning is alike the Rawagede and the South Sulawesi widows case. Yet it is still included separately as this report seeks to discuss all cases before the Dutch Court and it concerns a different area in the Dutch-Indies then in the Rawagede and South-Sulawesi cases.
[76] Idem, para 2.23.
[77] Idem, para 4.17.
[78] Idem, para. 4.39.
[79] East Java Rape case (2016), para 4.26.
[80] Idem, para 3.1
[81] Idem, para 4.4.
[82] Idem, para 4.6.
[83] Idem.

rely on any other form of support or compensation for the (psychological) damage suffered, the fact that the Dutch State had not properly investigated nor prosecuted those responsible, and the factual lack of access to justice for the claimant.

The Court argued that, in general, claimants could be expected to issue their claim *within a reasonable period* after they came to know that they could hold the Dutch State to account. The Court disagreed with the Dutch State who argued that the claimant had not issued the claim within a reasonable period since she could have known about the possibility to file a claim since the Rawagede judgement in 2011.[84] The claimant only knew about this possibility since she came into contact with the Committee for Dutch Debts of Honour in 2014. Therefore, by officially claiming accountability on 22 December 2014 and summoning the Dutch State on 23 January 2015, she had acted within a reasonable period of time.[85]

The Court ruled that the Dutch State was liable for the immaterial damages suffered by the claimant. While the claimant had requested 50,000 Euros for compensation, the Court only awarded 7,500 Euros based on similar cases. The Court outlined that monetary compensation above 10,000 Euros is only awarded in cases dealing with severe sexual abuse over a long period of time. Often, such cases involve underaged victims who consequently suffered significant psychological damage. Moreover, the Court stated that even cases that result in compensation below 10,000 Euros often involve sexual abuse committed over an extensive period of time.[86] Although the Court held that it had been presented with little evidence of the psychological damage, it did acknowledge that the severity of the impact of rape is a well-established phenomenon.[87]

Despite the Dutch Government's decision of April 2016 to appeal the ruling of the Court, the State decided to pay the compensation to the claimant. By doing so, the Dutch State acknowledged the facts of the case.

Despite the Dutch Government's decision of April 2016 to appeal the ruling of the Court, the State decided to pay the compensation to the claimant. By doing so, the Dutch State acknowledged the facts of the case. Hence, the appeal only relates to the legal question whether the Court rightfully rejected the State's argument regarding the limitations period.[88] However, until this date the Government has not formally appealed the case, despite its expressed intention to do so.

4.5. East Java torture case (2015-present)

The East Java torture case concerns the alleged torture of Mr. Yaseman by Dutch militaries during his imprisonment in 1947 in East Java.[89] Mr. Yaseman testified that he was arrested in 1947 by the Dutch military in Kebon Agung, East Java, and was held captive for eight days at a sugar factory.[90] During his captivity, he was interrogated, repeatedly beaten and electrocuted. In a written statement, Mr. Yaseman stated: "My fingers were tied up with a cable that was connected to a device that produced electricity when it was turned. My body trembled, and I had to provide an answer as though I was a soldier."[91] Mr. Yaseman was subsequently transferred to a prison in Pakisaji, where he was interrogated again. During this interrogation the claimant testified that he was forced to consume water until he vomited and was forcefully tied to a post. He was then transferred to the police station in Kayu Tangan, and again to a prison in Lowok Waru 14 days later. Mr. Yaseman testified that he was held for a total of thirteen months before he was returned to his home village.[92]

Mr. Yaseman summoned the Dutch State before Court on 23 January 2015 and requested the Court to establish that the Dutch State was responsible for the unlawful acts committed against him and as a result is liable for the damages he suffered and continues to suffer due to the severe and systematic injustice that he experienced.[93] The claimant requested a compensation of 50,000 Euros and the costs of the legal proceedings. The Dutch State argued that the claim was time-barred and therefore inadmissible.[94] It also argued that the evidence presented by the claimant was insufficient.[95]

The Court reasoned that during the period 1945-1949, many (current) Indonesians

[84] Idem, paras 4.13-4.18.
[85] Idem, para 4.20.
[86] Idem, para 4.70.
[87] East Java Rape case (2016), para 4.62.
[88] Prakken d'Oliviera, 'Staat betaalt schadevergoeding aan slachtoffer groepsverkrachting Voormalig Nederlands-Indië ondanks hoger beroep', 2 May 2018.
[89] District Court of The Hague, Judgement of 27 January 2016 (interlocutory), ECLI:NL:RBDHA:2016:702 (East Java Torture I case).
[90] Idem, para 4.27.
[91] Idem.
[92] East Java Torture case I (2016), para 4.27.
[93] Idem, para 3.1.
[94] Idem, paras 4.5-4.6.
[95] Idem, para 4.23.

were held captive by the Dutch military. In fact, approximately 14,000 (current) Indonesians were in Dutch captivity at the beginning of 1947. Even though few records were kept, the Dutch State did not dispute the misconduct by Dutch soldiers against prisoners at that time.[96]

The Court issued its first interlocutory judgement on 27 February 2016 and ordered the Dutch State to investigate, in case it had not done so, the validity of the claims. On 27 July 2016, the Dutch Institute of Military History confirmed that the prison and the military post at the sugar factory in Kebon Agung indeed existed.[97] However, no proof was found that the claimant was held captive at the time. The Court observed that it was a complicated exercise to confirm whether the claimant was held captive and tortured at these locations given that there was no proof of his captivity. Consequently, the Court ordered Mr. Yaseman to explain how he intended to provide evidence of his captivity and torture. On 8 March 2017, Mr. Yaseman requested a medical forensic examination of his scars and to be heard before the court, himself as a victim and his sister as a witness, to substantiate his claim.[98]

"Of all the victims [of torture] only one has registered with the court, and that is Mr. Yaseman. It is a shame that the state does not take its responsibility, even for this one case."

After the presentation of evidence in 2017, the Court reached a decision on 18 July 2018. The Court established that the Dutch State was liable for the damages that Mr. Yaseman had suffered.[99] The Court awarded a compensation of 5,000 Euros for immaterial damages.[100] Unfortunately, Mr. Yaseman was unable to hear the decision as he had passed away briefly after he had provided his statements via Skype.[101] The Court decided that the compensation should be awarded to his family. However, at the time of writing, the case has not been finalized. In October 2018, the Dutch State announced to appeal the decision, a setback for Mr. Yaseman's family and the legal representatives.[102] "Of all the victims [of torture] only one has registered with the court, and that is Mr. Yaseman. It is a shame that the state does not take its responsibility, even for this one case," said his lawyer Zegveld.[103] While the unlawful act has been recognized in Court and compensation has been awarded, the state continues to dispute its liability on all counts. The Court heard the appeal on 27 June 2019. In October 2019 the Court of Appeal confirmed the lifting of the statute of limitations.

4.6. South Sulawesi children case (2016-present)

After the decision of the Dutch Court in the first South Sulawesi case that limitations could not be upheld in relation to claims of the children of summary executed men, other children brought claims against the Dutch State for compensation. In this case, 15 children of summarily executed men in South Sulawesi summoned the Dutch State on 23 December 2016.[104] They requested the Court to establish that the Dutch State is accountable for the summary executions of their fathers in South Sulawesi and liable for the damages suffered due to this unlawful conduct. Furthermore, they requested compensation for material and immaterial damages, based on loss of livelihood, as well as the costs of the legal proceedings.[105]

In its judgement of 22 November 2017, the Court upheld the 2015 decision in the South Sulawesi widows and children case since barring the claims would be in violation of the principle of good faith. Yet, the Court explained that the lifting of limitations of claims is not unrestricted and a claim for compensation should be made within a reasonable period of time. What period of time is reasonable, and when that time period begins, would depend on the circumstances of the case.[106]

The claimants argued that they only knew that they could hold the State to account since the 2015 decision in the South Sulawesi case, as only then was it determined that the limitations period could not be upheld in relation to the claims of children. However, the Court did not agree. Instead, it took as the starting point the moment that claimants were made aware of the possibility to hold the State to account.[107]

[96] Idem, paras 2.5 and 4.31.
[97] District Court of The Hague, Judgement of 27 July 2016 (interlocutory), ECLI:NL:RBDHA:2016:8642 (East Java Torture case II).
[98] District Court of The Hague, Judgement of 8 March 2017 (interlocutory), ECLI:NL:RBDHA:2017:4448 (East Java Torture case III).
[99] District Court of The Hague, Judgement of 18 July 2018 (final), ECLI:NL:RBDHA:2018:8525 (East Java Torture case IV).
[100] East Java Torture case IV (2018), paras 3.1-3.2.
[101] Trouw, 'Indonesiër die Staat daagde voor foltering is overleden', 19 September 2017.
[102] ABC News, Anne Barker, 'Dutch Government appeals order to compensate Indonesian farmer after torturing him as a teen', 9 December 2018.
[103] Idem.
[104] District Court of The Hague, Judgement of 22 November 2017, ECLI:NL:RBDHA:2017:13556 (South Sulawesi children case).
[105] Idem, paras 3.1-3.2.
[106] Idem, para 4.43.
[107] Idem, para. 4.46.

Since these claimants were informed by the Committee of the possibility of bringing a suit against the State in 2013, this was set as the starting point for determining the reasonable period of time. Considering the reasonable period of time for submitting a claim to be one or two years following this starting point, the Court found that the claimants had exceeded the time limit.[108]

Claims should have been submitted within a reasonable period of time (one or two years) from the moment the claimant actually knew about the possibility to hold the State to account.

As a result, the Court rejected the claims based on the fact that the lifting of limitations was not unrestricted: claims should have been submitted within a reasonable period of time (one or two years) from the moment the claimant actually knew about the possibility to hold the State to account.[109] After deliberation, the lawyers of the claimants considered the decision of the Court reasonable and decided not to appeal the case.[110]

4.7. South Sulawesi beheading case (2016-present)

This case concerns the summary execution of the leader of a resistance group in South-Sulawesi in 1946.[111] The leader was detained after an altercation with the Dutch Military forces. While in detention, he was allegedly beheaded at the local market and, subsequently, the battalion was forced to kiss the beheaded head of their leader to desecrate his corpse.[112]

The son of the executed leader, with the support of the Committee of Dutch Debts of Honour, summoned the Dutch State on 5 October 2016, to claim compensation. The claimant requested the Court to establish that the Dutch State had been responsible for the unlawful act committed against him by the summary execution of his father and the desecration of his corpse, and as a result, is liable for immaterial damages and the costs of the legal proceedings.[113]

[108] Idem, para 4.57.
[109] Interview Zegveld (2018).
[110] Brought forward by Liesbeth Zegveld in her plea during the joint appeals case of Yasseman and the Sulawesi Widows and Children's case on 27 June 2019 before the Court of Appeal in The Hague.
[111] District Court of The Hague, Judgement of 23 January 2019 (interlocutory), ECLI:NL:RBDHA:2019:499 (South Sulawesi beheading case), para 2.1.
[112] Idem, para 3.2.
[113] Idem, para 3.1.

During the court proceedings the Dutch State disputed the claim both on procedural and substantial grounds. The Dutch State argued that the claim was time-barred, and therefore invalid.[114] The State also argued that there was no evidence to support the summary execution of the father and the desecration of his corpse.[115] The Dutch State argued that he had died as a consequence of legitimate use of violence.

Contrary to the arguments of the Dutch State, the Court decided on 31 January 2019, that the claim was not time-barred. The gravity of the misconduct, the fact that the Dutch State had knowledge about the summary executions and the possible claims that may have resulted from it and the inability of the claimant to effectuate their rights before the Dutch Court, motivated the Court to decide that maintaining the statute of limitations would be in violation of the principles of fairness and reasonableness.[116] The Court also considered the question whether the claim had been submitted within a reasonable period of time. In line with the decision of South-Sulawesi children's case (discussed above) the Court argued that a reasonable period of time should be understood as within a period of two years, from the moment the person came to know that it could hold the State to account for the respective atrocities.[117] Although the claimant read about an out-of-court settlement for one of the South Sulawesi widows in the newspaper in 2013, it could not have been expected of him to apply this to his own situation, the Court argued.[118] Rather, it was the moment when he read in the newspaper in 2015 about a judgement of the Court along with the appeal of the Committee to other relatives, to come forward in 2015, that, according to the Court, the claimant actually came to know about the possibility to hold the State to account.[119] Since he summoned the State on 5 October 2016, his claim was filed within a reasonable period of time.

To assess the substantial claim that the Dutch State had acted unlawfully against the claimant, the Court requested the claimant to provide more evidence (in the form of witnesses). The case is still pending.[120]

[114] Idem, para 4.5.
[115] Idem, paras 4.59 and 4.62.
[116] Idem, paras 4.24-4.29 and 4.51.
[117] Idem, para 4.39.
[118] Idem, para 4.47.
[119] Idem, para 4.50.
[120] As of 6 March 2019.

5. Analysing the impact of litigation

According to Duffy (2018) human rights litigation may have an impact in a variety of ways.[121] Duffy distinguishes the following levels of impact: (1) on the victims and survivors; (2) on the law; (3) on political and social change; and (4) on democracy and the rule of law.[122]

The starting point for any analysis of the effects of human rights litigation should, according to Duffy, always be the impact of the court cases on those most affected: the victims and survivors of the atrocities.[123] Although legal systems across the globe may vary greatly, Duffy explains that "human rights litigation may secure many different forms of reparation for applicants and often also for a broader range of affected persons than just the petitioners in the case." [124] According to Duffy:

The starting point for any analysis of the effects of human rights litigation should, according to Duffy, always be the impact of the court cases on those most affected: the victims and survivors of the atrocities.

> "The value of reparation *orders* from courts – compensation, restitution, concrete measures of satisfaction etc. – when they are implemented, is perhaps clear. Somewhat more neglected though, is the *restorative* function of the HR [Human Rights] litigation process. The declaratory impact of the judgment itself has a role to play here - validating experience, authoritatively recognizing wrongs and allocating responsibility. But the **power of the process** also deserves emphasis." [125]

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[121] Duffy, *Strategic Human Rights Litigation: Bursting the Bubble on the Champagne Moment*, p. 5. See also: Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*. Duffy defines 'human rights litigation' as follows: "It involves the increased use of the courts (national and supranational) by lawyers and civil society groups around the world, to advance human rights goals that go beyond the interests of just the applicants in the case. It reflects also the need to be strategic in the *way* litigation is done, to ensure that the process, both inside and outside of the courtroom, contributes to real success, beyond legal victory." See: Duffy, *Strategic Human Rights Litigation: Bursting the Bubble on the Champagne Moment*, p. 5.
[122] Duffy, *Strategic Human Rights Litigation: Bursting the Bubble on the Champagne Moment*, p. 5.
[123] Idem.
[124] Idem.
[125] Idem.

A second level of impact concerns the impact of human rights litigation on the law. Legal change may arise from litigation in several ways. For example, changes in the law may result directly or indirectly from judgments. Jurisprudence may lead to legal changes or modifications in the legal procedure, for example, to open up domestic systems to new international human rights standards, such as the right to truth, to have new remedies and procedures established, and to lift the statute of limitations if the circumstances so require.[126]

Perhaps the most obvious way in which human rights litigation pursues change is by challenging practices that violate human rights and the state policies that often underpin them.

Another level of impact concerns political or social change. Perhaps the most obvious way in which human rights litigation pursues change is by challenging practices that violate human rights and the state policies that often underpin them. States may cease violations and change policy as a result of the cases that expose unlawfulness. As Duffy states:

> "Often, the relationship between litigation and policy change is less direct. Litigation may simply serve to draw out and clarify state policy, as the state elaborates (and sometimes modifies) its position for litigation. It may serve to *put*, or to keep, an unfavourable issue on the political agenda, or to create political space for dialogue towards broader solutions. (...) Perhaps most important, is the elusive question of behavioural change, and the impact on the attitudes and "collective social constructs" that contribute to violations. In this context we should consider the role of litigation in *exposing, reframing and catalysing*." [127]

The fourth level of impact concerns the role of litigation in the preservation and promotion of the rule of law. The courts, says Duffy, "provide vehicles through which the law, including international human rights law, can be interpreted, applied and given real effect: (...) it is through litigation those whose rights are denied can seek to enforce them, and the government held to account under the law." [128]

[126] Idem, p. 7.
[127] Idem, pp. 7-8.
[128] Idem, p. 10.

Although the Dutch-Indies court cases have not been "strategic" from its inception,[129] these cases have had impacts on the above discussed levels, which will be addressed in the subsequent sections: impact on the victims (section 6); impact on the law, which includes a discussion of legal implications resulting from the court cases and the preservation and promotion of the rule of law (section 7); and impact on political and social change (section 8) discussed by addressing the impact of the court cases on the academic and social debate and its impact on governmental policy.

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[129] See section 3.

6. The impact of the court cases on the victims

Most relevant in the discussion on impact are the implications of the court cases for the victims and survivors in Indonesia. They are the people most affected: the people who lived through and survived the atrocities and are still facing the consequences on a daily basis, the widows and the children of the men who were executed, and others who experienced the consequences of similar atrocities.[130] To what extent and how has litigation positively or negatively impacted the life of victims?

Duffy identifies three levels of impact of strategic litigation, which may go well beyond the individual petitioners in the case;
(1) the restorative function of the litigation process, for example, the declaratory impact of the judgment itself, validating experiences, authoritatively recognizing wrongs, allocating responsibility;
(2) the impact of the reparation orders of the court, e.g. receiving compensation and apologies; and
(3) the power of the litigation process itself which can be an empowering process, for example during the preparations of the cases and the sharing among victims of experiences.[131] This section discusses these levels of impact on the victims in the Dutch East Indies cases.

6.1. Acknowledgement of the truth and responsibility

One very important result of the court cases was the acknowledgement by the Dutch Court that the Dutch Government had been responsible for the summary executions of men in Rawagede and South Sulawesi, as well as for torture and rape in the two East Java cases. Zegveld, who represented the victims, underlined the importance of acknowledgement for the victims. She stated:

> "Acknowledgement is important for them. They can now tell the truth. Their husbands or fathers were shot by Dutch military. After that, they never heard anything again or do not know what happened exactly. They want to understand and do not know what happened. They wish to understand and to give it a place in a broader context. They, for instance, wish to know if this has happened in different places as well." [132]

[130] Sinke, Onno, 'Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog: Het belang van erkenning', *Cogiscope* 0216 (2016), pp. 10-12, p. 11.
[131] Duffy, *Strategic Human Rights Litigation: Bursting the Bubble on the Champagne Moment*, p. 5.
[132] Sinke, *Liesbeth Zegveld over Indonesische Slachtoffers van de Dekolonisatie Oorlog*, p. 11.

Finding out the truth is the most important aspect for the victims. According to Zegveld: "To lose a court case is one thing (...), but that the facts do not come out? That is worse than losing the case. The victims seek acknowledgement on two levels: acknowledgement of what happened and acknowledgement of the fact that what happened was wrong." [133] She continues: "They are happy with the acknowledgment, with a public validation. They are happy that they no longer suffer in silence and that their suffering matters." [134] Immler, who interviewed the widows of Rawagede, came to a similar conclusion and stated: "The widows said they felt recognized. They have told their stories; the law declared their husbands innocent and acknowledged their suffering in front of their community and the world; the money symbolizes the irrevocable admission that a crime had been committed (...)." [135] Indeed, acknowledgement has been referred to as a "vital human need," related to a person's feelings of self-worth and self-esteem, which involves being acknowledged by others.[136]

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Unfortunately, the torture survivor in the East Java torture case, Mr. Yaseman, did not live to hear the ruling of the Court finding the Netherlands responsible for the torture inflicted upon him by Dutch military. Mr. Yaseman died in 2017, at the age of 89, shortly after giving testimony in court via a Skype connection. The fact that the Dutch Government appealed the decision on substantial grounds does not show much acknowledgement for the suffering inflicted upon him.[137] In the East Java rape case, the Dutch Government did acknowledge that the crime had been committed, but it appealed the case arguing that the matter was time-barred. The old age of the victims of atrocities committed several decades prior to the litigation makes it clear that justice delayed and frustrated can result in justice denied for its victims. Not only Mr. Yaseman but also the sole male survivor of the summary executions by the Dutch military in Rawagede died shortly before the pronouncement of the judgement, never witnessing acknowledgement, compensation, or apologies from the Dutch Government.

[133] Idem.
[134] Idem.
[135] Immler, Nicole L., 'Narrating (In)Justice in the Form of a Reparation Claim: Bottom-up Reflections on a Postcolonial Setting: The Rawagede Case', in: Nanci Adler (ed.), *Understanding the Age of Transitional Justice: Crimes, Courts, Commissions and Chronicling* (New Brunswick, New Jersey: Rutgers University Press 2018), pp. 149-174, p. 166.
[136] Immler, *Human Rights as a Secular Social Imaginary in the Field of Transitional Justice*, p. 196 (referencing to Charles Taylor, 1994).
[137] The Jakarta Post, 'Netherlands appeals court ruling that finds it liable for Indonesian torture', 13 October 2018 (with references to quotes of Pondaag and Zegveld); ABC News, Anne Barker, 'Dutch Government appeals order to compensate Indonesian farmer after torturing him as a teen', 9 December 2018.

6.2. Apologies

A form of reparation that resulted from the court cases were the apologies made by Dutch Government officials to the Indonesian population. Although often undervalued by lawyers and therefore less frequently requested, apologies can be an important form of reparation as they potentially reach a broader audience than the individual claimants. This is important as the group of victims is oftentimes larger than the actual petitioners, like in the Dutch East Indies cases.[138] What matters though is how, when, and where the apologies are delivered. If not done correctly, the apologies do not reach those who they are meant to reach: the victims.

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In the case of Rawagede, the Dutch Ambassador Tjeerd de Zwaard formally expressed the Dutch Government's apology to the Indonesian people in 2011:

> "Today, 9 December, we remember together Your family members and fellow villagers, whom 64 years ago let life during an action of Dutch military in your village. A tragic day for You and Your family and an incisively example of how the relationship between Indonesia and the Netherlands was able to derail. (...) On behalf of the Dutch government, I wish to apologise to you today for the tragedy that took place on 9 December 1947 in Rawagede." [139]

[138] Sinke, *Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog*, p. 12.
[139] Toespraak van Ambassadeur van Nederland Tjeerd de Zwaan, Balongsari, 9 December 2011. Available at: https://www.prakkendoliveira.nl/images/nieuws/2011/111209_buza_toespraak_ambassadeur.pdf (free translation).

Victims in Indonesia as well as the representatives of the victims in the Netherlands have stated that the apologies made by De Zwaan were well received and worked out well.[140] The timing was appropriate (three months after the court order) and the location was right as the apologies were expressed in the village where the widows were living and the crimes were committed. Also, the timing was well chosen: on the day of the commemoration of the mass killings in Rawagede, i.e. 9 December, exactly 64 years after the executions.[141]

In the case of the widows of South Sulawesi, the Dutch Ambassador made the following apology: "The Dutch government is aware that it has a special responsibility for the Indonesian widows of the victims of summary executions as committed by Dutch military in formerly South Celebes and Rawagede. On behalf of the Dutch government I apologize for these excesses." [142] However, contrary to the Rawagede case, this apology has been considered ineffective.[143] Critics have observed that the timing of the apologies was inappropriate as they were pronounced one and a half year after the apologies for the Rawagede crimes. Also, the place was badly chosen, i.e. at the Embassy in Jakarta, far away from where the widows were living as the the Ambassador had refused to travel to South Sulawesi, and the widows felt too old to travel to Jakarta. Furthermore, the date was set at 12 September 2013 which was considered too remote from the annual commemoration in Makassaron 11 December.[144] According to Luttikhuis, it seemed that the Dutch Government wanted to have the public apology – for all summary executions that had taken place during the Indonesian independence war, with particular attention for the South Sulawesi widows – had been done with before the planned work visit of the Dutch Prime Minister Mark Rutte in November of that year.[145] This made the apology look more political and less sincere. In addition, the emphasis on the summary executions only – and not for all atrocities – likely contributed to the lesser appreciation of the apologies for South Sulawesi.[146] Luttikhuis rightly argues that the reconciliatory impact of the South Sulawesi apology was much less than in the case of Rawagede.[147]

[140] Luttikhuis, Bart, 'Juridisch afgedwongen excuses Rawagedeh, Zuid-Celebes en de Nederlandse terughoudendheid', *BMGN-Low Countries Historical Review* 129(4) (2014), pp. 92-105, p. 97; Zara, Muhammad Yuanda, 'Nederland als dader: Hoe Indonesië naar de Nederlands-Indonesische oorlog kijkt, Cogiscope 0216 (2016), pp. 13-16, p. 16; Zegveld, *Apologies and the Dutch East Indies*, p. 8.
[141] Idem.
[142] Luttikhuis, *Juridisch afgedwongen excuses*, 93 (free translation).
[143] Limpach, *De brandende kampongs*, p. 17; Luttikhuis, *Juridisch afgedwongen excuses*, p. 97; Zegveld, *Apologies and the Dutch East Indies*, p. 9.
[144] Idem.
[145] Luttikhuis, *Juridisch afgedwongen excuses*, p. 98.[137] Idem.
[146] Idem.
[147] Idem.

By offering apologies to the victims, the Netherlands put itself at the same level as the victims, or even in a subordinate position. In doing so, the Netherlands freed the widows of their status as victims, at least with regard to the atrocities committed by the Dutch against their loved ones. However, for apologies to be successful, it matters that the manner in which the apologies are given, is discussed with the victims in advance.[148] As with acknowledgement and compensation, victims must have agency in deciding on how apologies are to be offered, in order for this form of reparation to have a meaningful impact on their lives. No apologies have been offered in the two East Java cases, and both cases having been appealed by the Dutch Government. In these cases, the Dutch Government relied on the statute of limitations for the crimes committed. This attitude shows the arbitrariness of the recognition by the Dutch of its responsibility.

6.3. Compensation

One of the more concrete results of the court cases was the subsequent settlement which resulted in the payment of compensation to the widows of Rawagede and some of the widows in South Sulawesi, i.e. 20,000 Euros per person. Compensation was court-ordered in the East Java torture and rape cases, i.e. 5,000 Euros and 7,500 Euros respectively. When the Rawagede widows were asked about the compensation they had received, they said that they had appreciated the compensation as it had helped them and their family members in addressing their most basic needs.[149] Compensation was also considered a great step in the acknowledgement of the harms committed by the Dutch against the Indonesian victims.

In practice however, the compensation brought complications. Soon after the payment to the Rawagede widows was made, about half of the money was taken by other villagers, in particular those who were under the influence of a local organisation that considered itself to represent the survivors of the Rawagede massacre.[150] The widows and family members were oftentimes threatened to hand over the money with the argument that other villagers too had suffered from the Dutch massacres. In Indonesian culture, where the community is considered to be more important than the individual, representatives of the community felt that the money should be shared among all community members and that the widows had been the

[148] Zegveld, *Apologies and the Dutch East Indies*, p. 9.[137] Idem.
[149] Immler, *Narrating (In)Justice in the Form of a Reparation Claim*, p. 166; Interview Pondaag (2018); Interview Zegveld (2018).
[150] Immler, *Narrating (In)Justice in the Form of a Reparation Claim*, pp. 155-156.

voice of all of those who had suffered similar atrocities.[151] The forced re-distribution of half of the money had a negative impact on the widows and their family members as they generally felt that they did not have any agency in the decision, despite the fact that they had worked hard for the legal recognition of what had happened to them. It was not the sharing of the money that was the problem, but that they could not decide about it themselves. One grandchild stated: "I know that my grandfather was not the only one killed over there, but others as well. I understand the feeling... so that's why I would have given something for them as well. But I didn't like the way they forced us to do so without any discussion." [152] According to Immler, the situation begs the question of whether alternative ways of implementing individual or collective compensation orders from a distant court could have been imposed, more fitting to the local and cultural context.[153] In addition, some victims were simply unable to receive the compensation, as – due to their old age – they did not live to see the result of the court cases, such as the torture survivor in the East Java torture case and the sole male survivor in the Rawagede case.

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6.4. An empowering impact?

A court process may be empowering to victims when they take, for instance, an active part in the preparation of the case, discuss and share experiences with other victims, including community members, organize themselves, and conduct further research into their past.[154] Through these processes, victims may come to understand that they are not responsible for their own misfortune and they may be taking agency over their own lives again. Immler points out that this may emancipate individuals and even transform societies, helping to overcome old identity-positions that people inherited from the past.[155]

When looking at the victims' involvement in the (preparations for the) court cases in the Netherlands, the process has been considered empowering, bringing agency to the victims, even if only few of them participated directly in the court proceedings in person or via Skype connection.[156] According to Zegveld, the process helped them in a positive way to deal with the past and it assisted them in their recovery process.[157] The apologies that were the result of the court proceedings made it possible for victims to have a voice and agency in the country of the perpetrators.[158] Victims were prepared for the cases in the sense that they were, for instance, informed of their rights, the procedure, the possible outcome, and the lengthiness of the procedures.[159] According to Zegveld, the victims did not mind the long trials: "they really wish to fight and the law offers them such an opportunity in a channelled way." [160]

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Immler however questions the emancipatory and transformative impact of the cases. She points out that poverty, local power relations, and gender inequalities prevented the emancipatory and transformative impact that the compensation could have had for the Rawagede widows.[161] She also refers to the widows' lack of agency when they were present at meetings in Indonesia that addressed their history. Prior, during, and following such gatherings, the widows hardly played a role: they were not listened to in the process and often the language used was not their own.[162] On

[151] Idem.
[152] Idem, p. 155.
[153] Interview authors with Nicole L. Immler (22 August 2018, Utrecht). Immler also notes that given the victims' situations of poverty, most of the money was immediately spent and therefore the money was quickly used up. See: Immler, *Narrating (In)Justice in the Form of a Reparation Claim*, p. 167.
[154] Duffy, *Strategic Human Rights Litigation: Bursting the Bubble on the Champagne Moment*, p. 6.
[155] Immler, *Narrating (In)Justice in the Form of a Reparation Claim*, p. 150.
[156] Sinke, *Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog*, p. 11; Luttikhuis, *Juridisch afgedwongen excuses*, p. 97.
[157] Sinke, *Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog*, p. 11.
[158] Luttikhuis, *Juridisch afgedwongen excuses*, p. 97.
[159] Sinke, *Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog*, pp. 11-12.
[160] Idem, p. 12.
[161] Immler, *Narrating (In)Justice in the Form of a Reparation Claim*, pp. 167-168.
[162] Idem, pp. 155, 169.

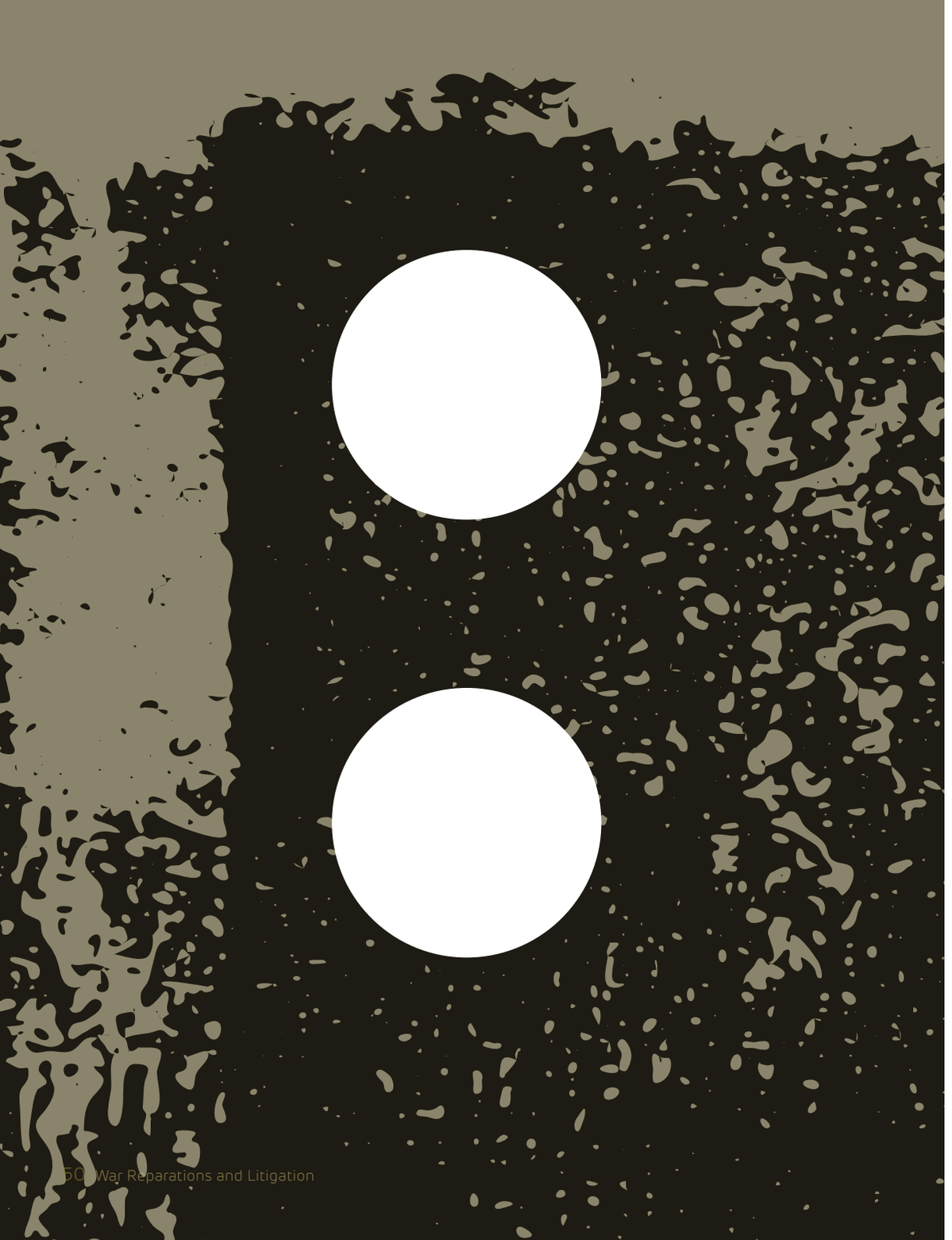
the other hand, Immler observed how proud the Rawagede widows were with the fact that Rawagede and its history are now known to the world and has its place in Indonesian history.[163] This is a direct result of the court cases.

Despite the overall positive impact the court cases may have had on the victims, the litigation also had negative effects. For example, this can be witnessed in the cases where the substance of the claims has been disputed before the Court. This was the case in the South Sulawesi, Peniwen and East Java torture cases, where doubts were raised as to whether the claimants were actually widows and children of summary executed men, whether the father was actually beheaded and his corpse desecrated, and whether the torture actually had taken place. Such issues had never come up in the Rawagede and East Java rape cases. In addition, the ever changing attitude of the State in court proceedings, at times obliging but at other moments downright hostile disputing every fact that was presented, was a very frustrating experience for the victims. There are certain limitations to the extent to which a lawyer can prepare victims for changes in the State's position. Initially, the Dutch Government thought its procedural defense on limitations was a defense it could easily win and the state's attorney therefore focused on that strategy. It was only when that argument was rejected in the Rawagede case (and even further in the interlocutory judgement in South Sulawesi), that the Government started to dispute the claims on substantial rather than procedural grounds. The fact that the State appealed cases on substantial grounds after the court had decided that the State was accountable for the unlawful acts was a serious setback for the victims (as in the East Java torture case).

The ever changing attitude of the State in court proceedings, at times obliging but at other moments downright hostile disputing every fact that was presented, was a very frustrating experience for the victims.

The victims were also frustrated about the fact that the Court questioned their reliability and expressed doubts as to whether they indeed had been husband and wife or the children of the men executed, or even whether their men were executed at all. In a Dutch court room, the victims have to prove all aspects of their claim, including their loss of livelihood, in a way that is very different from the Indonesian context. It has been frustrating for the victims to have to prove several aspects of their existence with documents or present forms of proof that were no longer available or never even existed, especially in light of the time elapsed. However, the Court has been flexible when confronted with minor inconsistencies in witness statements.

[163] Idem, p. 164.



7. The impact on justice and the law

Court cases may have an impact on justice and the law. One of the legal implications resulting from the cases has been the lifting of the statute of limitations, effectively providing access to justice for a group of victims that up until that point never had effective access at all. In that sense, as Duffy states, litigation plays an important role in the preservation and promotion of the rule of law. The cases established that those whose rights had been denied could now seek to enforce them, and the government could be legally held to account. The court cases have been instrumental in this, as will be discussed in more detail below. At the same time, victims and representatives were confronted with a level of sophistication of proof required by the Court, which was nearly unattainable for them. Flexibility on the part of the Court was thus required in order to allow effective access to justice for this group of victims.

7.1. Precedential value

One important legal effect of the proceedings is that the outcomes are precedent-setting. The Rawagede case opened up the possibility for other claims and was instrumental in providing access to justice for the widows of summarily executed men in other parts of the Dutch East Indies. In the South Sulawesi cases this was even extended to the group of children, although their claims have been restricted, as will be discussed below.

> It seems that the success of the Rawagede case has caused the Dutch Government to respond to subsequent cases more aggressively, disputing the substance of the claims.

The court cases have also set important precedents for similar cases around the world. For example, the Rawagede decision influenced victim representatives of the independence war in Kenya to file a suit against the British state, deciding to pursue a claim in court after political negotiations were blocked.[164] In a landmark decision in October 2012, three former Mau-Mau fighters won against the UK Government for "unspeakable acts of brutality" under colonial rule, and more than five thousands Kenyans received compensation from the British Government for torture suffered under its colonial regime.[165] The Dutch East Indies court cases may there-

[164] Immler, *Human Rights as a Secular Social Imaginary in the Field of Transitional Justice*, pp. 211-212.
[165] Idem, p. 212.

fore be seen as a beacon of hope for victims of colonial crimes elsewhere. Where previously it was thought to be impossible to win a case against a state, these cases have shown that the state is no longer immune from being held accountable for crimes committed in a long (for some) forgotten past.

After the Rawagede decision, the Dutch Government decided to set up a formal settlement procedure for widows of executed men in Rawagede and South Sulawesi and similar atrocities elsewhere, so that compensation could be requested out of Court. This settlement procedure, albeit limited in scope, would not have been in place if the Rawagede case had been unsuccessful. The litigation thus resulted in broader access to justice for victims both in and out of Court. It should be noted, however, that the approach of the Dutch Government has always been reactive and rather limited. It seems that the success of the Rawagede case has caused the Dutch Government to respond to subsequent cases more aggressively, disputing the substance of the claims, which in Rawagede was not an issue. Therefore, the participation in the Court proceedings has been more burdensome for the victims after the Rawagede case since the Dutch Government started to dispute the claimants reliability in almost every aspect, including their relationship with the executed men, whether the men had been executed at all, and whether their men were buried at the indicated locations.

7.2. The lifting of limitations under certain conditions

The Rawagede case has been instrumental, as the limitations period for the claims that stood in the way of litigation was lifted by the Court. The Court decided that on the basis of the principles of reasonableness and fairness, upholding limitations to the claims would be unacceptable, at least for the widows. The widows' lack of access to justice, the gravity of the atrocities, and the fact that the government had previously lifted limitations periods for claims in relation to the Second World War led to the Court's decision that the statute of limitations could be lifted but only in relation to the widows. The Court reasoned that widows were more affected than their children, particularly those who were not yet born by the time of the executions.

The case of South Sulawesi has been important because the Court determined that upholding the statute of limitations with respect to the claims of children of summarily executed men would also be in violation of the principle of good faith, contrary to what the Court ruled in Rawagede, thereby opening up the possibility to hold the state to account for a larger group of victims, being widows and children.

However, the Court restricted the circumstances under which the limitations could be lifted. The Court ruled that the claims should be brought against the State within a reasonable period of time. The starting point of the "reasonable period of time," according to the Court, was the moment that the claimants were informed that they could hold the State to account. From then, within a period of one or two years, the claims against the State should be submitted, or else the limitation would be upheld. Because of this, the Court rejected the claims of the 15 children in the second South Sulawesi case. It could, however, be disputed whether the starting point of the reasonable period of time determined by the Court was indeed the appropriate starting point. According to the Court, the starting point was in 2013, when the Committee informed the children that the State could be held to account, but the Rawagede decision – which was at that point final – held that the claims of children were time-barred. Was this the appropriate starting point, or was it in 2015, when the Court decided in the first South Sulawesi provisional judgement that the statute of limitations could not be upheld unconditionally in relation to the children?

7.3. Gathering and presenting evidence of historical atrocities

Whereas in the Rawagede case the Dutch State only disputed the fact that the claims were time-barred due to the statute of limitations, other claims were disputed on substantial grounds as well. The South Sulawesi case showed how difficult it was to obtain and present evidence when the Dutch State disputed the claims on substantial grounds. In Indonesia, registration of birth and marriage in the form familiar to Dutch courts is non-existent. Evidence that would suffice in the Indonesian Courts were not considered as such before the Dutch Courts. The evidence that the claimants presented, was considered insufficient due to typing errors, and the fact that Indonesian names may be spelt in a variety of ways. The testimonials presented by witnesses contained similar problems. This also became apparent in the East Java torture case, where the court in interlocutory judgements requested more evidence to be presented to substantiate the claims. The length of time between the atrocities and the litigation posed serious challenges to the gathering of evidence. Further, some documents that may be standard in current Dutch society, were not available in the Dutch East Indies (for example, proof of marriage, proof of being buried at a particular place). The turmoil at the time made civil registration nearly impossible. This required some flexibility by the Court in relation to the standards of proof, which has been less strict than in ordinary civil proceedings.

7.4. Recognition in law of atrocities committed by Dutch military forces
The various claims brought before the Court give account of the many types of atrocities committed during 1945-1949 in the Dutch East Indies. While most attention has been devoted to the summary executions of men by the Dutch militaries at various places – including Rawagede, South Sulawesi, Sumatra and Peniwen – the East Java rape case and the East Java torture case have shed light on other atrocities committed by the Dutch militaries, including torture of prisoners and conflict-related sexual violence. Although the facts took place a long time ago, they represented a period in Dutch history that up until that point remained largely unaddressed.

7.5. Pace of the proceedings and the age of the claimants
Two victims in the Rawagede and the East Java torture case did not live to witness the outcome of the proceedings. All claimants, both widows and children, are of old age and therefore a certain speed in dealing with the claims had been desirable. However, such expediency was impossible since the Dutch Government failed to conclude an overall settlement for claims stemming from that period. The fact that the South Sulawesi case is already pending for six years, has had an impact on the number of claimants the Dutch Government actually had and will have to compensate.

7.6. Consequences of compensation in and out of court
In the Rawagede case the Court decided that compensation should be awarded but left it to the State to negotiate the compensation in an out of court settlement. The widows of Rawagede received compensation of 20,000 Euros plus the costs of the legal proceedings, as well as formal apologies for the harm they suffered. Subsequently, the formal out-of-court settlement procedure was set up for widows in similar situations to claim compensation for the summary execution of their men. The precise form of compensation in the Rawagede case has thus been decided out of court, while in the East Java torture case and the East Java rape case, the Court ordered a fixed amount to be compensated (5,000 Euros and 7,500 Euros respectively).

During the proceedings in the South Sulawesi case, the Dutch Government argued that since settlements have no precedent-setting value, subsequent claims in Court cannot rely on these settlements. Based on the kind of atrocities and the applicable law, compensation varied from 5,000 to 20,000 Euros. The compensation for the summary execution of the widows' husbands in the different cases show considerable differences where 149,000 guilders were awarded in the settlement of 1953, compared to 20,000 Euros to the widows in Rawagede. In the South Sulawesi case, the claimed compensation focused on loss of livelihood alone and, when awarded, will be far less than in the Rawagede case. As part of the settlements, the Dutch State agreed to make formal apologies for Rawagede and South Sulawesi in particular, but also for similar atrocities committed elsewhere at the time.

8. The impact of the court cases on political and social change

A third dimension of impact concerns political and social change. This section addresses the question whether and how the court cases have influenced Dutch policy making and stirred debate in Dutch society and academia.

8.1. Academic and societal debate

Historians have analysed the value and impact of court cases on the establishment of the historical truth. The Dutch historian Bart Luttikhuis has argued that the legal approach as applied in the Dutch East Indies cases has confined public debate on the colonial past to single incidents – i.e. those cases that were brought to court – instead of the systematic and comprehensive nature of the atrocities that were committed during the conflict. Luttikhuis also poses the question whether legally sanctioned apologies may have "adverse effects," namely confining public debate to "specific types of incidents that fall within the parameters of legal responsibility and legal evidence." [166] In his view, the legal approach is rather misleading in terms of providing knowledge about the past as the juridification reduces the history to single provable facts. Luttikhuis also argues that the value of the apology was diminished due to its forced nature which in turn diminished the chance of successful reconciliation.[167] Other types of violence, such as burning down Kampongs or destroying food supplies, remain out of sight, even though these were an important part of the totality of atrocities committed during the conflict. The legal discourse may have brought attention to the victims, but, as Luttikhuis observes, the limited debate on a small number of legally defined atrocities will not help to integrate the colonial past into the Dutch master narrative.[168] Luttikhuis speaks of a *failure of memory politics*.[169] Other historians have expressed similar views. They do not see any effort by the Dutch state to deal with its past in a broader sense,[170] nor any endeavour to reveal the historical truth about the colonial past but rather hide its systematic nature.[171] One observes a continuum of a hitherto selective and euphemistic

[166] Luttikhuis, *Juridisch afgedwongen excuses*, p. 92.
[167] Idem.
[168] Idem, p. 99.
[169] Idem, pp. 103-105
[170] Lorenz, Chris, 'Can a Criminal Event in the Past Disappear in a Garbage Bin in the Present? Dutch Colonial Memory and Human Rights: The Case of Rawagede', in: Marek Tamm (ed.), *Afterlife of Events: Perspectives on Mnemohistory* (Palgrave Macmillan, 2015), pp. 219-241, p. 232.
[171] Eickhoff, Martijn, 'Weggestreept verleden? Nederlandse historici en het Rawagede debat', Colofon 194 (2013), pp. 53–67, p. 53.

way to cope with the colonial past, which is characterized by the very absence of any universal moral standard such as human rights.[172]

Zegveld, the lawyer for the victims in the Dutch East Indies cases, has a different viewpoint. According to her, the debate on the general picture of the Dutch colonial past – in particular the widespread and systematic nature of the crimes committed – only became topic of discussion *because* of the fact that individual cases were brought against the Dutch Government.[173] Without the trials, nothing would have been discussed in the first place. On the issue of reconciliation, Zegveld states that "without the court cases, the mighty politicians could just have done as they pleased, without the politically weak being able to get any form of justice. It is typical to think that something like that goes automatically and to see justice as something extreme." [174] Immler agrees that the court cases forced the Dutch Government and society to have a closer look at its own history.[175] Historian Limpach also agrees by reminding that before the litigation had started, the Netherlands had issued only non-committal statements about its past in Indonesia. At least, with the outcome of the court cases, it was forced to look at its past and show the first signs of repentance.[176] As will be explained in depth below (section 8.2), the increased attention to the Dutch colonial past was a result of the Dutch East Indies court cases, and the subsequent publications and debates compelled the Dutch Government in 2016 to reconsider its own role by commissioning historical research into the period 1945-1949.

The debate between historians, lawyers, and others on the value of court cases for the establishment of historical truths is not new. The historical truth is inherently different from the legal truth, since the legal truth is largely, if not always, confined to specific incidents. Nevertheless, it is too easy to argue that this limits the impact of the Dutch East Indies cases. Without the cases, the harms against the victims would not have been acknowledged, no compensation or apologies would have been provided, and no debate on the Dutch East Indies history would have even begun.

[172] Raben, Remco, 'Koloniale Vergangenheit und postkoloniale Moral in den Niederlanden', in: Volker Knigge and Norbert Frei (eds.), *Verbrechen Erinnern. Die Auseinandersetzung mit Holocaust und Völkermord* (München: Beck 2002), pp. 90-110, p. 101.
[173] Sinke, *Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog*, p. 12.
[174] Idem.
[175] Immler, *Narrating (In)Justice in the Form of a Reparation Claim*, p. 165; Immler, Nicole L., 'Hoe koloniaal onrecht te erkennen? De Rawagede-zaak laat kansen en grenzen van rechtsherstel zien', *BMGN – Low Countries Historical Review*, 133(4) (2018), pp. 57-87.
[176] Limpach, *De brandende kampongs*, p. 18.

Veraart, a professor in philosophy of law, has stated that changing of the official historical narrative of the Dutch colonial past, cannot be done by historians and journalists alone, but also through legal decisions.[177] And even if the legal truth might be confined to a particular part of the historical truth, it is still part of the truth. Furthermore, even comprehensive historical research may not be able to provide a complete or independent picture. We will discuss this below.

Even if the legal truth might be confined to a particular part of the historical truth, it is still part of the truth.

Since the first court case was started in 2008, more attention to a broader picture of the Dutch colonial past has ensued through the publication of news items and the organisation of debates within Dutch and Indonesian society.[178] More attention meant more diverging opinions on what the colonial past entailed, how it should be studied, and how it should appear in the history books. But even though more debates have now taken place within the Netherlands, most Dutch people still do not know much about their own violent colonial past, and this part of history is still not taken up in curricula of high schools in the Netherlands.

The Dutch and the Indonesians have a different look at their common history in Indonesia.[179] Some have argued that the Indonesian perspective on the Dutch colonial past is missing in the debate and publications on this topic.[180] The period of Dutch East Indies history is generally described from the Dutch national narrative. How the Indonesian population has experienced the colonial presence and the process to independence, for instance, is not included in the history books.[181] Indonesian histo-

[177] Veraart, Wouter, 'Uitzondering of precedent? De historische dubbelzinnigheid van de Rawagede-uitspraak', Ars Aequi 61 (2012), pp. 251-259.
[178] E.g. Zara, *Nederland als dader*, p. 14.
[179] E.g. NRC, Marjolein van Pagee, 'Malik wil excuses voor de onthoofding van zijn vader', 22 mei 2016; Hira, Sandew, 'Koloniale geschiedschrijving van Indonesië', International Institute for Scientific Research (undated). Available at: https://www.iisr.nl/koloniale-geschiedschrijving-van-indonesie/; Immler, *Hoe koloniaal onrecht te erkennen*, pp. 57-87.
[180] Pakhuis De Zwijger, Debat 'Dekolonisatie of rekolonisatie?', 13 September 2018. Available at: https://dezwijger.nl/programma/dekolonisatie-of-rekolonisatie; Van Pagee en Scagliola, 'Waar blijven de Indonesiërs in het debat over de Nederlandse oorlogsmisdaden in Indonesië?', *Historisch Tijdschrift Groniek* 606-207 (2015), pp. 131-143, p. 132.
[181] Pakhuis *De Zwijger, Debat 'Dekolonisatie of rekolonisatie?'* (contribution by Historian Marc van Berkel).

rian Bonny Triyana has emphasised the importance of having young people in Indonesia and the Netherlands learn about their shared history, in order to prevent incidents such as the one in 2002, when former Prime-Minister Balkenende of the Netherlands praised the VOC-mentality – "a traded company with a good spirit of trade, perseverance, and courage" – without due consideration of the fact that the VOC was at the basis of a century of colonialism and imperialism in the Dutch East Indies.[182] Dutch historians Raben and Nuberg plead for a renewed reflection on the Dutch colonial roots and its values thereby incorporating the viewpoints of those who have experienced the colonization from such a different perspective as the Dutch colonizers.[183]

8.2. Dutch policy and politics

The increased attention to the Dutch colonial past, influenced by the Dutch East Indies court cases and subsequent publications and debates on the topic, compelled the Dutch Government to reconsider its passive role. In 2016, it finally provided funding for a major research project that would focus on the period 1945-1949.[184] This was a breakthrough, since for a long time, the Dutch Government had rejected proposals for such a broad and comprehensive study. In January 2013 for example, the Ministry of Foreign Affairs had rejected the request to fund aresearch by Koninklijk Instituut voor Taal-, Land en Volkenkunde" (KITLV), the Nederlands Instituut voor Militaire Historie (NIMH) and the Nederlands Instituut voor Oorlogs, Holocaust- en Genocidestudies (NIOD).[185] The research institutions made a new request after the successful outcome of the Rawagede case - which underlined the case's relevance in the efforts to start further research into this period.[186]

The 2013 request for co-financing by the Dutch Government concerned a study that would examine the Dutch military violence during the decolonialisation period in the Dutch East Indies. In the researchers' view, this would contribute to the remembrance and healing from the suffering resulting from this period of Dutch history.[187] The Dutch Ministers of Foreign Affairs and Defence however considered that there was little political and societal support in Indonesia for such research, "in a period in which the Netherlands and Indonesia are working together on a future oriented agenda." [188] Lorenz (2015) argues that the response was the consequence of the stance of both the Dutch and the Indonesian Government that always rigorously refused to conduct any in-depth research, and felt that political stability and economic relationships were more important than to strive for post-colonial justice.[189]

The Dutch Government has – for political and legal reasons – always responded in a more reactive than proactive manner to developments that concerned its responsibility for the crimes it had been involved in during the period of 1945-1949.[190] This attitude has been part of a long tradition in which political and moral value of accepting responsibility for its colonial past was made subordinate to avoiding or obstructing the legal consequences.[191] Zegveld has observed that the Government's argument that there was little support in Indonesia for a comprehensive research into Dutch history was rather peculiar given the Dutch state's own responsibility to look into its own past.[192]

In light of this history, it has been argued that the last push to compel the Dutch Government to financially support the above mentioned research project was the publication of Dr. Limpach's book *De brandende kampongs van Generaal Spoor* (The burning kampongs of General Spoor). The study found that extreme violence and force were used by the Dutch military against the people in the Dutch East Indies between 1945-1949, and that this violence was structural and by no means could be considered isolated or sporadic excesses, as previously framed by the Dutch Government. According to Limpach, the extreme violence was either ordered or made possible by senior Dutch officials, even if many soldiers may not have been

[182] Idem.
[183] Raben, Remco, 'Waarom we allemaal kinderen van de Koloniale rekening zijn', 20 December 2018. Available at: https://overdemuur.org/waarom-we-allemaal-kinderen-van-de-koloniale-rekening-zijn/; Nuberg, Lara, 'Wanneer passen mensen hun beeld over Kolonialisme aan?', 18 December 2018. Available at: https://overdemuur.org/wanneer-passen-mensen-hun-beeld-over-kolonialisme-aan/
[184] Tweede Kamer der Staten-Generaal, Brief van de Ministers van Buitenlandse Zaken, van Defensie en Staatssecretaris van Volksgezondheid, Welzijn en Sport, *Indonesië*, 26 049, nr. 82, 2 December 2016, p. 4.
[185] Remy Limpach, *De brandende kampongs*, 2018, p. 20; Tweede Kamer, Brief van de Ministers van Buitenlandse Zaken en Defensie aan de Tweede Kamer, *Indonesië*, 26 049, nr. 75, 14 January 2013, p. 2.
[186] Van Pagee en Scagliola, *Waar blijven de Indonesiërs*, p. 132; De Groene Amsterdammer, Chris van der Heijden, 'Een mentale dekolonisatie', 9 January 2019.
[187] Tweede Kamer, *Indonesië*, 2013, p. 1.
[188] Idem, p. 2.
[189] Lorenz, Chris, 'De Nederlandse koloniale herinnering en de universele mensenrechten: De casus 'Rawagede'', *Tijdschrift voor Geschiedenis* 128(1) (2015), pp. 109-130, p. 112.
[190] Luttikhuis, *Juridisch afgedwongen excuses*, pp. 98-99.
[191] Luttikhuis, Juridisch afgedwongen excuses, p. 102; De Groene Amsterdammer, Chris van der Heijden, 'Een mentale dekolonisatie', 9 January 2019 (according to him, the Netherlands can still not fully acknowledge that it has committed more than incidental crimes in Indonesia and that real apologies still need to be made).
[192] Sinke, *Liesbeth Zegveld over Indonesische slachtoffers van de dekolonisatie oorlog*, p. 11.

directly involved in the commission of the crimes.[193]

Although Limpach's study proved to be the final incentive for the Dutch Government to decide to support further research into its violent past, it has been argued that the court cases against the Dutch State that had been ongoing since 2008 were among the first incentives since the *Excessennota* for the Government and Dutch society to revisit its colonial past.[194] It was only after the judgment in the Dutch East Indies cases that the Dutch state apologized for the massacres in a formal manner. The importance of the court cases is also apparent from a letter from the Government to Parliament in 2016, in which it mentions the impact of the court cases on Dutch Government policies. The letter refers to the succesful claims of victims before the Dutch court that resulted in further studies into the use of violence in South-Sulawesi and Rawagede.[195] The letter underlines the fact that "the debate in Dutch society has since 2009 also continued to take place in the court room." [196] It can be thus concluded that the developments as outlined above, in combination with court cases, had a significant impact on Dutch Governmental policy and politics. The court cases forced the Dutch Government to address its own history for the period of 1945-1949, even if they did not yet require the State to acknowledge that the violence was more widespread than outlined in the individual cases. The court cases forced the Dutch Government to accept responsibility and offer apologies, which they never would have done otherwise.[197] The court cases provided the first incentives to force the Dutch state to act.

The court cases forced the Dutch Government to accept responsibility and offer apologies, which they never would have done otherwise.

As mentioned, the approval in 2016 for an independent study, financed by the Dutch Government, underlines the government's understanding of the societal relevance of the topic. The research institutions KITLV, NIMH and NIOD were eager to conduct such a study, as they had already indicated several years before, and the Dutch Government was finally willing to provide the financial means.[198] According to the government, the research would help Dutch citizens to better understand their national history, and support the Dutch Government to draw lessons from the past in view of its current and future foreign policy, even if this would be difficult, especially for the former military that was stationed in the former Dutch East Indies.[199] The research project examines the context of the use of force in the period of decolonisation. It surveys the broad context of the decolonisation period and the political, governmental, legal and military behaviour in 1945-1949 in former Dutch East Indies, both from the perspective of the Netherlands as well as from the Indonesian perspective.[200] The results of the study will be forthcoming in 2020.[201] Yet, there are already extensive discussions taking place on the question whether the research, which is up until this point mostly conducted through a Dutch lens, will do justice to the historical reality and thus will indeed contribute to addressing the historical injustices of our colonial past.

[193] Limpach, Rémy, 'Extreem Nederlands militair geweld in Indonesië 1945-1949', *Militaire Spectator* 185(10) (2016), pp. 416-429, p. 419: "*De meerderheid hield namelijk schone handen. Belangrijke redenen hiervoor waren stationering in een rustig gebied of in een niet-gevechtsfunctie, waardoor men relatief weinig met gewapende of gevangen genomen vijandelijke strijders te maken had. Vooral in de hitte of in het kielzog van het gevecht en/of contact met de vijand vonden extreme gewelddaden plaats. Maar deze correlatie was niet alleen doorslaggevend. Het is geen zwart-wit verhaal. De werkelijkheid en de oorzaken waren complexer. Militairen met een gevechtsfunctie in een onrustig gebied pleegden namelijk niet per definitie extreem geweld. Omgekeerd zijn er gevallen bekend van in rustig gebied gelegerde koks of stafmedewerkers die ontspoorden. Ook al waren dit uitzonderingen, ze laten toch zien dat geen legeronderdeel geheel immuun was voor het toepassen van extreem geweld. Duidelijk is, zo blijkt uit talloze voorbeelden, dat de schaal en intensiteit van het extreme geweld per saldo te groot waren om slechts van incidenten te kunnen spreken. Sterker nog, dat was ook het toenmalige oordeel van veel medewerkers van de militair-juridische organisatie die dit extreme geweld moest beteugelen en bestraffen.*" See also: Oostindie, Gert, *Soldaat in Indonesië*, 1945-1950 (Prometheus, 2015).

[194] Luttikhuis, *Juridisch afgedwongen excuses*; Open brief aan Ministerie van Algemene Zaken, Ministerie van Defensie, en Ministerie van Buitenlandse Zaken, *Bezwaren tegen het Nederlandse onderzoek "Dekolonisatie, geweld en oorlog in Indonesië, 1945-1950"*, signed by 124 persons, including initiators Pondaag and Pattipilohy, 27 November 2017; Van den Herik, *Addressing "Colonial Crimes" through reparation?*, pp. 693-705, p. 705; Van Pagee en Scagliola, *Waar blijven de Indonesiërs*, p. 132.

[195] Tweede Kamer der Staten-Generaal, *Indonesië*, 2016, p. 2.

[196] Idem.

[197] Luttikhuis, *Juridisch afgedwongen excuses*, pp. 97, 99.

[198] Tweede Kamer der Staten-Generaal, *Indonesië*, 2016, p. 5; However, in the open letter of 2017, quite a number of people have questioned the political decision making and the manner in which the four-years research has been framed and managed. For example, they refer to the participation of the NIMH, where Limpach is also working, and that they are responsible for the historical verification of the Indonesian claims. They state that government-related institutions, such as NIMH, should not be involved in such a political sensitive topic. They also refer to the fact that Indonesian researchers deserve a more autonomous and prominent role in the research. Furthermore, some of the terminology that is used in the research has been questioned, such as the use of the term 'decolonisation, and the time frame on which the research is focussed (on the period 1945-1950, despite the four centuries of colonial occupation over Indonesia). See also: ABC News, Anne Barker, 'Dutch Government appeals order to compensate Indonesian farmer after torturing him as a teen', 9 December 2018. For more information on the four-years research itself, visit: https://www.ind45-50.org/.

[199] Tweede Kamer der Staten-Generaal, *Indonesië*, 2016, p. 4.

[200] Idem.

[201] De Groene Amsterdammer, Niels Mathijssen, '50 jaar affaire-Hueting: "Ik zeg u dat deze meneer liegt"', 9 January 2019 (Mathijssen wonders whether the Netherlands is finally ready to accept responsibility for the crimes committed).

9. Conclusion: The impact of the Dutch East Indies court cases

Without the perseverance of the Committee of Dutch Debts of Honour and of lawyer Liesbeth Zegveld, the Dutch East Indies cases would likely not have been brought to court, and therefore any form of accountability would likely not have been established for the victims. For a long time, the Dutch government has been reluctant to apologise for the historical injustices and to compensate the victims. It was only in response to the successful court cases that the Dutch government took steps to acknowledge its role in past atrocities. The findings of this report reveal different forms of impact of the five court cases. Not all findings are necessarily applicable to all the cases.

9.1. Impact on the victims

One very important result of the court cases for the victims was the acknowledgement by the Court that the Dutch Government had been responsible for the unlawful executions of the men in Rawagede and South Sulawesi as well as for the torture and rape in the two East Java cases during the independence war (1945-1949). The judgments provided the victims with a sense of acknowledgement of the crimes committed against them and their loved ones. However, the appeal by the Dutch Government in the latter two cases does not show much empathy with the victims or to their situation.

Another important result of the court cases for the victims were the apologies by Dutch Government officials to the Indonesian population. This type of reparations is of particular importance since it has a broader reach compared to the individual compensations. The effectiveness of the apology depends on how it is delivered. In the case of the Rawagede widows, the apology was generally considered successful: its timing, location, and date were well chosen. However, the apologies to the South-Sulawesi widows turned out differently and were considered meaningless. In general, for apologies to be satisfactory, the offering of the apology should be discussed with the victims in advance in order to agree about the manner in which these would be offered. . No apologies were offered in the two East Java cases, as both have been appealed by the Dutch Government. Such conduct does not put the Netherlands at the same level of the victims, as the apology in the Rawagede case did. This attitude shows the limited recognition of the Dutch Government's responsibility.

One of the more concrete results of the court cases were the financial settlements

for the widows of Rawagede and some of the widows in South Sulawesi, i.e. compensation of 20,000 Euros per person. Compensation was also ordered in the East Java torture and rape cases, i.e. 5,000 Euros and 7,500 Euros to the survivors, respectively. Asked about the compensation they had received, the widows stated that they had appreciated the compensation as it had helped them and their family members in addressing their most basic needs. Given their situations of poverty, most of the money was immediately spent.. In addition, the Rawagede widows were forced to give about half of the money away to fellow community members who argued that they had also suffered from the crimes by the Dutch. This brings up the question what form compensation should have in these kind of cases (for example, individual or collective) and how compensation schemes should be implemented.

Looking specifically at the victims' involvement in the preparations for the court cases that took place in the Netherlands, the process is considered to have been overall empowering, bringing agency to the victims, even if only a few of them participated directly in the court proceedings. Yet, some negative impacts of the court cases for the victims were also observed, for example in those cases where the substance of the claims (i.e. whether the claimants were actually widows and children of summary executed men, and whether the torture actually took place) has been disputed before the Court, such as in the South Sulawesi and Peniwen cases, and the East Java torture case. This was never an issue in the Rawagede case and East Java rape case.

9.2. Impact on justice and the law

The court cases have effectively provided access to justice for a group of victims that did not have it before. In that sense, litigation plays an important role in the preservation and promotion of the rule of law. Various forms of atrocities (summary executions of men, torture and rape) committed by the Dutch military forces have been recognized in law. The Rawagede case has been precedent-setting and opened the possibility for other court cases to be brought against the Dutch State for similar atrocities. It resulted in a formal settlement procedure for widows of executed men elsewhere in the Dutch East Indies between 1945-1949, which allowed for compensation to be requested out of Court. It has also been precedent-setting for litigation against other States worldwide, including the case of the Mau Mau fighters of Kenya against the British government for atrocities committed during the independence war in Kenya.

Further, the court cases have resulted in removing a legal obstacle that had stood in the way of litigation, since the Court decided that the limitations periods on the claims could be lifted under specified circumstances, both for widows (Rawagede) and children (South-Sulawesi). It did, however, restrict the period in which the limitations are lifted, and that is still a point of discussion in the pending cases.

The court cases demonstrated the difficulties of gathering and presenting evidence for this type of claims. Evidence that may be sufficient in the Indonesian legal context may not be considered as such within the demanding standards of Dutch civil law. The length of time between the atrocities and the litigation also possess challenges to building evidence for a court case. This impacts the pace of the proceedings and, given the advanced age of the claimants in these cases, this is problematic from the perspective of access to justice.

Finally, the court cases resulted in compensation being awarded, a settlement for similar atrocities and for the offering of formal apologies. Yet, the amount of compensation continues to be a topic of debate. The fact that the amount and form of compensation is decided in an out of court settlement may not always be helpful since a settlement is not considered a precedent by the Courts.

9.3. Impact on political and social change

The court cases sparked a debate about whether litigation – that focuses on single incidents in a particular situation -may nonetheless result in a broader discussion about the systematic and comprehensive nature of the crimes committed in the conflict. This debate between historians and lawyers touches upon the difference between legal and historical narratives and truths. It has however been concluded that without litigation, and despite its limitations, the harms against the victims would not have been recognised, and the broader debate on the Dutch-Indonesian history would not have even begun.

Since the first court case was brought in 2008, more attention to the Dutch colonial past has been paid through the media and the organisation of debates within Dutch and Indonesian society. More attention has also meant the more diverging opinions on what the colonial past entailed, how it should be studied, and how it should appear in the history books. However, most Dutch people are still not aware of the violent colonial past. In addition, the way the Dutch look at their colonial history in Indonesia is very different from how Indonesian people consider this period. It has been argued that the Indonesian perspective on the Dutch colonial past is still missing in the debate and publications on the topic.

After the successful Rawagede court case, Dutch research centres KITLV, NIMH and NIOD proposed in 2013 a comprehensive research into the Dutch colonial past, and requested funding from the Dutch Government. The Dutch Government rejected the

proposal. The Dutch State always argued that political stability and economic relationships were more important than to strive for post colonial justice. However, by the end of 2016, due to increased attention to the Dutch colonial past, influenced by the court cases and new publications and debates on the topic, the Dutch Government reconsidered its role and accepted that more research was needed into the period 1945-1949. The KITLV, NIMH and NIOD will conduct the research and the Dutch Government has shown its willingness to provide the financial means albeit under the condition that the research would fit within framework that has been contested by some as too restrictive as it excludes an Indonesian perspective. –At the time of this report, the 4-year period of the research is half way and the results are still forthcoming. Yet, discussions are already taking place on the question whether the allegedly one-sided conducted research will be able to contribute to the recording of the historical injustices of the Dutch colonial past.

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