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Unlawful act of government. Executions in South Sulawesi by Dutch soldiers in 1946-1947. Evidence assessment. Award of shock damage to child who saw execution of father. Budget material damage (loss of income).

LocationsRechtspraak.nl

Ruling

—

judgment

COURT HEDGE

Trade team

Judgment of 25 March 2020

in the procedures of

Case number / reel number: C/09/428182 / HA ZA 12-1165

2 [Claimant 1] ,

living at [residence 1] , South Sulawesi, Indonesia,

3. [plaintiff 2],

living in [residence 1] , South Sulawesi, Indonesia,

4. **[plaintiff 3]**,

living at [residence 1] , South Sulawesi, Indonesia,

5. **[Claimant 4]**,

living at [residence 1] , South Sulawesi, Indonesia,

12. **[Claimant 5]**,

living at [residence 2] , South Sulawesi, Indonesia,

18. the foundation **STICHTING KOMITE UTANG KEHORMATAN BELANDA**,
established in Heemskerk,

Case number / reel number C/09/458254 / HA ZA 14-96:

2 [Claimant 6] ,

residing at [residence 3] , [residence 2] , South Sulawesi, Indonesia,

3. [Claimant 7],

residing at [residence 4] , [residence 2] , South Sulawesi, Indonesia,

5. [plaintiff 8]

living at [residence 5] , [residence 2] , South Sulawesi, Indonesia,

6. [plaintiff 9]

living at [residence 6] , [residence 2] , South Sulawesi, Indonesia,

10. [plaintiff 10]

residing at [residence 7] , [residence 2] , South Sulawesi, Indonesia,

11. [plaintiff 11]

living at [residence 8] , [residence 2] , South Sulawesi, Indonesia,

12. [plaintiff 12]

living at [residence 9] , [residence 2] , South Sulawesi, Indonesia,

13. [plaintiff 13]

living at [residence 10] , [residence 10] , South Sulawesi, Indonesia,

18. the foundation **STICHTING KOMITE UTANG KEHORMATAN BELANDA**,
established in Heemskerk,

Case number/roll number C/09/467029 / HA ZA 14-653

[plaintiff 14] ,

living at [residence 17] , South Sulawesi, Indonesia,

Case number/roll number C/09/472892 / HA ZA 14-1020

1 [plaintiff 15] ,

2. [plaintiff 16]

both living at [residence 11] , Indonesia,

Case number/roll number C/09/472901 / HA ZA 14-1021

2 [plaintiff 17] ,

living at [residence 12] , Indonesia,

3. [plaintiff 18]

living at [residence 13] , Indonesia,

5. [plaintiff 19]

living at [residence 14] , Indonesia,

6. [plaintiff 20]

living at [residence 15] , Indonesia,

7. [plaintiff 21]

living at [residence 16] , Indonesia,

plaintiffs and plaintiffs,

Attorney at law: Mr. A. Vossenbergh, Amsterdam,

by

in all proceedings

the legal person under public law **THE STATE OF THE NETHERLANDS,**

having its registered office in The Hague,

defendant,

Attorney at law: Mr. K. Teuben, The Hague.

Defendant in all cases remains referred to as 'the State'. Claimant sub 18 in the proceedings with case - /rolnummer C/09/428182 / HA ZA 12-1165 and C/09/458254 / HA ZA 14-96 appears to be referred to as 'Stichting KUKB' and the natural persons acting as plaintiffs are referred to individually by (the last part of) their own name and together as 'the widows and children', as in the previous interlocutory judgments.

After the subpoenas were issued, a number of widows and children died. In the absence of a suspension and article, the case was continued in their names pursuant to Section 225 paragraph 2 of the Rv1.

1 The procedure

1.1. The further course of the procedures is evidenced:

- the interlocutory judgment of 31 January 2018 and the documents referred to therein.
- the minutes of the hearings of witnesses on 3, 9, 17, 19, 24, 25 and 30 April 2018, 1 May 2018, 25, 26 and 28 June 2018, 2, 3, 5, 6 and 11 July 2018, 18 and 23 October 2018 and 7 February 2018.
- the conclusions following a survey of the parties.
- the acts of the parties in the cases [plaintiff 15] and [plaintiff 16] .

1.2. Finally, a date has been set for sentencing.

2 The further assessment

Introduction

2.1. The widows and children claim that their husbands and fathers were executed in 1946-1947 by Dutch soldiers in what was then South Celebes in the Dutch East Indies, now South Sulawesi in Indonesia. They hold the State liable in tort for the damage they claim to have suffered as a result.

2.2. As was considered in the interlocutory judgments, for the claims to be allowed it must be established in court that the widows and children are (1) widows or children of (2) a man who was unlawfully executed by Dutch soldiers at the time. The widows and children bear the burden of proving those claims. In all cases, the parties argue about the motives of the widows and children for the death of their husband or father. All widows and children are allowed to prove this. In addition, [plaintiff 9] , [plaintiff 16] and [plaintiff 21] whose identity and/or family ties with the deceased man are not established, are admitted to the burden of proof. The widows and children have provided written evidence and evidence by hearing witnesses.

The report of the court-appointed expert R. Cribb

2.3. In the interlocutory judgment of 27 January 2016² , the court in the proceedings with case - /Roll numbers C/09/428182 / HA ZA 12-1165, C/09/458254 / HA ZA 14-96, and C/09/467029 / HA ZA 14-653 the historian R. Cribb (hereinafter: Cribb) appointed as an expert, with a view to answering - in so far as relevant - the following questions:

1. At the Tanete Cemetery of Honour, are only men (re)buried who were victims of unlawful executions during purification operations in 1946 and 1947 by soldiers of the DST and/or other KNIL units ? Can therefore be excluded - if so, on the basis of which - that on the honorary cemetery of Tanete (also) dead have been (re)buried who died due to other circumstances for which the State cannot be held liable, such as for example victims of legitimate fighting actions ?
2. In the walled part of the field of honour on Suppa are only victims of the massacre in that village on 28 January 1947 ? Is it possible to determine which of the graves outside the walled area of the field of honour of Suppa are those of executed persons ?
3. Based on the location of a grave on the Taccorong Field of Honour, is it possible to determine whether the person in question has been legally executed? Does the location of the graves of [A] and [B] at the Taccorong cemetery show that these men were executed without authority?
4. At the time of (re)burial in these three cemeteries, it was ascertained with respect to each deceased whether he was a victim of an unlawful execution before he was there

(re)buried? If so, how did that happen and by whom? Is this recorded in any records and can a copy be obtained ?

5. Can you determine whether the spouses of the parties [claimant 6] , [claimant 8] , [claimant 12] and [claimant 7] were (re)buried at the cemetery of honour in Tanete and, if so, on the basis of what concrete data (other than the party's own declaration) ?
6. When, by order of whom, by whom and in what way was the '*list of 214 victims of Bulukumba*' drawn up? Are only victims of wrongful execution mentioned on this list, and if so, on what basis do you draw this conclusion? If not, can you determine whether the father of party [claimant 5] ([C]) mentioned on this list was a victim of an unlawful execution, and if so, on the basis of what concrete data (other than your own party's statement) do you draw that conclusion ?
7. How were the four social service lists at issue drawn up? Are they exclusively victims of wrongful execution and, if so, on what basis do you draw that conclusion? If not, can you determine whether the spouses and fathers of the parties to these proceedings on this list - i.e. on the first list: the spouses of [plaintiff 14] ([D]) and the fathers of [plaintiff 1] ([E]) , [plaintiff 2] ([F]) and [plaintiff 4] ([G]) , on the second list the (alleged) spouses of [plaintiff 6] ([H]) , Claimant 8 ([I]) , [Claimant 12] ([J]) , [Claimant 7] ([K]) , [Claimant 9] ([A]) , [Claimant 10] ([B]) and [Claimant 11] ([L]) and the father of [Claimant 5] ([C]) , on the third list, the (alleged) spouses of [plaintiff 9] ([A]) and [plaintiff 10] ([B]) and, on the fourth list, the spouses of [plaintiff 6] ([H]) , [plaintiff 8] ([I]) , [plaintiff 12] ([J]) and [plaintiff 7] ([K]) - were victims of wrongful executions, and, if so, on the basis of what concrete data (other than your own party's statement) do you reach that conclusion?
8. Can you establish whether on or around 14 January 1947 unlawful executions took place in the place now called kampong Coka and - if so - whether the father of [plaintiff 3] ([M]) was killed in those executions?

2.4. In the interlocutory judgment of 27 July 2016 Cribb's assignment was expanded to include the following questions (numbered consecutively to the questions referred to under 2.3):

in Case C/09/472892 v HA ZA 14-1020:

9. Did a summary execution take place at the Katimbang bridge at the beginning of 1947 after the cleansing in Makassar, in which the husband of [plaintiff 15] , [N] , was shot dead by Dutch soldiers ?

in Case C/09/472901 v HA ZA 14-1021:

10. Does the location of the graves of [O] , [P] , [Q] and [R] at the cemetery TMP Ganggawa Mario show that these men were executed by Dutch soldiers and, if so, why, or if not, why not ?

10. When (re)buried in this cemetery of honour, was it checked with respect to each deceased person whether he was the victim of a summary execution by Dutch soldiers before he was (re)buried? And, if so, how and by whom and is this recorded in any records and can copies be obtained ?

10. Is the mentioning of the names of the aforementioned men on the memorial wall of Ganggawa Mario relevant to answering the question whether these men were lawfully executed by Dutch soldiers - and, if so, in what sense?

10. When, by order of whom, by whom and in what way was the victim list Ganggawa Mario drawn up? Are there only victims of summary executions by Dutch soldiers on this list and if so, on what basis do you draw this conclusion ?

10. Can you determine whether the spouses of [plaintiff 17] ([O]) and [plaintiff 19] ([P]) were killed in the summary executions by Dutch soldiers that took place on 7 February 1947 in Bulu Wattang ?

2.5. At the parties' meeting on 27 October 2017, the draft report was discussed with Cribb, who was in his office in Australia during the meeting. With the consent of the parties, this was done via a skype connection. After this meeting Cribb published his final report.

2.6. The widows and children explain that they are convinced that Cribb has carried out a poor quality investigation, has not focused sufficiently on the facts and has missed opportunities to make a valuable, substantive contribution to these matters. They conclude that Cribb's research adds little to the file.

2.7. The court does not endorse this conclusion of the widows and children. With their remarks about not speaking or not speaking sufficiently with persons on site, they ignore the fact that Cribb's assignment was to conduct his investigation on the basis of historical and verifiable sources that provide an objective insight into the backgrounds of the honorary cemeteries investigated and the creation of the investigated lists. Furthermore, as an expert appointed by the court, Cribb had a large degree of freedom in the design and execution of his research. In his final report and during the comparison of the parties, Cribb explained the research he had conducted and the choices he had made. The District Court leaves the comments of the widows and children to their own devices, since they do not request any consequence to be attached to them. Of its own motion, the District Court sees no reason to do so. It will include Cribb's report in the assessment of the evidence.

General considerations on the witness evidence brought

2.8. The hearing of the witnesses, who were at various locations in Indonesia, is governed by article 176 Rv: Indonesia is not a party to the 1970 Hague Evidence Convention or the 1954 Hague Procedural Procedure Convention or to any relevant bilateral treaty with the Netherlands and the EU Evidence Regulation does not apply. Since Article 176 of the Code of Criminal Procedure provides that the court *may* hear the witness in the manner described therein, in the District Court's opinion this provision offers room for the hearing of a witness abroad in another way, by means of 'tele-hearing'. The witnesses have been heard in accordance with the agreements that the supervisory judge made with the parties in this respect during the pre-trial hearing on 12 February 2018. In so far as relevant, these agreements imply the following:

- during the interrogations, the examining magistrate was with the registrar, the lawyers of parties, the interpreter (Netherlands/Bahasa Indonesia) and audience in the courtroom,
 - the witnesses were located at the locations agreed by the parties in South Africa, Sulawesi, Indonesia (Hotel Dalton in Makassar, the school Wisma Sang Surya in Bulukumba, an office in Bonto Bangun, Resto Fly Over in Suppa, Hotel 'M' in Pinrang, the office of the subdistrict in Kulo and an office in Bulohole).
 - the identity of the witnesses has been established by Mrs [X], who also during the interrogations has been present.
 - the identity of the witnesses has been established by Mrs [X],
 - the interrogations took place via a secure digital meeting room (a so-called MCU) of the jurisprudence and - where appropriate when that connection did not work - via skype.
 - the formalities laid down in Article 177(1) and (2) of the Code of Civil Procedure have been complied with, with all witnesses being required to give evidence.
- promise has been made.
- the questions to the witnesses and their answers to those questions are literally in Dutch reflected in the minutes of interrogation.
 - the questions were asked in Dutch and translated by the interpreter present in the courtroom to Bahasa Indonesia. The witnesses who spoke Bahasa Indonesia gave their testimony in that language, which was translated into Dutch by the interpreter present in the courtroom.
 - for the witnesses who spoke Makassar or Bulgarian, the questions were asked by the in Indonesia Present interpreter translated from Bahasa Indonesia to Makassar or Bulgarian, on which the witnesses made their statement in Makassar or Bulgarian. That statement was translated to Bahasa Indonesia by the interpreter present in Indonesia and then by the interpreter in the

Interpreter from Bahasa Indonesia into Dutch.

- in the courtroom by the lawyers of the widows and the children hired from Indonesian PhD students (the translation of) what was said in Makassar and Boeginees were checked and, where appropriate, comments were made, which were noted in the minutes of interrogation.
- the witnesses didn't sign their testimony.
- the statements were not dictated and read out.
- audio and video recordings were made of the interrogation, which were provided to the parties.

2.9. The examining magistrate, who is part of the Multiple Chamber, which pronounces this judgment, heard the witnesses, after which the lawyers present in the courtroom were able to question the witnesses. By hearing the witnesses in this way, the court has ensured that, in accordance with the rule laid down in article 155 of the Code of Civil Procedure, the witnesses themselves have been heard and has also done justice to the principle of hearing both sides of the argument.

2.10. For the valuation of the evidence, the earlier considerations on this matter in the interlocutory judgments, to which the Court refers for the sake of brevity, apply. The District Court adds the following.

2.11. It has been agreed with the parties that the statements of the witnesses will be given the evidential value of witness evidence within the meaning of article 163 of the Code of Civil Procedure. This means that the statements of the widows and children, who were heard as witnesses in their own case, concerning the facts to be proved by them, cannot constitute evidence in their favour, unless the statement serves to supplement incomplete evidence. ⁴ The supporting evidence must be of such strength and substance as to render the party's testimony sufficiently credible.

2.12. The witness's own observations referred to in Article 163 of the Code of Civil Procedure shall not be confined to direct observations as eyewitnesses; information from hearings is admissible as evidence. ⁵

2.13. Apart from the above rule for the evidentiary value of party witness statements, the applicable free doctrine of evidence does not require evidence to be supported by other evidence. The facts to be proved can therefore be based on a single means of evidence, e.g. the testimony of a witness. Because of its limited evidentiary value, this cannot be a statement by a party witness.

2.14. A number of witnesses have made a statement that deviates (strongly) from a written statement made earlier in the proceedings. In earlier interlocutory judgments, the court has generally considered that many written statements do not contain reasons of science and that it is unclear how the written statements came about. Therefore, the district court will not use the written statements as evidence. It will only use the statements of the witnesses.

2.15. The testimony was given under oath at the request of the court and the parties. Contrary to what the State argues, the court sees no reason to dismiss witness statements as unreliable if they deviate from previous written statements. The lack of clarity about the manner in which the written statements were made prevents the court from considering the testimony of the witnesses as unreliable on that basis. Therefore, the court will include all witness statements in the assessment of evidence, even if they deviate from previous written statements by the same person.

2.16. In general, the witnesses did not specify a time or a period, expressed in concrete months and/or dates. The court considers it a fact of common knowledge that persons such as these witnesses, who were living in the countryside in South Sulawesi at the time, did not (and in many cases still do not) have the same sense of time as

people who lived in the Netherlands and that they do not indicate times - as is customary in the Netherlands - in terms of years and months. Rather, they indicate times with the season (rainy or dry season) and/or certain stages of cultivating and working the land (for example, sowing rice or harvesting maize). This also happens in the Netherlands, by the way, if one draws on the memory, especially if an issue arose a long time ago.

- 2.17. The missing or deviating awareness of time discussed above is also reflected in the fact that a number of witnesses did not know how old they were at the time of the events they declared or, in the context of the formalities, mentioned an age that did not correspond to the age stated on their identity documents. The District Court sees no reason to question the testimony of the witnesses for this reason.
- 2.18. Widows and children have argued that persons like her and the witnesses who have heard of the purges come from a different era and a different world. According to the widows and children, who point to Professor Herman Slaats's expert report on the parties in the case [... 1] c.s., on executions in Rawagede in Java in 1947, the modern Western frames of reference cannot be applied to them without reason. It speaks of "*isolated, small Javanese village communities of illiterate farmers ... The world of these people extended to their own village and at most some surrounding villages*". The widows and children argue that this is equally (if not more) true for them and the heard witnesses, who come from the less prosperous South Sulawesi. They point out that their world was very small at the time and it still is today.
- 2.19. The court has an eye for cultural differences that are not up for discussion, which are expressed in different traditions and lifestyles. The court takes this into account when valuing the witness statements.
- 2.20. The widows and children repeatedly refer to what is known from historical research, including R. Limpach's thesis, about the nature and extent of the applied violence. The large-scale scale and structural character of the misconduct of Dutch soldiers in 1946-1949 described in the cited sources are not up for discussion. On the Indonesian side, however, there were also casualties as a result of legitimate fighting. Furthermore, the court considers it a fact of general knowledge that during the chaotic period in 1947- 1949, fatalities also occurred as a result of other violent causes than misconduct by Dutch soldiers. This stands in the way of drawing conclusions in cases where it cannot be excluded that a man was the victim of legitimate fighting actions or where there are no concrete indications that the man was killed by Dutch soldiers, solely because of the large-scale scale and structural character of the misconduct of Dutch soldiers.

General Evidence Themes

- 2.21. In the previous interlocutory judgments, honorary cemeteries and victim lists were identified and discussed as general themes of evidence. The widows and children stated that on the basis of being buried in a number of honorary cemeteries and/or being mentioned on the victim lists they brought into question, it could be assumed that the man in question was the victim of an unlawful execution by Dutch soldiers. The court will discuss these general themes of evidence below, first (a) the honorary cemeteries and then (b) on the victim lists. Then the court will discuss (c) the individual evidence positions of the widows and children. Under (d) we will discuss whether and to what extent the claims are attributable.

(a) The cemeteries of honour

2.22. The evidential value of being buried on (a certain part of) the fields of honor (a1) TMP Suppa (a2) TMP Taccorong, (a3) TMP Tanete, (a4) TMP Ganggawa Mario and (a5) TMP Panaikang is under discussion.

(a1) TMP Suppa

2.23. It has been established that on 28 January 1947 a mass execution took place in Suppa . [plaintiff 1] , [plaintiff 2] and [plaintiff 4] claim that their fathers [E] , [F] and [G] were shot by Dutch soldiers and then buried in or near TMP Suppa. plaintiff 13] and [plaintiff 14] claim that their husbands [S] and [D] were also shot dead during the mass execution in Suppa on 28 January 1947 and buried in or near TMP Suppa .

2.24. TMP Suppa is a walled section of a general cemetery, containing one large mass grave, divided into several burial pits. In that walled section are randomly placed and weathered stone tombstones without mentioning the names of the dead buried there. That can be seen on this photo that Cribb made during his visit to this honorary cemetery.



2.25. Cribbs answer to question 4 for TMP Suppa :

"The bodies of the victims at Suppa have apparently never been reburied. Their original burial in 1947 was a mass burial of victims of a wartime massacre. It is not to be expected that separate records would have taken place."

2.26. Cribbs answer to Question 2:

"As with Tanete's field of honor, there is no indication of the circumstances in which the deceased died. There is a big difference between the walled part of the field of honor on Suppa and the part outside the walls. Inside the walled part of the field of honour there are a large number of tombstones in three rows. The stones are much closer together than usual in a Taman.

Makam Pahlawan. On a small number of tombstones there is a name, apparently recently written down. Some stones have clearly been renewed recently, but these are smaller and more modest than the graves outside the walled area, which also have names and often have a date of death considerably later than 1947.

The scientific literature on mass graves deals mainly with traces of recent burials and with the forensic excavation of known graves and thus provides little insight into the specific questions that arise in this case.

According to the lurah of Suppa, the bodies of the victims of the massacre near Suppa were dragged here (about 200 meters) to be buried. It is unlikely that each gravestone stands exactly over the remains of the victim, but the place looks like

as unlike any other cemetery. One can reasonably assume that there is indeed a mass grave here. Since that space is available immediately outside the walled part of the field of honor, it is highly probable that there are only victims of the mass murder of January 1947 in the walled part of the field of honor.

2.27. Cribb concludes:

"It is therefore probable but not proven that the graves within the walled section of the field of honor on Suppa are exclusively victims of the massacre in that village on January 28, 1947. However, it can be established that the marked graves that lie outside the walled part of the field of honour of Suppa are from a later period".

2.28. In view of these conclusions of Cribb, the State considers it sufficiently certain that those buried within the walled section of TMP Suppa were victims of the mass execution in Suppa on January 28, 1947. Thus, there is no longer any dispute about the evidential value of being buried on TMP Suppa. When assessing the individual evidence positions the court will determine whether the fathers or husbands of [plaintiff 1] , [plaintiff 2] , [plaintiff 4] , [plaintiff 13] and [plaintiff 14] are buried there.

(a2) TMP Tanete and (a3) TMP Taccoring

2.29. It is an established fact that Dutch soldiers in the Bulukumba region carried out purification operations in various villages over a longer period, from December 1946 to April 1947. In many cases, the men who were shot to death were buried on the spot. In 1978 and 1979 reburials took place at TMP Tanete and TMP Taccorong, both of which are part of general cemeteries.

2.30. [plaintiff 6] , [plaintiff 7] , [plaintiff 8] , [plaintiff 11] and [plaintiff 12] claim that their husbands [H] , [K] , [I] , [T] and [J] were reburied on TMP Tanete. plaintiff 9) and [plaintiff 10] claim that their husbands [A] and [B] have been reburied at TMP Taccorong. They claim that only victims of wrongful executions by Dutch soldiers have been buried on these honorary cemeteries, so that this cause of death can be determined on the basis of being buried there.

2.31. The court did not follow them in the interlocutory judgments, because it was unclear and not verifiable whether and how the local Indonesian authorities involved checked the reburial of the dead on TMP Tanete and TMP Taccorong in 1978 and 1979 and established whether the deceased was indeed a victim of an unlawful execution during the purification operations carried out in the Bulukumba region from December 1946 to April 1947 inclusive, or whether (also) dead were buried there due to circumstances for which the State cannot be held liable. The District Court considered it necessary to further investigate the question under which circumstances the men were reburied there and under which circumstances they died at that time. It put questions about this to Cribb, who in a general sense remarked the following about honorary cemeteries in Indonesia:

"Of many Indonesians who fell during the struggle for independence, the cemetery is now uncertain or not known at all, because of the confused circumstances of the time and because of forgetfulness since then. In about 1953 Indonesia formally started to establish fields of honour. (...) In the following years, other TMPs were founded in different places, mostly on local or regional initiative and sometimes with a peculiar character, such as the Taman Makam Pahlawan Kerja (Workers' Cemetery) in Pekanbaru. In some cases, existing cemeteries have been renamed as official TMPs; in other cases, new fields of honour have been established and the remains of freedom fighters from other places have been reburied there.

At that time, the criteria for being buried in a TMP were never punctual. One had to have played a role in the realization of Indonesia, albeit as a struggle for independence, if

someone who has made a contribution to the prosperity of the people, or as a victim of an enemy of the Indonesian nation. In principle it made no difference whether one fell in a battle, in a massacre, in an individual murder, in an accident, or from natural causes. One could take place in a TMP also when one died long after the independence struggle. The determination of the deceased in the interest of the nation and doing the service were decisive, not the specific circumstances of death. (...)

In 1981, the Commander-in-Chief of the Indonesian Armed Forces established more punctual criteria for burial in a TMP. One must have received a decoration (satya lencana) or fallen in a military context. Otherwise one is designated to the Taman Makam Bahagia ('happy burial garden', for military personnel) or the Taman Pemakaman Umum ('general burial garden', for civilians). However, anyone who recognizes having played a role in the military independence struggle against the Netherlands in 1945-1949, be it formally in the army, or as a member or supporter of a militia unit, is automatically eligible for the Bintang Gerilya (guerrilla star) and therefore for burial in a TMP. In 2008, a spokesperson for the Department of Social Services stated that civilians are also entitled to be buried in a TMP, provided they meet the general conditions. At the same time, the Indonesian government has established that in each district (kabupaten) there may only be a TMP. As a result, a general, but not complete, transfer of mortal remains to district TMPs has taken place. Local honorary cemeteries have been preserved where families or the local government have expressed a strong desire not to have the cemeteries moved.

I haven't been able to find anyone who's played a direct role in the reassignment of graves. Separate remarks give me the impression that sometimes the remains were not to be found and that the reburial was more symbolic than literal (...).

At most of the districts I visited there is a sign with the names of the people who are buried there. The sign is a guide for visitors to the Field of Honour and is usually no more than a list indicating the part of the cemetery where a particular grave can be found or the grave number. There was no indication that the signs I saw in South Sulawesi were objects of worship, but formally they are called tembok abadi (eternal wall) (...) Sometimes the sign reflects the order of burials in the cemetery of honour, but there is never any mention of the circumstances of death. Occasionally the word gugur ('fallen'), which usually means 'killed on the battlefield', is used, but that use is irregular and does not imply a distinction between death on the battlefield and wrongful execution (...).

2.32. TMP Tanete is shown on this picture taken by Cribb. Cribb remarked that this honorary cemetery is rather neglected and:

"Names of deceased are roughly written on the gravestones, but there's no indication of their circumstances of death. The burial sites are not packed together."



2.33. TMP Taccorong can be seen on the next photo of Cribb, who at a photo (not shown here) of the signpost (figure 3, Cribb report) notes that this cemetery of honour was established in 1977 and that corpses of former freedom fighters were reburied there, without mentioning their original location and without mentioning death conditions.



2.34. Cribb's answer to Question 4 is, in so far as it is relevant to TMP Tanete and TMP Taccorong:

- *The office on the Taccorong district airfield was unmanned during my visit. There was no office at the local fields of honor of Suppa and Tanete.*
- *The Dinas Sosial (Social Service) in Bulukumba is responsible for the field of honour. Taccorong. I approached the office of the Dinas Sosial with a request for documents concerning the establishment and administration of the field of honour. However, the officer there told me that the relevant documents had not been kept.*
- *Responsibility for the local field of honor in Tanete is unclear. I am referred to the Dinas Sosial in Bulukumba, but that service denied responsibility for that field of honor.*
- *It can therefore not be established that when (re)buried in these three honorary cemeteries at the deceased verified whether he was a victim of an unlawful execution before he was (re)buried there.*

2.35. Question 1 to Cribb sees on TMP Tanete. Cribb answered:

- *At the Tanete cemetery of honour, there are no written instructions regarding the circumstances in which the deceased died.*
- *The location of the graves - row by row, somewhat scattered in an extensive field - gives the impression that these are reburials.*

2.36. In his answer to question 5, which relates to the burial of the parties' spouses

[plaintiff 6] , [plaintiff 8] , [plaintiff 12] and [plaintiff 7] on TMP Tanete, Cribb claims:

"It can therefore not be excluded that at the honorary cemetery of Tanete (also) dead have been buried who died due to other circumstances for which the State cannot be held responsible, such as victims of legitimate fighting".

2.37. Question 3 to Cribb sees on TMP Taccorong. Cribb's answer is:

"I find no indication that the location of a grave on the Taccorong Field of Honour provides evidence of the death conditions of the deceased. The Taccorong Field of Honour honors revolutionary fighters in general and pays no special attention to potential victims of wrongful executions."

2.38. It follows from these findings and conclusions of Cribb that it is quite possible that victims of misconduct of Dutch soldiers were buried at TMP Tanete and TMP Taccorong, but that it cannot be assumed that this applies to *all* men buried there.

2.39. The widows and children have testified about the reburials at these two honorary cemeteries. They had presented [witness 1] as a witness, because he would have been involved as a civil servant in reburials at these two honorary cemeteries. During his interrogation, however, it appeared that he had been a civil servant in sports matters, not in his official capacity, but as a private person involved in these two honorary cemeteries. Among other things, he stated the following:

"11. When you were a civil servant, when you were in office, were you involved in putting those people together in Terang Terang and in the reburials at Taccorong?"

Yeah, I saw it with my own eyes. I've seen my father buried there. (...)

13. I (...) understood from the documents that you were in office, when you worked as a civil servant, that you played a role, that you were involved in burying or re-burying people in the Taccorong and Tanete cemeteries of honour. I'd like to know what that's like.

I wasn't involved as a civil servant at the time, but as a family member.

14. So the idea that I had, that you were involved as a civil servant at the time, that's not true? Yeah, that way.

15. What you now tell us about those cemeteries and what you have previously put on paper about those cemeteries, that you have done as a concerned next of kin?

*Yeah, yeah, yeah, yeah, yeah,
yeah, yeah, yeah. As next of
kin. As family. (...)*

17. What function did you have as a civil servant, was the name of the function?

I worked as a civil servant at the ministry, sports department. I had two areas under me; Gantarran and Bulu Lohe. That used to be one area: Udjum Bulu.

18. So you had nothing to do with cemeteries in that position?

No, I had nothing to do with that in my job. Those who had anything to do with it were the district commander and the veterans.

19. What about other people?

Yeah, the subdistrict's local government.

20. What else?

No, there weren't. Only as next of kin, like me.

21. We have a file here with all the pieces in it. There's a statement from you in there, as well as a drawing of Tanete Cemetery. There's all sorts of things in there about both Tanete and Taccorong. Where did you get that science about those honorary cemeteries?

I only knew about that cemetery in Tanete, I had never been there, only after it became known that things were going to be arranged regarding those 40,000 deaths.

22. *When did you first visit Tanete? About 2013.*

23. *You have made a map of the cemetery showing where certain people are buried. How did you get that information?*

From the next of kin's side, from the family's side.

24. *So how did it go? Did they assign those graves to you? Yes, that way.*

25. *Have you checked with any other people who are buried there?*

Yeah, with the locals. With relatives of the people, but also people from the area.

26. *How did they know who was buried where?*

People know that because every year at the Sugar Festival they visit the graves."

2.40. Now that [witness 1] was involved in TMP Tanete and TMP Taccorong only as a private person and he has heard what he knows from relatives, of whom it is not clear how they got their knowledge, the court does not include his testimony in the evidence. For the same reason, the court ignores the drawings he made of these cemeteries, which the widows and children brought into question.

2.41. The widows and children have also [witness 2], the administrator of TMP Taccorong, as a witness. He stated that he has been caretaker of this cemetery for about thirteen years, where the '40,000 victims' lie on a separate part of the cemetery. There are 207 graves there, 163 of which, according to the testimony of [witness 2], are "*victims of those 40,000 casualties*". Those 163 graves lie side by side. [witness 2] has testified about these graves:

"Yes, there are those who were executed and there are those who died in battle."

It follows from his testimony that the grave does not show how the buried person died; the 207 gravestones are the same and [witness 2] stated:

"It's not clear who died in battle and who was executed."

2.42. As considered above, the large-scale scale and structural nature of the misconduct of Dutch soldiers in 1946-1949 described in historical sources is not in dispute. Contrary to what the widows and children advocate, however, it cannot be assumed that all 163 graves referred to by [witness 2] are victims of such executions.

2.43. The conclusion is that it cannot be assumed that all graves in TMP Tanete and TMP Taccorong are victims of misconduct by Dutch soldiers. The dispute as to whether the (alleged) husbands and fathers of [plaintiff 6], [plaintiff 7], [plaintiff 8], [plaintiff 11], [plaintiff 12], [plaintiff 9] and [plaintiff 10] are all buried on these honorary fields can therefore remain unanswered. The Court will not judge the evidence relating thereto.

(a4) TMP Ganggawa Mario

2.44. TMP Ganggawa Mario is a military field of honour, where soldiers, fighters and also recently deceased veterans, such as Usman Balo, a well-known freedom fighter who died on 5 May 2006, are buried. There are also graves of police officers and strangers. The State argues that it is quite possible that victims of misconduct of Dutch soldiers are buried in this honorary cemetery, since Dutch soldiers have many summary executions.

carried out in the Sidenreng Rappang region. However, the State disputes that the mere fact of being buried at this cemetery is sufficient to assume that this person died as a result of misconduct by Dutch soldiers.

2.45. The situation here is different from that of the honorary cemeteries discussed above, where, according to the widows and children, only victims of misconduct by Dutch soldiers are buried. In the case of this honorary cemetery, this concerns the locations of the graves and/or in connection with other data from which the cause of death of the buried person can be deduced, such as a statement on the memorial wall and/or on the victim list TMP Ganggawa Mario to be discussed below under (b).

2.46. Question 10 to Cribb is about TMP Ganggawa Mario. Cribb answered:

- *The location of the graves at the Honorary Cemetery Ganggawa Mario does not provide a basis on which a conclusion can be drawn about the manner of death of the people buried there. The location does not exclude that [O-1] / [O] , [P-1] / [P] , [Q-1] / [Q] and [R] were uprightly executed, but does not give rise to such a conclusion.*
- *The unreliability of honorary cemeteries as a historical source is, in my opinion, emphasized by the fact that the tomb of [Q-1] at the Honorary Cemetery Ganggawa Mario is clearly marked with a year of death of 1967, which is not correct with other sources.*

2.47. Cribb's answer to Question 11:

"The names of [Q-1] and [R-1] can be found as numbers [number 1] and [number 2] respectively in a document from the Dinas Sosial Kabupaten Sidenreng Rappang, 'Daftar: Nama-nama Pahlawan yang dimakamkan di Taman Makam Pahlawan Mario Rappang Kab. Sidenreng Rappang' (List: Names of heroes buried in the Honorary Cemetery Mario Rappang, Sidenreng District Rappang), dated April 10, 1986. There is no report of '[O]' or '[O-1]', but there is report of [O-2] (No [number 3]), [O-3] (No [number 4]) and [O-4] (No [number 5]). There is no indication of [P-1] . Next to the names [Q-1] , [R-1] , [O-2] , [O-3] and [O-4] is the note 'gugur' [cases] and 'Bertempur [or Pertempuran] melawan Belanda/Nica', i.e. 'in battle [battlefield] against the Netherlands'. The list gives no reason to conclude that these men were executed on the stand. The Ganggawa Mario list is attached here as Appendix 3. N.B. The note 'sda' in this list means 'sama dengan atas' (the same as above)'.

2.48. Cribb answered question 12, about the memorial wall at TMP Ganggawa Mario:

"As explained above, the memorial walls at Indonesian honorary cemeteries are ostensibly intended to indicate who is buried in a cemetery, and possibly the location of specific graves. As a rule, the memorial walls give no further information. Mentioning a name on a memorial wall means nothing more than that the grave of the man in question can be found in that cemetery".

2.49. In view of these findings and Cribb's conclusions, it cannot be assumed that the men buried on the TMP Ganggawa Mario and the men named on the associated memorial wall are victims of misconduct by Dutch soldiers. As Cribb mentions, this is possible. This will have to follow from other evidence.

(a5) TMP Panaikang

2.50. On TMP Panaikang not only victims of misconduct of Dutch soldiers are buried. It is not disputed that such victims may be among the people buried there.

2.51. claimant 16] first stated that her alleged husband [You] is buried in this cemetery of honour in [block I] , the block in which those who were legally executed lie. Finally, [plaintiff 16] claimed that [U] was reburied in [block II] of TMP Panaikang. The State opposes this

that does not appear to be from a separate part of the cemetery where only victims of misconduct by Dutch soldiers would lie.

2.52. The Court did not accept the proposal of [plaintiff 16] to have Cribb investigate the Panaikang Cemetery of Honor and the significance of being buried there in [block I], because the marriage relationship she had established with [U] was not established. However, [plaintiff 16] has been admitted to prove her thesis about the meaning of being buried on ([block I] of) TMP Panaikang.

2.53. witness 15] , the administrator of TMP Panaikang, was heard as a witness about the list of persons buried there and about the proposition of [plaintiff 16] that on the basis of the location on TMP Panaikang can be traced how that person was killed. Among other things, he has stated:
"35. So how do you know people were buried in 1947 and 1962, who told you that? The next of kin told me about what happened in 1947 and 1962.

(...)

36. Before the remains were moved by the cemetery of honour itself or by the government or any other authority, was there any investigation into the cause of death of these people buried in [Block I] and [Block II]?

Never.

37. I want to make sure I understand. So it's true that people were buried there based on information from the next of kin and nothing else. Is that right?

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah.

(...)

65. How do you know what you just told us about burying 1947 and 1962? They're all based on the information from the next of kin."

2.54. On the basis of this testimony, it cannot be assumed that everyone buried in [block I] and/or [block II] on TMP Panaikang was killed as a result of misconduct by Dutch soldiers. Now that it is unclear how the next of kin came by the information provided by them and this information has apparently not been verified in any way, no evidential value can be derived from being buried in [block I] and/or [block II] of TMP Panaikang.

Slotsom honorary cemeteries

2.55. If it is established that a man is buried in the walled part of TMP Suppa, it is thus established that this man is the victim of the mass execution in Suppa on January 28, 1947. No evidential value is attached to being buried in (a certain part of) the other honorary cemeteries discussed above.

(b) The victim lists

2.56. The second general theme of evidence that has been discussed in the interlocutory judgments is the evidential value of the victim lists drawn up by the widows and children who, according to them, mention (only) victims of unlawful executions by Dutch soldiers. It concerns (b1) the List of 214 victims of Bulukumba , (b2) the victim lists of the social service of Bulukumba (B1-B3), (b3) the lists of the social service of Pinrang (P1 and P2), (b4) the Tanete list and (b5) the victim list of Ganggawa Mario.

2.57. The court has previously ruled that it cannot be simply assumed that the mention of the man's name on one or more of these victim lists means that the man in question is the victim of misconduct by Dutch soldiers. The victim lists may well play a role in the evidence to be provided by the widows and children that their spouses

and fathers died as a result of misconduct by Dutch soldiers. The evidential value to be attributed to the victim lists depends on the sources on which these lists are based and whether these lists have also been drawn up in a sufficiently reliable and verifiable manner. The following assessment of the evidential value of the victim lists always takes place in the cases of the widows and children whose spouse or father's name is on the list in question.

(b1) the list of 214 victims of Bulukumba

2.58. Cribb's answer to question 6 on this victim list is - in so far as relevant:

- *I have both a number of officials at the Dinas Sosial in Bulukumba as well as the former head of asked the Legiun Veteran Republik Indonesia about the circumstances in which the list of 214 victims of Bulukumba was drawn up, but the answer was always frustratingly vague. My conclusion is that the list was not drawn up all at once, but that it gradually took shape by adding (and possibly removing) names.*
- *In 1994 the minutes of a seminar on the history of Bulukumba appeared in the revolution years, which includes a list of victims of which it is written that in 1954 by the local administration of Bulukumba . I think there is no reason to doubt this claim, although it is not certain that no changes have been made to the list in the transfer to the 1994 publication. The list is titled 'Daftar Nama Korban 40,000 Perjuangan Kemerdekaan Bulukumba ' (Names of Victims 40,000 Victims in Bulukumba). Each name is accompanied by a civil appeal. For this reason I consider it likely that this list only reports victims of irregular executions, and not members of army or militia (who may have been killed on the battlefield). (...)*

2.59. Cribb also notes:

"It should not be assumed that the lists are 100% reliable, because they were drawn up some time after the post-war events.

2.60. Cribb's conclusions led the State to assume that a listing on the List of 214 victims of Bulukumba means , in principle, that someone died in a summary execution by Dutch soldiers. Because it follows from the nature of the case that lists of this kind are never 100% reliable, the State believes that an exception should be made to this principle if there is real doubt that someone died in a summary execution by Dutch soldiers in the Bulukumba region in 1946-1947. This means that there is no longer any dispute about the evidential value of this list of victims. The District Court will base its assessment of the individual evidentiary positions of the widows and children whose husbands and fathers are mentioned on this list on this basis.

(b2) Bulukumba Social Service casualty lists (B1-B3)

2.61. On these victim lists are names that also appear on the List of 214 victims of Bulukumba . In view of the above assessment of the list of victims, the question of the evidential value of social service victim lists in Bulukumba (B1-B3) focuses on how the names that do not appear on the List of 214 victims of Bulukumba ended up on these victim lists.

2.62. The court has previously considered that there is insufficient insight into the question on which concrete and verifiable sources these victim lists are based, while there are elements that raise questions, such as (i) the fact that the victim lists are drawn up in a reactive manner, since inclusion on the victim lists takes place after the victim's own registration, (ii) the fact that verification of the applications is to a large extent based on oral statements and (iii) the increasing number of names on the different versions of the victim lists, sometimes with numbers that exceed the number of buried victims respectively the numbers mentioned in historical sources, and (iv) the fact that the social service victim lists are partly

are based on other victim lists.

2.63. Question 7 to Cribb relates to the victim lists of the social service in Bulukumba (B1-B3).

Cribb's answer is - as far as relevant here:

"I have assumed that this question should have been answered on the basis of written evidence, not on the basis of statements made by people involved in the compilation of the list. In principle, it is not improbable that some names could be found on these lists solely on the basis of the statements of people involved in the trial. That's why I have tried to pick older lists as far as possible, be it from publications or from official archives. The three lists - from 1954, 1974 and 1986 respectively - attached as Appendices 1, 2 and 3, are the main results of this research. It should not be assumed that these lists are 100% reliable, because they were drawn up some time after the post-war events".

2.64. The widows and children made [witness 3] testify about the drawing up of the victim lists of the social service in Bulukumba (B1-B3). He stated that he had started drawing up victim lists as of 2011 and that he based these three victim lists on the List of 214 victims of Bulukumba, the data on the stone commemorative plaque on TMP Taccorong and on the stories of the children of the victims.

2.65. The State correctly observes that it follows from this that the names not on the List of 214 victims of Bulukumba, but on the lists of the Social Services, are only based on the information on the memorial plaques of the honorary cemeteries and on the stories of the children of the victims.

2.66. [witness 3] has stated that he had conversations with smaller groups of relatives and witnesses and at the annual memorial meetings with children of the executed and that he does not know exactly anymore with whom he has spoken, but according to him they were "many". The information he gathered in this way, he then included in these three victim lists.

2.67. This testimony does not remove the court's reservations about these three victim lists. In the opinion of the court, the names on the Bulukumba social service victim lists (B1-B3) that do not also appear on the 2014 list of Bulukumba victims are not based on sufficiently concrete and verifiable sources. Therefore, it cannot be assumed on the basis of these three victim lists that these men are victims of executions by Dutch soldiers.

(b3) the lists of the Pinrang social service (P1 and P2)

2.68. Y], who by order of the State has investigated the backgrounds and the creation of these victim lists, has spoken with Mr. [xx] of the social service in Pinrang. The court has previously ordered the State to bring the interview notes of [Y] of the interview with [xx] into question.

2.69. It follows from the interview notes brought into question by the State that the data on these victim lists originate from surviving relatives and from interviews with members of the community. The widows and children correctly point out here that the process of drawing up these victim lists is comparable to the process discussed above of drawing up the victim lists of the Bulukumba social service. In the opinion of the court, in the absence of a concrete insight into who was spoken to and what those persons stated on the basis of which, these victim lists are not based on sufficiently concrete and verifiable sources. The District Court will not take this into account any further.

(b4) the Tanete list

2.70. [witness 3] has testified that he drew up this list between 2011 and 2013

from the names on the headstones of TMP Tanete. The widows and children state that this list is leading for them in the question who is (re)buried on TMP Tanete.

- 2.71. Now that this list is based on the names on the gravestones on TMP Tanete, the dispute over the evidential value of this victim list can be left undiscussed. As considered above, it cannot be assumed that only victims of misconduct of Dutch soldiers are buried on TMP Tanete.

(b5) the victim list Ganggawa Mario

- 2.72. According to the widows, this list of victims should be seen in conjunction with the memorial wall, which was discussed in Cribb's above mentioned answer to question 12. Question 13 to Cribb relates more specifically to this list of victims. Cribb has answered the following:

"The list above, 'Daftar: Nama-nama Pahlawan yang dimakamkan di Taman Makam Pahlawan Mario Rappang Kab. Sidenreng Rappang' was initialled by [Head of Department] , then Head of the Department of Social Affairs of the Cabopaths Sidenreng Rappang. I have not been able to find any further information about Mr. [Head of Department]. This question does not seem to be answered on the basis of written sources. As explained above, it is likely that the victim list Ganggawa Mario has not been drawn up all at once, but that it is the result of adding and removing names to and from an original list".

- 2.73. It is not disputed that it is unclear what the underlying sources are for the list of victims drawn up by the Social Services on 10 April 1986. In a general sense, however, it is clear that Social Services in Indonesia collaborated with other organisations, such as the Veterans' Legion (LVRI), when drawing up victim lists, and in later years carried out research into the '40,000 victims'. However, these general circumstances cited by the widows and children do not detract from the fact that there are no concrete data on the sources and/or the research on which this victim list is based. This also applies to Cribb's remark, to which the widows and children refer, that - in a general sense - older victim lists are, in his view, more reliable than more recently drawn up victim lists.
- 2.74. This means that there is a lack of sufficiently concrete and verifiable information about the sources and the manner in which this victim list was drawn up. The inclusion of a man on the victim list, Ganggawa Mario, therefore has no probative value.

Slotsom victim lists

- 2.75. If the name of a man is mentioned on the List of 240 victims of Bulukumba , the starting point is that this man is a victim of misconduct by Dutch soldiers in the Bulukumba region in 1946-1947. This principle is the exception if there is real doubt that someone died as a result of misconduct by Dutch soldiers in the Bulukumba region in 1946-1947. Inclusion on the other victim lists discussed above does not have any evidential value.

(c) Discussion of individual evidence positions

- 2.76. The court now comes to discuss the individual evidence positions of the widows and children. In view of the earlier considerations on this subject, the District Court will not consider the written statements previously brought into dispute by the widows and children. The District Court only includes in the assessment of evidence the submitted witness evidence, the previously established evidential value of the burial of a man within the walled section of TMP Suppa and the inclusion on the List of 240 victims of Bulukumba and the written evidence submitted in the conclusions after investigation.

[Claimant 1] and [Claimant 2].

2.77. In its conclusion after the survey, the State indicated that - because of the photographs of a tombstone and a memorial stone submitted by [plaintiff 1] and [plaintiff 2] respectively - sufficiently plausible that their fathers are buried within the walled section of TMP Suppa and that they died as a result of a summary execution by Dutch soldiers. This is no longer in dispute and it is legally established that the fathers of [plaintiff 1] and [plaintiff 2] were shot dead by Dutch soldiers during the mass execution in Suppa on 28 January 1947. What this means for the assignability of their claims is discussed below under (d).

[plaintiff 3]

2.78. finally states that her father [M] was killed by Dutch soldiers during executions on or around 25 January 1947 in the place now called kampong Coka. She had previously stated that her father was buried on TMP Suppa after being shot and killed during the mass execution of 28 January 1947. She stated that together with her mother she witnessed the summary execution of her father and argued that [plaintiff 1] would have confirmed her presence at that summary execution. After the first interlocutory judgment, [plaintiff 3] changed the facts on which her claims are based and stated that her father had died about two weeks earlier in another massacre in a place now called Kampong Coka.

2.79. In its interlocutory judgment of 26 January 2016, the District Court considered that [plaintiff 3] had not substantiated this new assertion in any way: it suffices to state that , on the basis of *triangulation*, it can be examined whether the father of [plaintiff 3] was indeed killed in a summary execution. At that state of affairs the District Court saw no point of departure for accepting this proposition as certain. However, the District Court did see reason to ask Cribb to investigate whether, as [plaintiff 3] stated at that time, unlawful executions took place on or around 14 January 1947 in the place now called kampong Coka and whether it can be determined whether her father, [M] was killed in the process.

2.80. In its conclusion after the inquiry [plaintiff 3] concluded, based on the witness statement of [plaintiff 1], that the alleged summary execution of her father would not have taken place on or about 14 January 1947, but on 25 January 1947.

2.81. In her conclusion after the inquiry [plaintiff 3] explains her widely divergent views on the facts by stating that for years she had been under the (incorrect) assumption that her father had been executed in Suppa on 28 January 1947. According to her explanation she moved to Suppa with her mother after that date and from childhood she knew that her father had been executed by the Dutch army. Elders told her that this had happened, but they did not explicitly tell her where it had happened. Claimant 3] , who also heard from childhood about the summary executions in Suppa, subsequently always assumed that her father had also been shot at that massacre. According to her explanation, [plaintiff 3], with a view to this lawsuit - and apparently after the State had been held liable on her behalf and summoned in these proceedings - further investigated the death circumstances of her father. This brought her to the attention of [V] (hereafter: [V]), who at that time was the oldest person in Karangang, where [Q] came from. Subsequently she heard from [V] that her father had been betrayed before the massacre in Suppa and had been executed by the Dutch army in nearby Coka in the days before. Subsequently other witnesses were traced who confirmed that this was indeed the case. The lawyers of [plaintiff 3] have also noted that it was previously stated on behalf of [plaintiff 3] that she lived with her parents in Coka in 1947. According to them, this was an incorrect assumption on the part of [plaintiff 3]'s contact persons. Because [Q] had been shot dead in Coka, it was wrongly assumed that he also lived there. From the file of

(plaintiff 3) however, it is clear that the family were living in Karangang at the time of [Q's] death, according to (the lawyers of) (plaintiff 3) .

2.82. [plaintiff 3], as a party witness, has stated the following:

"(...) I'd like to talk to you about your father's death. [M] . How did he die?

At one point, he was ordered to come out, get out of the house. That's what he did. The house was then set on fire. Where he was taken, what happened, so far that's unclear.

2. Were you there when this was ordered to your father?

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah. I was there when my father was ordered to come out. Then we all went outside.

3. Who ordered your father to come out?

I don't know about that. I don't know who ordered him to come out. I was little then.

4. How old were you then? About

three years.

5. Do you know what happened after your father left home?

My father was taken after that.

6. Who took him?

I don't know who.

(...)

8. Do you know where your father died? According to the people in the village of Coka.

9. According to which people?

A man named [V] . He told me that my father was killed in kampong Coka.

10. When did he tell you that?

I was told when we were going to settle this. Because we used to be afraid to talk about it.

11. What do you mean? "when we were going to settle this"? Arranging it with the Netherlands.

12. When did [Q] tell you this? So how long ago? A long time ago. I forgot when.

13. What exactly did he tell you?

[V] has told me that my father was shot by the Dutch. And that he was then buried in Karangang on a rice field.

14. How did [V] know that?

[V] know that because he was taken, too. But on the way home he was sent back, because he was still small.

15. Then how does [Q] know what happened after he was sent back?

V] was still small when he was sent home and after that there was no talk about it, because people were afraid.

16. How does [Q] know what happened to your father in Coka?

Q] knows that from hearsaying people who told that, secretly actually, because they didn't dare talk about it so it was secretly told.

17. Who were they who secretly told [V] ? That's not what [V] told me.

18. Initially, in these proceedings, it was said that your father was shot dead during the great

execution in Suppa. Do you know why it was said that way in the first place? I didn't know he was shot in kampong Coka at first.

19. Does this answer you're giving mean you thought your father was shot dead in Suppa before? Is that what you're saying?

Yeah, that's right. I initially thought he was shot dead in Suppa.

20. How come you thought that at first?

That's because I knew Suppa was a place of execution.

21. Did somebody tell you that?

Yeah, the Elders told me my father was shot.

22. So how did you get the idea that your father was shot and killed in Suppa?

Because the elderly, a lot of people have said that my father was shot too.

23. Did those elders also say where he was shot?

The Elders just told me that my father was shot. They didn't tell me where he was shot.

24. Just to make sure I got it right. Do I understand correctly that you heard from the elders that your father had been shot. That you knew that a lot of people had been shot in Suppa and that at first you yourself thought that your father was one of those people who had been shot in Suppa?

Yeah, I knew about those executions, the shooting, in Suppa. And that the men who were shot and killed in Suppa.

25. How did you get in touch with [V] ?

[V] is related to me on my father's side.

26. How come after years of not talking to him about your father's death?

I have, with [V] I started to talk about where my father was shot after these things were settled with the Netherlands.

27. So you went to ask him, do I understand?

That's right. I made a good enquiry about what happened and I asked [V].

28. Why were you going to ask him that?

Because at that time we were in the process of arranging with the Netherlands. To arrange this with the Netherlands.

29. And why did you go and talk to him when you were arranging things with the Netherlands?

Because at that time [V] was the oldest person in Karangang.

30. And why did you ask, in Karangang? Because my father is from kampong Karangang.

31. Have you checked with other people?

I haven't asked anyone else, except [V] , because every time I talk about this I feel very heartbroken.

Remark Judge: Madam is emotional. (...)

38. What else did he tell you about your father's death?

[V] told me that my father was shot and that he was buried there.

39. You said at the beginning that your father was shot dead in kampong Coka and that [V] had told you that.

I've talked to [V] about this and I just really wanted to know what happened when this was going to be arranged with the Netherlands so I really knew, I want everything to be halal, so pure is what

will be told and what will be arranged. I really wanted to know. (...)

57. Just checking to see if I understand how it went. You stated that you thought for a long time that your father was buried in [residence 1] and you said that to the village chief and then the village chief wrote that it was so. Is that how it happened?

This is because it was said that all those who were shot were buried in the hero cemetery Suppa .

(...)

82. Kampong Coka, the place where your father died, used to be called Kampong Coka, when that happened?

Yeah. It was called Coka from way back when my father passed away.

83. So if I understand correctly, it was called Coka then and it's still called Coka now. Yeah.

84. I am asking you this because during the procedure the place has been discussed and it has also been said that the name of the place might be different now. Can you imagine anything about that? Is it conceivable that kampong Coka is also known by another name?

I don't think so, but I've only known the name kampong Coka since this was arranged.

(...)

86. You just told us you were three years old at the time. Is everything you tell us about that based on what [Q] told you?

Everything I've told you about this has been told to me by [V] . That he was shot, that the house was set on fire.

87. Because you were there, but you were still very, very small. So do I understand that you don't have a memory of your own?

All I know is he was taken, shot, the house set on fire. That's all I know.

(...)

96. Did you ever find out why your father was taken?

I don't know about that. No one ever told me why he was taken."

2.83. As can be seen from the parts of her testimony quoted above, [plaintiff 3] has been extensively questioned about what she knows about her father's death. She was three years old at the time and has no recollection of that. According to her testimony, what she knows is based on what [V] told her after she made the claim in these proceedings. Before that, however, according to her witness statement, she had heard from people in Suppa that her father had been shot during the mass execution there and that he was buried in the walled part of TMP Suppa. As considered above, she initially took the position that she, together with her mother, witnessed the summary execution of her father during the mass execution in Suppa on 28 January 1947.

2.84. Furthermore, apart from the capacity of the oldest person in Karangang claimed by [plaintiff 3], it is not clear who [V] is and what he bases his knowledge about the death of [M] on. This also does not follow from the production 133 submitted by [plaintiff 3], a recording of an interview with [V] . The court has taken note of what [V] says through the English subtitles. [V] only says that he saw the corpse of [M], with a gunshot wound in his head. He says nothing about the place of execution, only that he heard from the people who brought the body of [M] that he had been executed.

2.85. Because of these uncertainties, which are not removed by her explanation referred to under 2.81, and the contradictions in what [plaintiff 3] apparently heard from different sides about the death of her father, her explanation cannot contribute to proving the cause of death alleged by [Q] .

2.86. [witness 4] , the (older) half-sister of [plaintiff 3] , was also heard about her father's death. At that time she lived with her mother in another house than her father's house. She stated as a witness that her father's mortal remains were brought to her and that a young man had come earlier to tell her that her father had been killed:

""15. Where did this man come from when he came to you?

That man was from Karangang. (...) It's family, but not close family. It's not a brother or anything.

16. Where did he come from?

The man is from Karangang, but he came from kampong Coka when he told about that event.

17. Did he have your father's remains with him?

No, not yet. He just came to tell me that message and he also said to pick up the corpse of Mr. [M].

(...)

20. That man who came with the message, what exactly did he tell you?

The man who came to bring the message said that sir [M] was shot dead by the Dutch.

21. Did he see that?

The odds are very good. It is very well possible that he saw it, because he came to tell us from kampong Coka that he had been shot.

22. I understand, just for the record, that he didn't tell you he saw it. But that he just came to deliver the message of death.

He didn't say he saw it, because he was scared, too.

23. What did he tell you about how it went? About how it happened?

The man who came didn't say much, because he was scared. He came from Coka and told that there was an execution including executed, shot, was Mr. [M] .

24. Were any more people shot?

Yeah. There were a lot of them, but I don't know who all got shot.

25. Did he also tell you where in Coka the men were shot? That man only said in kampong Coka.

26. That place, Kampong Coka, is it still called Kampong Coka?

I don't know if it's still called kampong Coka. I've never been there, because I live in [place]. Because my parents and grandparents are from Karangang.

27. Do you know where Coka is?

I don't know where kampong Coka is, because I've never been there."

2.87. [witness 4] also stated that her father had been taken from her home earlier that day and that his house had been set on fire:

""49. And you also just told me that early in the morning you heard that your father's house was burning and then you heard shots. Did you see anything between that moment and the moment the man came to tell you where your father was? What actually happened to you between those two moments?

In the meantime, the story went around that the Dutch had come with people, set things on fire and took those people with them.

(...)

50. *Let's move on. We'd stuck to the point where you said the story went around that people had been picked up by the Dutch. Was that part of the story, or was it part of the story, that your father was picked up?*

Yeah, I heard that message too and eventually I found out he was gone, he wasn't there.

51. *And what you just told me about you going to find your father, was that because of that story that went around?*

Yeah. We were waiting for that moment and we were afraid to walk around.

52. *Did you see Dutchmen that day?*

I didn't see that on that day, but there was a school near us and there was the Dutch army. From the moment they were there that school was closed."

2.88. The District Court considers this statement to be insufficiently concrete to allow it to be assumed that

Q] , as [plaintiff 3] states, was killed by Dutch soldiers during executions on or around 25 January 1947 in the place now called kampong Coka. witness 4] did state that she saw the dead body of her father. According to her statement, however, at the time she only heard that he was killed by Dutch soldiers in Coka. It is not clear whether this is the place that is called Coka nowadays. Furthermore it is unclear how [Q] ended up there. Witness 4] only states that stories were going around about Dutch people who had picked people up and set houses on fire. However, she did not see any of them herself.

2.89. In addition, there are too many questions about the executions made by [plaintiff 3] in the place now called Coka. The District Court has asked Cribb to investigate whether, as [plaintiff 3] (at that time in the proceedings) stated, unlawful executions took place on or around 14 January 1947 in the place now called kampong Coka and whether it can be determined whether her father, [M] , was killed in those executions.

2.90. In his draft report, Cribb concluded that he could not find any mention in the literature of wrongful executions in a place called Coka on or around 14 January 1947.

2.91. On the basis of the agreements made during the parties' appearance on 27 October 2017, Cribb conducted a further investigation into possible executions at the location specified by [plaintiff 3]. In his final expert report, Cribb concludes that kampong Coka is currently located in the city of Pinrang, just east of the main road Parepare- Pinrang and on the right bank of the Sungai Sadangtoa. The name does not appear on the maps of the Pinrang district that can be consulted in the collection of scanned historical maps of Indonesia that is now at Leiden University. On a military map of 1944 the name Laie does occur in the area where Coka now lies. For this reason Cribb has searched Indonesian sources for the names Laie and Pinrang, as well as (just to be sure) Leranglerang and Oeloetedong. He concludes that he could not find any mention of a mass murder or a fight in 1946-1947 in connection with these places.

2.92. (plaintiff 3) wrongly claims that Cribb did not conduct an additional investigation into the map in M. van den Brekel's book, "Mass executions on Sulawesi. How the Netherlands got away with murder in Indonesia (2017)", from which follows a different location of Coka, somewhere near Garisi I, Tjenrana or Sorowe. Cribb also investigated this location. In the reports on Pinrang that Cribb found, however, these names do not occur.

2.93. In its conclusion after survey [plaintiff 3], referring to the aforementioned book by M. van den Brekel, states that the summary executions at Coka have been referred to in the historical sources as summary executions at Padakkalawa.

2.94. By order of the State, the NIMH6 investigated the alleged executions in Coka. According to the NIMH, the probable location of kampong Coka is the former town of Barang 1. The NIMH then investigated whether, according to archive sources and literature, executions took place in kampong Coka (modern name) or kampong Barang 1 (then name) or in the immediate (rural) surroundings. The NIMH concludes that the sources studied do not provide any information about executions in kampong Coka in Pinrang in January 1947. However, references have been found in the archive material to a Dutch military action in the Padakkalawa camp complex on 17, 18 or 19 January 1947 by the Depot Speciale Troepen (DST) with the support of Battalion Infantry XV (KNIL). On the basis of contemporary and modern maps, the NIMH was able to verify that the modern kampong Coka, and thus the location of the executions, was approximately six kilometres from Padakkalawa.

2.95. Because of the ambiguities discussed above, the conclusion is that [plaintiff 3] has not succeeded in proving [M]'s (ultimately) alleged cause of death. Her claim must be rejected.

[Claimant 4]

2.96. states that her father [G] was shot during the mass execution in Suppa on January 28, 1947. However, he is not buried within the walled section of TMP Suppa, where the victims of the mass execution of 28 January 1947 lie. Claimant 4] states that her father's grave is located outside the walled section of TMP Suppa. According to [plaintiff 4], the style of the memorial stone is an indication that his fate is inseparable from that of those buried within the walled section.

2.97. On the one hand, it is certain that only victims of the mass execution on 28 January 1947 were buried within the walled section of TMP Suppa. On the other hand, it is not clear whether *all* victims of that mass execution were buried there. Therefore, it cannot be excluded that - as [plaintiff 4] states - her father was shot dead during that mass execution and buried outside the walled section of the cemetery of honour.

2.98. In the absence of further details, no inferences can be drawn from the style of the commemorative stone referred to by [Claimant 4]. Nor, based on Cribb's general determination that the marked graves lying outside the walled area are of a later period than 1947, can it be assumed that the father of [plaintiff 4] did not die in the mass execution on 28 January 1947. It therefore matters whether this follows from the witness evidence submitted by [plaintiff 4].

2.99. The parties agree that the testimony of the witness [witness 5] cannot contribute to proving the cause of death of [B] alleged by [plaintiff 4].

2.100. The State correctly points out that the witness [witness 18] did not state in which place the mass execution took place which she witnessed as a child; she speaks only of *'the southern side of the office of the head of the sub-district'* and has stated that she heard from others that [G] was shot during the executions which were hidden from her sight by the office where she sat with the women and children. From this it can only be deduced that [witness 18] has heard that [G] was shot during an execution, but not in which place.

2.101. The place of death is also unclear in the witness statement of [plaintiff 4]. She stated that her father was shot dead at the office of the head of the sub-district in Madjenna :

"11. Where was he shot?

At the office of the head of the subdistrict in Madjenna.

(...)

38. *Where was your father buried after he was shot? At a cemetery in Madjenna. An honorary cemetery.*

(...)

66. *You were talking about the office of the head of Suppa, village in Madjenna. What was the name of the head of Suppa, you know?*

We never said about the office of the village of Suppa, but about the office of the head of the subdistrict of Madjenna.

67. *What was his name?*

I don't remember. I can't remember, because I was very small back then.

68. *Where is Madjenna, in relation to Suppa?*

Close by."

2.102. In her observations on the minutes of the examination of witnesses, [plaintiff 4] stated that, in her opinion, "Madjenna" was misrepresented in the minutes. Instead, it should read "Majennang". The State points out that Majennang is about 140 kilometers south of Suppa .

2.103. With the State, the Court is of the opinion that [plaintiff 4] in both cases - whether it concerns Majennang or Majenna - has another place than Suppa in mind. The Court has reviewed the recordings of the witness statement again and has established that [plaintiff 4] does not only state in writing, but also in pictures, that her father did not die in Suppa. Although that is on her way, she has not provided any clarification about this. There are too many questions about the alleged place of death to be sure that her father was shot and killed during the mass execution in Suppa. So [plaintiff 4] has not succeeded in her task of proof. Her claim will be rejected.

[plaintiff 5]

2.104. states that her father [C] was executed by Dutch soldiers in the Bulukumba region in 1947. His name is mentioned on the List of 214 Victims of Bulukumba . This means that the cause of death established by [plaintiff 5] is in principle fixed, unless there is real doubt about it.

2.105. The State argues that such a real doubt exists, because [plaintiff 5] was only able to say hearsay about the death of her father. However, as considered above, this does not prevent a statement from being considered reliable and useful.

2.106. Furthermore, the State points out that [plaintiff 5] took different positions in the proceedings and subsequently, as a witness, made a statement that differs in some respects from its earlier positions. For instance, [plaintiff 5] has stated as a witness that her father was shot dead and buried in Batukaropa, while she previously took the position that her father was buried at the TMP Taccorong about fourteen kilometres away. She also stated as a witness that her father played a leading role in the resistance, while earlier in these proceedings she explicitly stated that her father was not a resistance fighter:

"20. Did your father join the fighters, or was he one of them?

Yes. He has joined the warriors and he has also resisted as a warrior. Just like his son, who was a pelopper.

21. *Do you know what kind of acts of resistance he committed?*

He didn't resist and take up arms, because my father was old then. He took the

assisting young warriors with words, with advice, with opinions: "You must do this." Or "You'd better not do this."

22. *How do you know this?*

I heard that from his wife, my grandmother. [grandmother] She heard it from the warriors who came back to report for duty.

23. *Was your father one of the warrior leaders?*

He was indeed a leader. He gave advice. At the time he came to turn himself in. He was actually in the service of the Dutch. He was a vacciner. Even at the time he was shot, he was in Dutch service. Dutch civil servant.

24. *You just told me that the Dutch were looking for the fighters and that they couldn't find any fighters. Were they looking for your father as well?*

Yeah. He was a warrior too, because he had joined the warriors. After he was in the woods, that announcement came that warriors could turn themselves in and that nothing would happen to them. Then he came out of the woods to turn himself in. Before he did, he was in a place where people had fled and come to. He didn't have a chance to change his clothes and turned himself in.

25. *My question was about what happened before the Dutch called the fighters to surrender. When they were searching. My question was, "Were the Dutch looking for your father?"*

Yeah, he was searched for before there was an announcement.

26. *Why was he wanted?*

Firstly because he didn't report his son and secondly because he had also gone into the woods. That's why he was wanted."

2.107. Claimant 5] has clearly taken divergent and not always compatible positions in these proceedings and has, as a witness, again stated differently on points from what she has put forward in the documents of the case. However, the District Court sees no ground for real doubt in this, which necessitates a deviation from the starting point adopted on the basis of the List of 2014 victims of Bulukumba regarding the cause of death of the father of [plaintiff 5]. The Court sees - on the contrary - in what [plaintiff 5], under oath and from her own knowledge, has stated about the search for her father and her statement that she heard later that he had been shot, precisely a confirmation of this starting point.

2.108. Furthermore, the Court sees no ground to assume, as argued by the State, based on the testimony of [plaintiff 5] that her father was a leader of the resistance, and initially refused to report to the military, although he had been summoned to do so, that there is a real possibility that he died as a result of legitimate fighting. claimant 5] has in fact stated that her father had not taken up arms. According to her testimony, her father played a leading role in the resistance because of his age and position, and that role consisted of advising the combatants. According to the testimony of [plaintiff 5], her father also returned to his initial refusal to report and did so. The State has not questioned these parts of the witness statement of [plaintiff 5] and the court also has no reason to doubt the correctness thereof.

2.109. The cause of death alleged by [plaintiff 5] of an execution of her father fits better with reporting it to the Dutch military after all, than the possibility that according to the State he was killed in legitimate fighting actions. Furthermore, no concrete point of departure has been made or has emerged from which it follows that [C], after reporting to the Dutch soldiers who were looking for him, died as a result of a cause of death other than the execution by Dutch soldiers alleged by [plaintiff 5].

2.110. The testimony of the witness [witness 8] , who stated that he does not know [C] and deviates from the testimony of [plaintiff 5] , also does not give rise to any real doubt, which necessitates deviation from the starting point adopted on the basis of the 2014 List of Victims of [residence 2].

2.111. It is thus established in court that [C] , the father of [plaintiff 5] , died as a result of an unlawful execution by Dutch soldiers. What this means for the assignability of the claims for [plaintiff 5] is discussed below under (d).

[plaintiff 6]

2.112. states that her husband [H] was executed by Dutch soldiers in March 1947 in Palampang near Rilau together with [I] (the husband of [plaintiff 8]) and [J] (the husband of [plaintiff 12]). In her conclusion after the inquiry [plaintiff 6] has, in view of the victim lists of the Social Service, adjusted the month of death of [H] to February 1947.

2.113. [witness 10] was heard as a witness on the circumstances of [H's] death. He has - as far as relevant - declared the following:

"3. How did he die?

It was one morning. We were still together then. At one point, he went to a different place than I did. He was then captured and shot.

4. What were you doing with [H] before he was taken away?

We were alone together that morning and he went someplace other than me and he was picked up and shot.

(...)

7. You were telling me you were with him. What were you doing with [H] ? You mean that morning?

8. Yeah, on the eighth.

We were hiding, hiding, in the woods.

9. Why were you hiding? Because we were wanted and we were scared.

10. Who were you looking for?

At that time we were wanted by the Dutch army, by Dutch soldiers.

11. Why were you wanted by the Dutch soldiers?

At that time we were wanted by Dutch soldiers, because we had joined insurgents.

(...)

14. Were you alone with [H] when you were hiding in the woods, or were there more people there? I was with sir [... 2] . (...)

(...)

19. Can you tell us what you remember? About what? About that hiding?

20. First of all, about that hiding. You just told me that [H] was captured and I'd like to know how that happened.

I can't remember in detail. All I remember is that at one point I went to another place and [H] went to another place.

21. Then where did you go?

When our paths separated us between me and sir [H], I went to the forest to take shelter,

to hide me.

22. *Where did Mr. [H] go?*

When we broke up, Mr. [H] went to Palampang in Tanete.

23. *Did sir [H] go there on his own, or with someone else or others?*

I can't remember in detail with that, because I've already forgotten a lot. All I know is that we broke up.

24. *How do you know [H] went to Palampang?*

Because it was reported that [H] had been arrested and shot dead in Palampang.

25. *Whose message did that come from?*

Many stories about those events came from people from the market.

26. *Did you see that [H] was picked up and shot?*

I didn't see that directly. I only learned that from the messages that came to me.

27. *What were you told about that?*

(...)

What I had heard was that Mr. [H] was shot and I heard that from people coming back from the market.

30. *Where was [H] shot? They say*

it was in Palampang.

31. *Did you hear where exactly in Palampang? Where in Palampang? I don't*

know. I forgot. I only heard that.

32. *When did you get those messages about [H]'s death ?*

I don't know that in detail. It's been a long time. I don't know what day it was. (

...)

40. *What had you done in the time between the moment you last saw [H] and hearing the news of his death?*

I was hiding at the time, because I was wanted too.

41. *Where have you been hiding?*

I hid in the woods of Garopo."

2.114. [witness 17] has declared only hearsay about the death of [H] . However, as considered above, this does not prevent a statement from being considered reliable and useful. Nor does the District Court see any reason to dismiss the testimony of [witness 17] as unreliable. The question is therefore whether on the basis of this statement it can be assumed that [H] died as a result of misconduct by Dutch soldiers.

2.115. The State argues that, now that it follows from the testimony of [witness 17] that he and [H] had joined the insurgents and were on the run from

Dutch soldiers, the real possibility that [H] was killed as a result of legitimate fighting. However, [witness 17] has stated that he heard that [H] had been arrested and then shot. This first arrest fits better with the execution alleged by [plaintiff 6] than the possibility suggested by the State of finding death in legitimate fighting actions. The court therefore assumes, on the basis of the testimony of [witness 17], which it considers to be reliable and sufficiently consistent, that [H] after he had fled with [witness 17] and their ways separated, was arrested and, as [plaintiff 6] states, was executed by Dutch soldiers. What this means for the claims of [plaintiff 6] is discussed below under (d).

[plaintiff 7]

2.116. states that her husband [K] was executed by Dutch soldiers in February 1947 in front of the government building in Tanete.

2.117. Earlier, the court found that doubts had arisen as to the name of [K].

In the summons [plaintiff 7] stated that [witness 9] was the name of an eyewitness to the execution of [K]. After being disputed by the State, she claimed that [witness 9] was a nickname of her husband [K], which he had assumed when he entered the guerrilla. The District Court considered that the difference between one statement and the other is so great that without further explanation - which is lacking - this cannot be attributed to an error in the translation, as [plaintiff 7] argued.

2.118. The witness [witness 8] made a statement about the death of [K]. Among other things, he has declared:

"18. When he was shot, was he married then? Yes, he was married. His wife's still alive today.

19. What's her name? [plaintiff 7]

20. Do you know [plaintiff 7] as well? I do."

2.119. On the basis of the part of the statement of [witness 8] referred to under 2.118, the District Court assumes as certain that the man with the name [K], on which he declared, was the husband of [plaintiff 7]. This sufficiently clarifies the lack of clarity about his name and the aliases, whether or not they were used.

2.120. [witness 8] has stated the following about the death of [K] :

"21. How did [K] die? Shot, captured.

22. How do you know that?

I saw him captured and taken there and shot. (...)

24. Where was he captured?

Bulukumba.

25. In which part of Bulukumba?

Bontomanai.

26. Where were you when you saw that happen? When he was captured, I saw it.

27. What were you doing when he was captured? We were gathered. Gathered.

(...)

29. Who were you with? I don't know who, with a lot of people.

30. Who brought you together?

Dutch soldiers.

(...)

46. *And when were [K] and those others captured, relative to when you were sitting there?*

On the same

day. (...)

48. *And how was that capture?*

People were assigned. This one, this one, this one. Of all those people.

49. *Do you know why those people were assigned?*

Maybe because they were fighters.

50. *Were those four men you just mentioned all fighters? They were fighters indeed.*

(...)

54. *What happened when those four men were chosen? They were taken to Tanete.*

55. *How did you take that?*

They were tied up and then taken in a car.

56. *How do you know they went to Tanete?*

I saw them taken there.

57. *How did you see that?*

Everyone was seated, so there was no one else standing. So I could see they were tied up.

58. *Did they head towards Tanete?*

Yeah, they were.

59. *What happened then?*

They were shot and killed in Tanete.

60. *How do you know that?*

After two days the message came that they had all been shot.

61. *How did you get that message?*

Someone came to the village from there.

62. *Who was that?*

I don't know who. I just heard the message.

63. *What did you hear?*

That they'd been shot, those people."

2.121. The State correctly points out that [witness 8] is not consistent in his statement about the place where [K] was killed and buried, because he mentions two places: Kapampuang in Tanete and Jawi Jawi in Tanete, which may or may not be different places or the same place:

12. *Where did that happen? [the shooting of [K] , addison court] In Tanete.*

(...)

74. *Were you at [K]'s funeral? No, because he was shot and killed in Tanete.*

75. *Where is he buried?*

In Tanete, Karampuang.

76. *Is that where he was shot? Or is that another place in Tanete? No, that's where the execution was.*

77. Am I to understand that he was buried where he was shot? Yeah.

78. How do you know that?

After he was shot, someone came and told me.

80. Where's Jawi Jawi

Tanete? Tanete, too. Jawi

Jawi.

81. Where's that compared to the place of execution you said it was? That's where they were shot, in Jawi Jawi.

82. That's where they were shot? That's where they were shot.

83. Just called you another place name. How about that? No, I didn't.

84. Karampuang you just said. Where is that, then? In Tanete. Karampuang.

85. Where is that compared to Jawi Jawi in Tanete? I don't know.

86. But it's not the same place?

It's a different place.

87. Is it far from each other, or close by? You don't have to say exactly how far. It's not far from each other.

88. Where did [K] get shot? He was shot over there.

89. Where's there?

Karampuang. It's the same place, Jawi Jawi and Karampuang."

2.122. However, the circumstance that [witness 8] , who did not observe the killing of [K] himself, makes a not very clear statement about the place of execution and the cemetery of [K] , in which he possibly mentions several places in Tanete where this would have happened, is no reason to dismiss his entire statement as unreliable.

2.123. [witness 8] declares in detail and consistent about what he saw, when he was assembled on the orders of the Dutch soldiers, of the picking and taking away of [K] and what he heard about his death, with the exception of the exact place in Tanete where this happened and where [K] would have been buried. The District Court sees no reason to doubt that [K] was selected and taken away by Dutch soldiers in the manner observed by [witness 8]. [witness 8]'s testimony fits with the subsequent execution of [K] , as [witness 8] also heard from others. Now that it is not disputed that [K] did not return after he was taken away by Dutch soldiers, it is sufficiently established that he was executed by Dutch soldiers. What this means for the assignability of the claims of [plaintiff 7] is discussed below under (d).

[plaintiff 8]

2.124. states that her husband [I] was executed by Dutch soldiers in March 1947 in Palampang near Rilau together with [H] (the husband of [plaintiff 6]) and [J] (the husband of [plaintiff 12]). Just like [plaintiff 6] she has, in her conclusion after survey , adjusted the month of death of [I] to February 1947, in view of the victim lists of the Social Service.

2.125. The only evidence to be taken into consideration is the statement made by [plaintiff 8] as a party witness. This statement has limited evidentiary value. Without additional evidence, which is lacking, this witness statement is insufficient to be able to base the cause of death of her spouse [I] as alleged by [plaintiff 8]. In connection with the latter, it is (superfluously) important that the witness heard in the case of [plaintiff 6] has declared [witness 10] on the spouse of [plaintiff 6] , [H] , but not also on [I] . The dispute about the reliability and usefulness of the said witness statement can remain undiscussed, since the claim of [plaintiff 8] has already to be rejected for this reason.

[plaintiff 9]

2.126. states that her husband [A] was executed in February 1947 together with [W] and [W-1] by Dutch soldiers in Bontobaja near Palampang. Furthermore, her identity (her year of birth) and her marriage relationship with her husband [A] (the marriage bond) are under discussion. Related to this there is discussion about the age of her daughter, who according to the State was born long after the death of [A].

2.127. The court will first assess the evidence submitted for the year of birth of [plaintiff 9]. The documents are accompanied by various proofs of identity and family certificates, which contain the years of birth 1930 and 1939.

2.128. Claimant 9] points out in a general sense that the method of personal registration in Indonesia is not watertight. It observes that this is based on the fact that persons in the demographic group of [plaintiff 9] originate from a time when the Dutch State was under colonial rule and did not maintain a system of personal registration for the indigenous population. This is tantamount to a repetition of what it has brought forward earlier about the inadequate registration of persons in Indonesia. In its interlocutory judgment of 27 January 2016, following the Schulte Nordholt report with an explanation of the inaccurate and incomplete manner of personal registration in Indonesia, the court considered that this is a possible explanation for the differences observed in the personal data mentioned in the identity documents and other documents at issue. However, it is not possible to find any ground in this statement for assuming the accuracy of the statements made by the widows and children about which there is uncertainty. The lack of clarity due to different entries of personal data in different documents will have to be clarified. It is up to the widows and children concerned to provide evidence of their identity and/or marriage ties, about which there is a lack of clarity. Without this proof, their statements on this matter cannot be accepted as definite.

2.129. The village chief [investigator] has given a testimony on the written statements he made on 20 December 2011, 10 September 2012 and 25 June 2014, which mention the correct date of birth according to [plaintiff 9], i.e. 7 March 1930. It follows from his witness statement that these written statements are based on information provided by [plaintiff 9] about her date of birth and her marriage relationship with [A]: according to his witness statement, [investigator] has noted what [A] told him. In addition, he has looked at her proof of identity for the mention of the place and date of birth on the statements of 10 September 2012 and 25 June 2014. Furthermore, according to his testimony he checked with the head of the RT, neighborhood and of people living in her area:

"asked if it is true that [plaintiff 9] is the wife of the late [A] "

69. And what was the answer?

Yes. He acknowledged it.

70. How did he know that?

Because he may have been about the same age as [plaintiff 9] .

71. Am I to understand that he [plaintiff 9] knew so long ago? Yeah.

72. What's the name of the head of

RT? [name 2] but he's already
deceased.

73. You just said you'd asked other people. Who else did you ask?

Among others to [witness 2] .

74. Who's that?

He once served on the village council and is also a well-known figure. He quit because of his age.

75. How does he know if the

information was correct? They were
neighbors.

76. Were they also neighbors when [A] was
still alive? I don't know.

77. Who else did you ask? That's it."

2.130. plaintiff 9] concludes that it is established that she was born in 1930, since, according to her, [investigator] carried out a thorough examination which led him to conclude that [plaintiff 9] was indeed born in 1930.

2.131. The Court does not follow [plaintiff 9] herein. In fact, [investigator] has also drawn up a written statement dated 17 January 2014, stating that [plaintiff 9] was born in 1939 . According to his witness statement, this document is based on information originating from [plaintiff 9] and her identity document. Just like when the other written statements were drawn up, [investigator] copied the place and date of birth from it. To the question how it is possible that the dates differ, he has answered:

"That may be on the basis of the submitted ID. There was probably a change when the dates of the identity document were handed in.

91. Can you explain what you mean by that?

It's the same person. But when the new identity document was issued, that change was made.

92. Why has this change been made?

Perhaps when [Claimant 9] registered, that was specified and that change was made.

93. Who did that? What body?

The Population and Registry Office of Bulukumba .

94. That number from the KTP listed here, where did that number come from?

The one who issues numbers of family cards and identity cards, that's the marital status.

95. That number you wrote on that statement, that's right, isn't it?

Yeah, yeah, yeah, yeah, yeah,

yeah, yeah, yeah. Based on the ID

card. (...)

97. Have you made any inquiries with other people about this statement?

I only did that on the basis of proof of identity, because that's considered an official document.

98. The contents of the statement, so what's under there, did you check with other people about that?

No."

2.132. The written statements of May 22, 2014 and September 30, 2014, which also mention a date of birth in 1939, were, according to the witness statement of [investigator], drawn up by someone else, namely the village board member [village board member], with whom, according to his witness statement, [investigator] spoke about the creation of these written statements prior to his testimony. Investigator] has stated about this:

"123. What data is this statement based on, you know? On the basis of information provided by Mrs. [plaintiff 9] .

124. So, here again is that other place of birth and the date of birth [date of birth 3] 1939 and here is number [number 6] and beyond. What kind of number is that?

The KK number is the number of the family card.

125. Who has that family card? Where is it? Mrs. [plaintiff 9] has it.

126. How do those details end up on that family card?

From the ID card. The number on the family card is given by the Population and Registry Office.

127. Is that the same number as the KTP? It's a different number.

128. If you look at this piece, what information is it based on?

On the basis of information from the Population and Registry Office."

2.133. It can be deduced from this that [plaintiff 9] apparently had several official documents with different dates of birth. Investigator] has stated that three days before his testimony he found out that the documents contained different dates of birth, but that in his opinion the date of birth from 1930 is the correct one. He stated the following:

"105. Why is that the correct date of birth? Because that was the first data we had. (...)

107. Are there any other reasons why you think that the first date, March 1930, is the right date? Because that's based on data that was submitted first. While the other date is drawn up after the change in the proof of identity.

108. When you found out three days ago. That difference. Have you talked to anyone about that in the last few days?

With the village council.

109. What did you discuss with the village council?

About the change in the date of birth.

110. What did the village council say about that? They're also sticking to the first date.

111. Why are they holding on to that?

Because at the second registration it is very well possible that [plaintiff 9] because of her age, because she has already forgotten, has given another date.

112. Is [plaintiff 9] forgetful? Yeah.

113. *Has it been a long time?*

That's a long time ago.

(...)

115. *My question was, how do you know that [plaintiff 9] is forgetful?*

If we ask for details, she's already deceased. If we asked for data at first, she said something other than next time.

(...)

161. *Production 56, the statement of 25 June 2014. (...) It says that the registration number [registration number] and so on is an error number and that it would be a false number.*

Where did you get that on

based on that statement? On what information is that based, that statement?

Based on the first statement.

162. *There are also statements in which this number appears and in which you have copied it and which you said is based on an official document. I don't quite understand why you're now saying it's false. Can you explain that?*

Because there were different numbers in the previous statements, this statement has been drawn up on the basis of the correct document.

163. *So you have the statement from June 2014, which states that the earlier number would be wrong, when you just said that I wrote down based on the correct data. How did you determine what the correct data is?*

On the basis of the information issued by the civil registry office.

164. *Surely the civil registry has also published the data with the other date of birth, the one from 1939?*

That may be an error by the person who recorded it, who recorded the data. The correct date is [date of birth 1] 1930."

2.134. The testimony of [investigator] clarifies how the various written statements were made. However, this testimony still does not give an adequate explanation for the discrepancies in the different written statements. Furthermore, this witness statement does not contain enough concrete leads to take over the conviction of [investigator] about the correct date of birth in court. This is all the more true since [plaintiff 9] herself apparently is an important source of information and she herself has mentioned changing birthdates.

2.135. Furthermore, no birth certificate has yet been submitted for the alleged daughter of [plaintiff 9] and [A] , [the daughter] , who would have been one year old in February 1947. Researcher] has also stated the following about his written statement of 30 September 2014 stating that [the daughter] , born on [date of birth 2] 1946, would be the child of [A] and [plaintiff 9] :

""137. And on what information is this statement based?

On the basis of statements made by [plaintiff 9] and [the daughter] .

138. *You mean you've talked to both of them about this? Yeah.*

139. *For example, the date and place of birth mentioned in this statement, what is it based on?*

The identity card, KTP card, of [the daughter] .

140. *Do I understand that she showed it to you and then you copied what was in it?*

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah.

(...)

142. *Did you check with other people when you made this statement? Yes, I did.*

With Mr. [witness 2] as a known figure in the community and with neighbors.

143. *You know, what names do those neighbors have?*

Apart from [witness 2] , I'm sorry I don't know because it's a long way from my house."

2.136. The State notes correctly that this does not explain the discrepancies with regard to the family card and the personal number on the identity card of [the daughter]. The still existing ambiguity about the date of birth of [the daughter] , reinforces the ambiguity about the identity [plaintiff 9] and her marriage relationship with [A] , which, incidentally, has not been sufficiently clarified either.

2.137. Now that the identity of [plaintiff 9] and her marriage relationship with [A] have not been established, her claims must be rejected. The dispute as to whether the alleged circumstances of [A's] death have been established can remain undiscussed. Needless to say, the District Court considers that, also in view of the inconsistencies in the statement of the witness [witness 11] referred to by the State, the question is whether assessment of the evidence brought forward by [plaintiff 9] will result in the conclusion that [plaintiff 9] has succeeded in the evidence.

[plaintiff 10]

2.138. states that her husband [B] was executed by Dutch soldiers in February 1947 together with six other men in Bontobaja near Palampang.

2.139. [witness 11] was heard as a witness:

"23. Was [B] there?

Yes. [name 1] .

24. I want to know [B] . With a "d". Was [B] , with a "d", there? What I know is [name 1] and not [B] .

25. I want to know if the husband of [plaintiff 10] was there. No, that's a different story.

26. Can you tell that story?

No, I don't know, and I can't tell you.

27. So if I understand correctly, you don't know, we're talking about Mrs. [Claimant 10] , sir [B] , if I understand correctly, you say I don't know how he died. I can't tell you that.

No, I don't know. And I can't tell you either.

28. So if I understand correctly, you don't know and we're talking about Mrs. [Claimant 10] , sir [B] , and if I understand correctly, you say now I don't know how he died.

I can't tell you that. No, I don't know. (...)

47. I really want to know one more time just to be sure, we've started talking about Mr. [B] . Do you know, or don't you know, how Mr. [B] died? And I'm talking about Mrs. [Claimant 10] .

No, I don't know. It seems it's another case and that's not my case."

2.140. [witness 11] has been heard twice as a witness. He stated during his second interrogation at questions of Mr. Vossenberg:

""6. At the very beginning of the hearing last week, the judge asked you whether you knew Ms [plaintiff 9] and Ms [plaintiff 10]. Could you tell us how you knew Mrs. [plaintiff 10]?

I know [plaintiff 9] , she's a daughter of sir [... 3] . I don't know a lady [plaintiff 10]. I won't tell you what I don't know. There are ten people who have been captured. Seven have been shot and three are still alive."

2.141. In its conclusion after the inquiry, [plaintiff 10] argues that [witness 11] erroneously stored the name [B] in his memory as '[name 1]'. Claimant 10] points out that [witness 11] stated that the person he called '[name 1] ' was the brother of [name] . [name] is the name of the brother of [B] . Furthermore [plaintiff 10] points out that [witness 11] was accompanied during his interrogation by [grandson] , a grandson of [name] . Claimant 10] brings a list drawn up by [grandson] with the names of the sons of his great-grandfather, [grandfather] , and their children into dispute. It follows from this, according to [plaintiff 10], that [name] was the eldest son of Bolerang, and [B] was the youngest, as the person mentioned by [witness 11] in his statement [name 1] is the youngest brother of [name] . On the basis of the information provided by [grandson], it can be assumed according to [plaintiff 10] that, where [witness 11] speaks of '[name 1] ', he actually spoke of [B]. Claimant 10] sees this confirmed by the original graves of a number of victims of the massacre in Palampang, mentioned by [witness 11], in a cemetery in Palampang. There are graves of [B] , [1] , [... 3] and [2] . plaintiff 10] further points to the location of the secondary grave of [B] at TMP Taccorong, close to the graves of his three relatives, in the blocks declared by [witness 2].

2.142. The Court does not follow [plaintiff 10] herein. witness 11] has been heard twice and during both interrogations he is absolutely clear and firm about this, also when he was asked about it repeatedly. The State also correctly argues that the mentioning of the name [name] does not mean that [witness 11] meant the brother of [B], insofar as it can already be established that [B] actually had a brother named [name]. Furthermore, the District Court with the State is of the opinion that no arguments can be derived from the burial place and the location of the cemetery in Taccorong.

2.143. Since [witness 11] has stated nothing relevant about the alleged summary execution of [B] and other evidence is lacking, the claim of [plaintiff 10] must be rejected.

[plaintiff 11]

2.144. states that her husband [L] (alias [T]) was executed in February 1947 together with five others in or near a rice field in Bululohe by Dutch soldiers. In her case not only the alleged cause of death is in dispute, but also the identity of [T] . It is unclear whether [T], as [plaintiff 11] states, is a nickname of [L], or the name of her second husband, with whom she married after the death of [L] .

2.145. Only the witness [witness 12] has stated the alleged cause of death of [L] :

""9. You just said you heard that [L] had been shot. Then what happened? What did you do then?

After I heard the message from the child that Mr. [L] was shot, I went there to collect the corpse and bury it in the garden.

(...)

19. Do you know who [L] was shot by?

I don't know, because I didn't see who shot him either.

20. Are there people who have seen it?

cemetery is a mass grave. Earlier in these proceedings it was established that there are randomly placed and weathered stone gravestones in it without mentioning the names of the dead buried there and that it is unlikely that each gravestone is exactly over the mortal remains of the victim in question. Cribb has established that there is a large number of tombstones within the walled section of TMP Suppa and that a small number of them have a name, apparently recently written down.

2.152. In view of these previously established facts and Cribb's findings about the gravestones within the walled section of TMP Suppa, in the District Court's opinion no decisive importance can be attached to the gravestones present there. Therefore, the State's comments in this respect do not constitute grounds to consider its earlier findings of fact, based on the parties' views, as inaccurate or otherwise untenable.

2.153. The State further argues that the witness [witness 19] in the cases of [plaintiff 13] and [plaintiff 14] declared nothing relevant about the death and burial of [S] and [D] . This does not lead to a different judgment either. This is in contrast to the statement of [plaintiff 1] . claimant 1] attended the mass execution in which his father was also killed. He has testified as a witness about what he saw and heard when he was under a house with other children and women during the execution:

"71. What happened after that? What did you see? My father sat in the front and then he was shot.

72. And what happened after that?

Then they were taken by people to the cemetery of honour.

73. And those other men who were shot, were they shot after your father was shot?

First my father was shot and then the others, but I didn't look at that because I started crying when my father, grandfather and family were shot.

(...)

79. And [D] , did you see him that day?

I haven't seen [D] , man from [plaintiff 14]. I only heard people say he was dead, too.

(...)

82. Did you see the men's bodies before they were actually buried?

I didn't see them again, because I was very sad. I went on and on and on crying."

2.154. Prior to this [plaintiff 1] had stated the following about burying the victims of this execution:

"46. How many people were shot with your father at the same time?

208. It is on January 28, 1947 and they were buried in the honorary cemetery Suppa .

47. How many men were shot?

208. There are three holes, so it's marked with wood.

48. How do you know it's 208?

Somebody was gonna count. With banana leaves. They use banana leaves.

49. When did that count with those banana leaves?

It's a person who wasn't shot, it's [that person]. He's the one who was going to count. (...)

52. I'd like to know about the person who was counting, did you see that [that person] was counting?

2.156. [witness 20] further stated as a witness that his mother heard about three days later from someone from Suppa that [D] had been shot dead and that he himself saw his father's name on the monument in Suppa seven days after he was arrested.

2.157. The Court does not share the opinion of the State that these two witness statements are too brief and insufficiently concrete to be able to contribute to evidence. The District Court sees in this witness statement a confirmation that [D] was killed during the mass execution in Suppa on 28 January 1947.

2.158. In view of the above, it is legally established that the spouses of [plaintiff 13] and [plaintiff 14] were shot dead by Dutch soldiers during the mass execution in Suppa on 28 January 1947. What this means for the attribution of their claims is discussed below under (d).

[plaintiff 15]

2.159. states that her husband [N] (hereinafter: [N]) was killed by Dutch soldiers in early 1947 during a round of executions near the bridge near Katimbang.

2.160. Question 9 to Cribb related to the circumstances of the death of [N] . Cribb concluded that the circumstances of the death of [N] cannot be determined on the basis of historical sources.

2.161. The exact location of the bridge to which [plaintiff 15] refers has long been unclear. In its conclusion after the survey [plaintiff 15] has further clarified this location. According to [plaintiff 15] it concerns a large bridge in Katimbang, a place in the Paccerekang district of Tamalanrea , Makassar. Jalan Katimbang is nowadays the name of a street in the Paccerekang district. Bontoloe, where [N] and [plaintiff 15] lived in 1947, is (now) also a street about five kilometers northwest of Jalan Katimbang. These locations can be found in the area [residence 11] , which nowadays lies entirely in Makassar. [plaintiff 15] points out that the Dutch army/DST, after large-scale purification actions at the end of 1946 in Makassar in early 1947, moved to the more northerly places Pangkajene and Maros. According to [plaintiff 15] Jalan Katimbang lies along a logical route from Makassar to Maros.

2.162. As a result of this, the State had a further investigation carried out by the NIMH, which concluded that the contemporary map provides clarity about the location of the alleged execution of [N] mentioned by [plaintiff 15]. However, the sources do not mention the place names Katimbang and Paccerekang as the location of a military action, nor do military reports mention the route taken by the Dutch soldiers when they moved in a northerly direction. The statements of [plaintiff 15] therefore find no support in the investigated sources, according to the State, which disputes that Jalan Katimbang lies along a logical route from Makassar to Maros. The State points out that the road over the indicated bridge leads to the southeast, while Maros lies northeast of Makassar. The NIMH also notes in its further report that, according to the State, the logical main route that the Dutch military units would take on their way from Makassar to the places Maros and Pangkajene does not run along the location of the alleged execution mentioned by [plaintiff 15].

2.163. The court left the question of whether or not the bridge was on a logical route from Makassar to Maros to rest. This is irrelevant, since [witness 21] stated that the Dutch soldiers went the same way back as they came. It is therefore very questionable whether, as [plaintiff 15] argues, they were in transit when the alleged execution took place. However, the District Court has established that the lack of clarity about the alleged location of the execution has been clarified.

2.164. The witness [witness 21] stated the following about the death of [N]: "1. You just said that you know Mrs. [plaintiff 15]. Did you also know her husband, [N] ? Yes, I did.

2. How did you know [N] ?

We lived in the same village.

3. Do you remember when you last saw [N]? I forgot.

...the last time I saw him, he was executed. (...)5. ...what can

you tell me about [N]'s death?

He was shot dead on the bridge.

6. What bridge was that?

The big bridge, in Paccerakkang.

7. We have written in the pieces that it was at the bridge in Kampong

Katimbang. Yes, in Katimbang, but in the Paccerakkang district.

8. So Paccerakkang is part of Katimbang again. Do we get it right then? Yes, it was in

Paccerakkang in Katimbang.

9. How do you know [N] was killed there?

I was there. I was ordered to gather the people.

10. Can you tell me what you saw then? I

saw it because I was there.

11. How did you get in there?

I was taken there with my father. There were a lot of people.

12. Can you tell me what you saw when you were there with your father?

A lot of people had been brought there. Parents, children, they were all brought here.

13. Who brought all those people there? The army.

14. What were those people supposed to do there?

As soon as they got there people were picked out to be shot.

15. So first all the people had to get together, I understand, and then people were taken out. Is that how it went?

No, there was no question of being picked. They were all shot.

16. Who were all shot?

[N] , [person 2] , [person 3] , [person 4] . It's hard, I forgot something. Four people have been shot.

17. Can you tell us how that went?

They were pushed to the river and then shot dead.

18. How many soldiers were there?

There were a lot of soldiers, a lot of soldiers.

19. Do you remember what those soldiers looked like?

I couldn't see that clearly, because they were smeared with charcoal.

20. So they had blackened faces? Yeah, they

did. Black.

21. Have you seen the uniforms? Yes, military clothing.

(...)

23. Do you remember how many soldiers there were? I couldn't count them, there were a lot of them.

24. Do you know where they came from before they got here? They came from Paccerakkang.

25. Did you see them coming?

Yeah, I saw them. They called people out to get out of their homes.

26. Where were you when they arrived? I was at home with my mom and dad.

27. What happened when they arrived? Everyone was taken to the edge of the bridge.

28. Do you remember where you were at that time?

I sat where everyone was gathered, next to the bridge.

29. Can you tell me again what happened when you got there? from beginning to end, when you sat there and what happened after that.

Then people were chosen, taken to the bridge and executed. (...)

37. I want to know a little more about how the execution went. Can you tell me what happened after the men were taken out of the big group?

They were shot and then everyone was sent home.

38. Was there anything said or discussed before the men were shot? No, they were just pointed at and then shot.

39. Did the soldiers say anything to the people from the village who were watching? All they said was that everyone was sent home. It was raining.

40. So the Dutch soldiers took the men out of the group, shot them dead and then told everyone to go home. Is that what happened?

Yeah. It was raining hard.

41. What happened to the bodies of the men who were shot? They were carried away by the river.

42. How did they end up in the river?

When they were shot, they were pushed into the river.

43. Who pushed the bodies into the river?

The military. Because they were shot.

44. You say the soldiers pushed the bodies into the river and then the men were already dead. Do I understand that correctly?

They were pushed first and then shot.

45. I'd like to know exactly how it happened. Do I understand correctly when you say that they were pushed first and then shot, then they were in the water while they were being shot? Is that how it happened?

Yeah. They were pushed and shot.

(...)

47. What happened after that? The bodies were in the water, and what happened to the bodies after that?

happened?

Because there was a lot of current, the corpses were not taken, but they were carried along in the water.

(...)

52. What did the army do after the men were killed?

The soldiers themselves went back.

53. Did you see where they were going, in which direction the military left? They went back to Makassar.

54. Did they go back the same way they came? Yes, they did.

55. What did you do after the men were killed?

I went back and six people who were still alive were taken by the military. (...)

72. I'll summarize it to see if I got it right. As I understood it, ten men were taken out of the group. Four of them were shot and one of those four men was sir [N] . The other six men, were telling you, were taken by the military.

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah.

73. You also told me earlier that the military went the same way as the road they came from.

Yeah.

(...)

79. What happened when the Dutch soldiers left? Everyone went back to their own homes.

80. Do you know what happened to the bodies of the dead men after the Dutch military left?

There weren't any, because it was raining hard.

81. Did you see the bodies after that?

No, after they were shot, they fell into the river and I didn't see them again."

2.165. During his interrogation [witness 21] was accompanied by [attendant] , who noted names during that interrogation. That was discussed during the interrogation. The paper with the names is shown and is attached to the documents. The examining magistrate established during the interrogation that the list mentions more names than those mentioned by [witness 21] during his interrogation. In this state of affairs around the note with the names, the court sees reason to disregard the other names - other than the name [N]. Incidentally, these names are not relevant for the proof of the claim of [plaintiff 15] . For this it is important whether proof has been provided that her husband [N] was killed by Dutch soldiers in the manner she claimed.

2.166. The Court does not follow the State in its argument that with the testimony of [witness 21] no reliable evidence has been produced, because it cannot be assumed that [witness 21] has mentioned the name [N] from his own science, nor that [witness 21] has stated from his own science that [N] is a victim of a summary execution. witness 21] has been questioned about the death of the husband of [plaintiff 15] , [N] . According to his statement he knew them both and lived in the same village as [N] . The court sees no reason to doubt that [witness 21] knew [N] . The court also sees no reason to doubt that the detailed testimony he gave was about [N] . That [witness 21] , in answer to the question when he last saw [N], first

declared that he no longer knew that, is no reason to assume that what he subsequently declared was about the shooting of [N] , is not about [N]. When he was questioned about the death of [N] he explained this in detail, as shown above.

2.167. The absence of this execution emphasized by the State in historical sources is also no reason to dismiss this statement of [witness 21] as unreliable. After all, not all misconduct by Dutch soldiers has been documented.

2.168. In conclusion, [plaintiff 15] has succeeded in proving the cause of death of [plaintiff 15]. What this means for the assignability of its claims is discussed below under (d).

[plaintiff 16]

2.169. finally states that her husband [U] was executed at the end of 1946, after being herded together by Dutch soldiers with other villagers in the Kalukuang district of Makassar. The State noted that executions took place there in the night of 14 to 15 December 1946. In addition to the alleged cause of death, the marriage relationship with [U] is under discussion.

2.170. The court will first assess the evidence of the alleged marriage bond between [plaintiff 16] and [you]. As considered in the interlocutory judgment of 27 July 2016, [plaintiff 16] can provide evidence of its claim by all means, unless the law provides otherwise (article 152 paragraph 1 Rv). The latter is not the case, since it concerns a marriage allegedly contracted abroad.

2.171. The witness [witness 22] declared the following to be of importance:

"3. How do you [you] know?

I've seen them get married. Because [plaintiff 16] was my neighbor.

4. Do you remember when [plaintiff 16] and [you] got married?

Yes, I remember when they got married."

2.172. [witness 22] also stated that [plaintiff 16] had a child:

"1. I would very much like to know about your relationship with Mrs. [Claimant 16].

I saw [plaintiff 16] when she was pregnant. I'm not related to [plaintiff 16].

. I am the neighbor of [plaintiff 16] and I was at the wedding of [plaintiff 16]. "

(...)

10. Do you also know if [plaintiff 16] and [you] had children? The child's name is [child's name]."

2.173. [witness 22] declared that he had forgotten in which part of the year the marriage took place, *"for it has been a long time already"* and that for the same reason he does not remember in which part of the year the marriage took place. He also did not remember how old she was about when the marriage took place, and:

""8. Was it in the time of the Japanese, that marriage?

The Japanese had already left."

2.174. [witness 23] has testified:

"3. Were you at the wedding between [plaintiff 16] and

[you] ? Yes, I was there when [you] got married."

2.175. She further stated that she was ten years old when [plaintiff 16] married [You] , that she thinks that [plaintiff 16] and [You] had a child who died and that [plaintiff 16] and [You] have been married "*quite long*".

2.176. [plaintiff 16] herself testified that she was married to [you] and that they had a child together:

"1. Who were you married to?

I was married to a man named [you].

2. Do you remember how old you were when you married him?

I don't know exactly when, but it was in the period of Japan.

3. Do you remember how old you were when you were in Japan?

I don't know exactly how old I was, there was no registration.

(...)

8. Have you been married to [you] for a long time, or have you been married to [you] for a short time?

It wasn't short. I had one child and that child was one year old. [You] , or the father, took the child everywhere on his arm."

2.177. The State correctly observes that the statements are brief, that they do not place the marriage exactly in time and that they are contradictory in certain respects, such as, for example, whether or not the marriage took place in 'the time of the Japanese'. Nevertheless, [witness 22] and [witness 23] have clearly stated that [plaintiff 16] was married to [you] and have explained how they know this. These statements can therefore contribute to the proof of the alleged marriage bond. The party's statement by [plaintiff 16] supplements incomplete evidence on this point. On the basis of these witness statements, the court concludes that [plaintiff 16] has succeeded in proving that she was married to [U] .

2.178. The next question is whether the reason [plaintiff 16] has proved the death of [you]. What the State brings forward here about the changes in the views of [plaintiff 16] on the cemetery of [U] and the different dates of death in different victim lists, can remain undiscussed because no evidential value is due to the fact that [U] was buried in [block I] or F of TMP Panaikang, nor to the fact that [U] was mentioned on these victim lists.

2.179. [witness 23] and [plaintiff 16] have been heard as witnesses as to the cause of death of [you] alleged by [plaintiff 16]. Saeneng Bolle has declared the death of [you]:

"11. What do you know about the death of [you] ? I don't know how he died.

12. Do you know when he died? He was too young when he died.

13. How old was he when he died? I don't know how old he was then.

14. When did you first hear he was dead? I heard when he was already dead.

15. What did you hear then?

He was shot and taken when he was already dead.

16. Who shot him?

The Dutch shot him, but I'm really not sure. He was in Kalukuang on his way to work.

17. *Have you been told how that happened, too?*

You ask me how he died, he was shot.

18. *Where did that happen?*

He was shot dead in Rappokaleng.

19. *Where was [you] shot?*

I don't know where he was shot. All I know is he was shot in Kalukuang. He was shot in the ear.

20. *How do you know that?*

Somebody told me.

21. *Do you remember who?*

I don't remember the names of whoever told me that. (...)

23. *Then what happened in Kalukuang?*

[You] was right under the sun in Kalukuang.

24. *What was he doing there?*

He was on his way to work.

25. *What happened then that killed him?*

I don't remember, because I was just a little girl then. (...)

36. *Who did you hear [you] got shot?*

A lot of people have told me that [you] have been shot."

2.180. [plaintiff 16] has stated the following:

"15. How did [you] die?

I didn't see it myself. He was killed in Rappokaleng by Dutch soldiers. I was somewhere else.

16. *What else do you know about his death?*

I know a thing or two about it. Someone told me about his death.

17. *Who told you that?*

I know about my husband's death from so many people.

Mrs [... 4] notes that [plaintiff 16] says that many people have said that [you] was done dead. Then [plaintiff 16] went to the house of [your] mother, where his body was lying. And then they went to Panaikang together.

18. *Where were you when [you] were killed? When*

[you] were killed, I was in Bontorama.

19. *When did you first hear that [you] had been killed?*

He was already dead when I heard about it.

20. *Who told you he was dead?*

I'm not sure who I heard it from, people told me he was killed by Dutchmen.

21. *What have you heard about how he was killed?*

[You] had already been killed by the Dutch.

22. *How was he killed?*

He was killed in Ukaleng. He was shot.

23. *Were other people shot then, too?*

I've heard a lot of people have been shot.

24. *Do you know the names of other people who were shot and killed at the time?*

I don't remember any names, but I heard that a lot of people died and that the Dutch left. I just remembered that there was also someone called Hassan. Who was also killed at the time.

25. *Is that all you remember, or did that just come to mind? I don't*

know. I just heard a lot of people got killed.

26. *Do you remember what time of the year [you] were killed?*

I don't know if it was hot or if it was raining, but he was in Rappokaleng.

27. *What was he doing in Rappokaleng at the*

time? He wanted to visit his father there.

28. *Do you know how [you] fell into the hands of the Dutch?*

He was taken by the Dutch and shot.

Mrs [... 4] notes that it seems as if the witness is a bit confused and first said that it was [U's] father and then [U's] father was taken and shot.

29. *It is not yet entirely clear to me how [you] fell into the hands of the Dutch. After [U] had died I was told that he had been shot. He was in Rappokaleng.*

30. *What happened to [you]'s body right after he died?*

I don't know what happened to his body right after he died. He was killed in Rappokaleng and I was working in Buntorama."

2.181. claimant 16] states that after the execution of her husband she heard from many people that he had been shot by Dutch soldiers: he was '*ge-Rappokallingt*'. She argues that this expression in practice refers to the mass executions in Kalukuang that were carried out by the Dutch army, in which the inhabitants of surrounding villages such as Rappokalling were also involved. She refers here to the explanation given by Kouwagam, who assisted in court with checking the translation from and to the Makkassar, that witnesses who testify about Rappokalling do not (at least not always) use the place name as a geographical location but as an action: '*ge-Rappokallingt*'. The place name is used as a verb that is directly related to events that are generally known to have taken place there. Thus, a witness in fact declares that someone is '*ge-Rappokalingt*', according to [plaintiff 16] , who further argues that this case concerns the fact that it is generally known that people who were in Rappokalling at the time were herded together by the Dutch army and shot dead. Claimant 16] points out that (i) this corresponds to the written statements in the file and what is known from (Dutch) literature about the cleansing operations in Kalukuang at the end of 1946 and that (ii) Rappokalling is a short distance from Kalukuang and (iii) it is generally known that in its cleansing operations the Dutch army drove the local population - also from surrounding villages - together to a central place of execution. Claimant 16] further explains that it is not known to her how many people speak in this way about the events in Rappokalling and the surrounding area, but it is clear that she does, where she stated that her husband [U] was '*ge-Rappokallingt*'.

2.182. The State disputes this interpretation. It explains that it has had the testimonies of [witness 23] and [plaintiff 16] heard again by the interpreters [interpreter 1] and [interpreter 2] and has asked them whether the translation of the testimonies proposed by plaintiffs is correct . They took the explicit view that the translation proposed by plaintiffs was incorrect. According to them, there is no verb '*(di) Rappokalingi*' in the Macedonian language. The witnesses stated about the place Rappokalling, and the word Rappokalling is only a place indication, according to the State.

2.183. The court leaves this dispute about '*ge-Rappokallingt*' for what it is. Even if the meaning given by [plaintiff 16] is assumed, the witness statement of [witness 23] and witness statement of [plaintiff 16] offer too few concrete points of departure to assume as certain that [U] - as [plaintiff 16] states - was executed by Dutch soldiers at the end of 1946, after having been driven together by Dutch soldiers with other villagers in the Kalukuang district of Makassar. Neither of them saw that [U] was shot.

2.184. According to the comment of [plaintiff 16] in the minutes of the testimony, which is not refuted by the State, the correct translation of the answer to question 15 is: "*He was shot and we brought him when he was already dead*". It can be deduced from this that [witness 23] saw [you] after he was killed.

2.185. According to their statement [witness 23] and [plaintiff 16] both heard that [U] was shot by Dutch soldiers. As previously considered, a statement of hearsay may contribute to the evidence. However, what [witness 23] and [plaintiff 16] have heard according to their statements is not very concrete. The most problematic is the connection between Rappokalling - in the sense advocated by [plaintiff 16] - and the cleansing operations in Kalukuang at the end of 1946, in which [U] is said to have been shot. The mere circumstance that Rappokalling is at a short distance from Kalukuang and the fact that a cleansing operation took place in Kalukuang, is insufficient to conclude that [U] is one of the victims of that cleansing operation. Thus the fate of the claims of [plaintiff 16] is given: they must be rejected.

[plaintiff 17]

2.186. states that her husband [O-1] / [O] was arrested in his village [residence 13] and then taken to the village [residence 14], where he was executed by Dutch soldiers with a group of others on February 7, 1947.

2.187. It is an established fact from historical sources that (at least) an execution round took place in Bulo (Wattang), around February 1, 1947, in which between 30 and 47 men were executed by Dutch troops. The State notes in this respect that the possibility cannot be excluded that executions were carried out at several moments.

2.188. The parties agree that the statements of the witnesses [witness 13] and [witness 14] cannot contribute to the proof of the cause of death of [O] alleged by [plaintiff 17]. The Court agrees with this; they have both stated that they do not know [O]. Their statements about the death of [P] are discussed below when discussing the evidence provided by [plaintiff 19].

2.189. The witness [witness 24] has stated the following about the death of [O] :

""5. What can you tell us about the deaths of [O] and [P] ?

The Dutch were in Rapang and there they picked up [O] and brought him to [residence 14] .

6. And then what happened?

In [residence 14] about ten people were building such a house on poles and all the men were taken away.

7. And what happened after that?

All the men who had been taken were taken to the house, a guard post, there the men were taken and the women and children were simply left at that place where the house was built, they left them there.

8. And what happened after that?

They were taken to that guard post, those men, and had to sit there and they were told

to sit there and that's it.

9. *And what happened when they had to sit there?*

After the men sat there they were walked around and the Dutch asked the spy for the Dutch: "Which one of them is an extremist?"

10. *And then what happened?*

The spy for the Dutch indicated about ten men from their midst as extremists and they were shot.

11. *And were [O] and [P] designated?*

Yeah. [O] and [P] were also assigned to those ten people and shot.

12. *Who was first designated and shot? (...)*

[O] was designated first.

14. *He was designated first. He was shot first, too? Yes, he was.*

15. *How was that pointing and shooting? Was it one by one, or were the ten people first identified and then shot?*

First they were designated, those ten people, and then they were shot.

Remark, Judge: while the witness said that, he rejected the row; and then again and then again, as if the row had gone off.

16. *Were those ten people who were designated and shot, taken to another place before they were shot, or were they shot where they were?*

They were shot where they were sitting, among the others who were there.

17. *Where were you when that happened?*

After those ten people had been shot, the spy for the Dutch was asked what other extremists were, who else were they, and then more than ten people were designated and then shot.

Remark judge: [interpreter 2] says everything in Indonesian in the ear of the witness, on which the witness nods approvingly and says yes.

18. *You're telling me what happened and I'd like to know where you were when it happened.*

I was with the women and children, about 30 yards from where people were shot.

19. *Could you pinpoint that place a little more precisely? For example, were you at someone's house, or under someone's house?*

I sat at the side of the road with the women and the little children, because those who were shot were also at the side of the road.

20. *Did you get a good look at the men being shot?*

Yeah. I could see that because it was pretty close to where I was sitting.

21. *Am I to understand that there was nothing between you and the men? Like trees, or a house, or something else?*

There was nothing that obstructed my vision. I could see directly.

22. *You were telling me that the men were assigned and shot. Were [P] among the first ten men who were assigned and shot?*

Yeah, [P] and [O] were among the first.

23. *They both belonged to those first ten. Did I get that right?*

Yeah.

(...)

27. You started telling me that [O] had been arrested in Rapang. How do you know that?

[O] and [P] have been picked up in Rapang. That is close to Bulo Wattang and after that they were taken to Bulo Wattang.

28. How do you know that?

[O] and [P] have been picked up in Lanrang.

29. Where's that? You just said it's near Bulo Wattang. Is it north, east, west, south of Bulo Wattang?

Lanrang is west of Bulo Wattang.

30. How far west? Less than a mile from there.

31. How do you know [O] and [P] were picked up there? As far as I know, [O] and [P] were picked up in Lanrang.

32. Did somebody tell you that?

I didn't see him arrested in Lanrang, but I saw him taken to Bulo Wattang from Lanrang.

33. Am I to understand that you saw for yourself that they came from the direction of Lanrang? Yes, I saw them coming from Lanrang to Bulo Wattang.

34. Where were you when you saw that? Were you in that spot on the side of the road? I was on the side of the road with the women.

Mrs [... 5] notes that she asked for a term. He saw that he was dragged, or pulled.]

35. How did [O] and [P] come? Were they put in a car, or did they arrive on foot? On foot.

36. How many Dutch soldiers did you see, then? I couldn't count them, but there were a lot of them.

37. How did you recognize them as Dutch soldiers? How could you tell they were Dutch soldiers? I could tell by their white eyes, so light eyes and pointed noses.

38. Am I to understand that they were Europeans, all of them?

Yeah. They were Europeans, because the Dutch are Europeans so they were Europeans.

39. Were they white men?

Yes. Their skin was white and the colour of their hair was light. (...)

44. Do you know what part of the day this happened, what you were talking about? It happened in the afternoon, about four or five hours.

45. You said you were on the side of the road. Why were you sitting there?

Because when the Dutch came to collect the men and women. Then I was there too.

46. Do I understand, then, that you had to gather there from the Dutch, that the Dutch had said that to you?

Yes, the Dutch had brought us together and told us to sit there."

2.190. The State correctly points out that [witness 24] has declared that the summary execution described by him took place in 1945 and that at that time he was more than ten years old.

was. This is inconsistent with the statements of [plaintiff 17] that the alleged execution took place on 7 February 1947. Furthermore, the State points out that it is unclear what the (young) age [witness 24] was at the time of the events. According to his proof of identity, he was only seven years old at that time, while during his interrogation he stated that he was older than was ten years old. Since [witness 24] also stated that he was with the women and small children by the side of the road at the time of the event, the State considers it most likely that [witness 24] was (very) young at the time.

2.191. In the interlocutory judgment of 27 July 2016, the District Court noted in response to the written statement of [witness 24] that he was (very) young in 1947, namely - judging from the information in that statement - seven years old. As considered above, the District Court sees in the fact that a witness - in this case [witness 24] - apparently does not (anymore) know how to put things in time, reason to dismiss his testimony as unreliable. The court also sees no reason not to use his testimony in evidence because of the uncertainty about his age and his probable young age at the time of the events (based on his identity card seven years old).

2.192. Not in dispute is that [witness 24] knew [O]. The State notes that [witness 24] states during his examination of the witnesses that he knows that [O] was arrested in Lanrang, and that his house was in kampong Dea, in the town of Baranti, which is not in accordance with the statement (to be proved) of [plaintiff 17] that [O] has been arrested in his village [residence 13]. It is unclear on what basis [witness 24] bases his statement on this point; the repeated questions about his reasons for knowing on this point have not led to any clarification about it. It does follow from his statement, however, that it has been seen that [O] was shot dead by Dutch soldiers. He has stated in detail and consistently about what he saw. On the basis of this statement, the court assumes that [O] was shot dead by Dutch soldiers in the manner described by [witness 24].

2.193. The conclusion is therefore that [plaintiff 17] has succeeded in proving that [O] in Bulo Wattang was executed by Dutch soldiers together with a group of others on 7 February 1947. What this means for the assignability of its claims will be discussed under (d) below.

[plaintiff 18]

2.194. states that her husband [husband] / [husband] was shot by Dutch soldiers in 1947 in Sipodeceng .

2.195. [witness 6] has testified the following:

"2. You just mentioned the husband of [plaintiff 18] , [husband] , and I'd like to talk to you about his death. What can you tell me about that?

I was working in the rice field at the time. When people came running from the east and shouted that [husband] had died. [husband] was dead.

3. Where was that rice field relative to [husband's] house ?

[husband's house] was about 50 yards east of where I was sitting. Where I was.

4. Did you see that [husband] die?

Yeah, I witnessed [husband] die. I got him. I went to him and turned him over. I flipped the body myself.

(...)

6. Can you tell us from beginning to end what you saw and heard about the death of [husband] ?

(...)

When I saw the people running and heard screaming that [husband] was dead, I immediately asked what happened. The people said [husband] was shot dead by the Dutch.

7. Just for the record, do I understand that you didn't see [husband] get shot?

After the people ran and shouted that [husband] was dead, I immediately went to [husband's] house to look and saw the corpse.

(...)

10. Can you tell us exactly what you saw when you saw the corpse?

What I found was only the body of [husband]. I didn't see any Dutch people there. I didn't see him shot either. Then the body was taken, picked up, so to speak.

11. You just said you turned the body over. How was the body before you turned it over?

I picked up the body and it was pierced from under one armpit to the other and there was no hope he would live.

12. Was [husband] still alive when you picked him up?

When I got there and picked him up, he was already dead.

13. Did he have any injuries other than piercing the bullet you just told me about? No, that wasn't just a wound that pierced from his left armpit to his right armpit.

14. How do you know [husband] was shot by the Dutch?

The people who ran in the direction of my house told me that [husband] had been shot dead by the Dutch.

15. Did they see that?

I don't know about that. I even forgot who were the ones who ran to my house and shouted that Mr. [husband] had died.

16. Do you remember exactly what they told you when they came running?

They said: "[husband] is dead." And then I asked, "How is that possible, that he's dead?" And people said: "He's been shot dead by the Dutch. "

17. Did they tell you how they knew?

I don't know how they knew. But that's what they told me.

18. Did they tell you how it went, that shooting?

Someone was chased by the Dutch and that's why people were running.

19. Who was chased?

There was someone called [name 3] and the Dutch were behind him and then he was shot.

20. Just checking. You just said the Dutchmen who were after [name 3] and then [husband] was shot. Is that how it happened?

Yeah, that way.

21. How do you know that?

That's what people said.

22. And why were the Dutch after [name 3]?

I don't know about that. I don't know if he was wrong or not. Whether he was wrong or not.

23. I'll go back to the beginning with you. You said you were making a squad when you heard [husband] had been shot. Where were you then?

In my house. I was making a crew in my house.

24. Where was [husband] shot?

He was shot dead in the gutter next to the house, next to his own house of Mr. [husband] .

(...)

45. Can you remember if the people you heard that [husband] had been shot, or if they had told you anything about what had happened just before he was shot, had been shot?

All I know is that Mr. [husband] was shot dead by the Dutch."

46. You also told us about sir [name 3] . Can you remember where the house of sir [name 3] was compared to the house of sir [husband] ?

I don't know where Mr. [name 3]'s house is. He's a, uh, someone who can heal people. He's from outside. Mr. [name 3] is a traditional healer who comes to the villages to heal people. I don't know where he lives.

47. Back to that house where you lived when this happened, where you were making that crew. Could you see Mr. [husband]'s house from your house?

From my house to the house of sir [husband] is about 50 meters, less than a kilometer, but the house is not visible from my house.

48. Is that because it's too far away? Or because there's something in front of it, for example, that obstructs the face?

It's not visible. Not because visibility is obstructed by trees or something like that, but because it is too far away.

49. Can you remember if you heard any shots on the day this happened? I didn't hear that then. I forgot."

2.196. [witness 7] has testified:

"4. Did you see that [husband] get shot?

No. ...I didn't see him until after he was dead. We only came after it had happened, because we were afraid that the Dutch soldiers, or soldiers, would come back.

5. Where were you when [husband] was shot? At the time of the incident, I was at home.

[... 6] notes that in Bulgarian they asked, "Where were you?" and...

that the witness answered: "I was in Padacenga." Then [interpreter 2] asked further, and then the witness said: "I was at home. "

(...)

7. Did you see any Dutch soldiers earlier that day?

Yeah, I saw soldiers that day. I didn't know if they were Dutch soldiers or not.

8. What do you mean, you didn't know if they were Dutch soldiers or not?

It was not clear whether they were Dutch soldiers or not, but it was clear that they were looking for people.

9. Were they wearing uniforms?

Yeah, they were wearing green clothes. And they had headgear.

10. Can you describe what they looked like?

Their skin color wasn't much lighter than ours. It was the same skin color and not much different.

11. What else? Can you tell me anything else about them, what they looked like? That's all I know.

12. And were there any white European people, military?

I didn't see that. I'll tell Ruet something I didn't see.

[... 6] notes that [interpreter 2] asked the witness: 'Did you see whether their skin was white and their eyes red?

[giving fire, burning red?]

13. *Have you seen any white European men? I have not.*

14. *Those soldiers, did you see them before or after [husband] died?*

We didn't come until after he was dead and we didn't see the corpse until after the people left.

[... 6] notes that the witness said: 'After the soldiers had gone' and that it was translated: 'After the people had gone'. "

(...)

21. *Who said that?*

They said he ran from a different direction and ran on the house, fled.

[... 6] notes that it is a house on stilts. He ran the house upstairs, inside.]

22. *Who told you [husband] ran away?*

A neighbor said to me that [husband] ran away because they were looking for someone."

2.197. *[the son] , the son of [plaintiff 18] has testified that he saw [husband] after his death:*

"3. Where did you see him then?

He was shot near the house, near the house.

4. *Where were you when it happened?*

I was little then. I was playing elsewhere.

5. *Were you playing outside, washing up somewhere inside?*

I was playing a little far from the house at the time.

6. *Can you tell me what happened from the moment you were playing outside and then when you saw your father and so on? So basically from beginning to end, the whole story.*

Someone came to tell me that my father was dead, that my father had been shot.

7. *What happened then?*

I went back after that and saw my father's corpse. (,,)

22. *I want to get back to what ti just told you about people coming to get you and telling you that your father died. I'd like you to tell me if you remember exactly what those people said to you back then.*

That person, or those persons (I think it is one person; Mrs [... 5]), said: "Go over there because your father's been shot."

23. *Who was that? That person, or persons? My uncle came to call me.*

[Mrs... 5] notes that she asked, "Were there no other people?" and that the witness replied, "No, only my uncle."

24. *Did your uncle see your father shot?*

No, my uncle didn't see my father shot. He saw my father after he was shot.

25. *Do you know who shot your father?*

I do not know, but my grandmother or grandfather (I believe that may be both in Bulgarian, but in Indonesian it is grandmother; comment Mrs [... 5]), said that the Dutch shot my father.

26. *Was it the grandmother or*

the grandfather? My

grandfather.

27. *Did he see that?*

No, he didn't see that.

28. *How did your grandfather know that your father had been shot by the Dutch?*

He said he heard a shot, or shots, and then people came together and saw what had happened.

29. *Your grandfather told me, if I understand correctly. Yeah.*

30. *Did you hear a shot, or shots?*

No, I didn't hear anything then. I was playing.

31. *Did you see Dutchmen that day?*

No. People only came after the Dutch had left, because everyone was very afraid of the Dutch. We were afraid that we would also be shot.

32. *Do I understand that the Dutch had come to the village that day? Yes.*

33. *Do you know what they were doing there? Or rather, what they were doing there? They came there to perform an operation.*

Mrs [... 5] notes that she had asked what their purpose was there.

34. *What kind of surgery was that?*

By operation is meant, at that time were supposedly named after the flag (that is my addition; remark Mrs [... 5]) the Red White Troops were in conflict with the Dutch and the Red White Troops are the current veterans. Dutch people who came to the villages to look for members of those Red and White troops, but they shot innocent people dead.

(...)

40. *I just thought I'd see if I got it right. I just had the impression that your grandfather had told you how he knew that your father had been shot by the Dutch. I would very much like to know how your grandfather knew that. Do I understand correctly that you don't know, or did your grandfather tell you?*

That's

right.

(...)

51. *You told us the Dutch army was there to conduct an operation. How do you know they were conducting an operation? Can you remember where you heard that?*

At that time there were members of the Red White Troops in our village and they all fled and more unhappily the Dutch found my father".

2.198. None of these witnesses saw that [husband] get shot. However, immediately after his death they saw mortal remains and heard from others that he was shot by Dutch soldiers. witness 7] did state that he saw soldiers that day, but that he does not know if they were Dutch soldiers. In particular [witness 7] could not remember that there were white (European) soldiers among them. plaintiff 18] correctly points out that the KNIL was also involved in misconduct by Dutch soldiers. The Court considers it a fact of general familiarity that many KNIL soldiers were of Indonesian descent. The other witnesses themselves did not see any Dutch soldiers that day. This does not alter the fact that these statements provide sufficient evidence of the statement of [plaintiff 18] that [husband] was shot by Dutch soldiers in 1947 in Sipodeceng .

2.199. The State correctly points out that it does not follow from the testimonies of witnesses that there has been a summary execution. According to the witnesses, [husband] was killed when he ran away or fled while the army was searching for the Red White

Troops. The State argues that there is a real possibility that [spouse] was killed in legitimate fighting.

2.200. Apart from the fact that he was killed when the Dutch soldiers carried out a search in the village, nothing is known about the circumstances under which [husband] was killed. However, the statement of [the son] (in answer to question 51), that the Dutch soldiers found his father 'more unfortunate' and that they shot 'innocent people' on their search for the red and white troops, indicates that [husband] was an arbitrary victim of violence by Dutch soldiers. No point of departure has been made or shown from which it follows that [husband] was a member of the red and white troops. Also otherwise there is no reason whatsoever to assume that [husband] was killed in the context of legitimate fighting. Thus, [plaintiff 18] has succeeded in her task of proof. Under (d) it is discussed what this means for her claims.

[plaintiff 19]

2.201. states that her husband [P-1] / [P] was executed on 7 February 1947 in Bulu Wattang with a group of others on a field by Dutch soldiers .

2.202. The State points out that there is great uncertainty about the age of [witness 13] at the time of the alleged summary execution on which he has testified as a witness. According to his passport he was born in 1945 and according to his identity document he was born in 1943, while a written statement previously in dispute states that he was born in 1938 (so he would have been nine years old in 1947) and it also states that he was seven years old at the time, which has been endorsed by the KUKB Foundation. During his examination of the witnesses he stated that he was 80 years old and also that at the time of the event he was about 12 years old, in which case he would have been born in 1935 and that at the time of the examination of the witnesses he would be 83 years old.

2.203. In the interlocutory judgment of 27 July 2016, the court already noted in response to Patanangi's written statement that he was (very) young in 1947, namely - judging by his passport - two years. In the lack of clarity about Patanangi's age in 1947 and the possibility - judging by his passport - that he had the very young age of two years at that time, the court sees reason not to use his testimony for the evidence. Given the very young age that Patanangi could have had at that time, it is questionable whether he was able to testify out of his own observation. This question is all the more pressing now that on important points he has declared differently from [witness 24] and [witness 14] : for example, according to [witness 13] there was no guard post near the place of execution, while [witness 24] and [witness 14] both declare that this is the case. Also, the course of events outlined by [witness 13] - in which men were designated and shot in groups - differs from the events described by [witness 24] and [witness 14] , both of whom stated that the men were designated and shot one by one.

2.204. [witness 24] has stated as a witness that [P] was shot by Dutch soldiers during the same execution as [O] (see under 2.189). As considered above, the District Court sees no reason to dismiss his testimony as unreliable because of this uncertainty and the possibly very young age of [witness 24] at the time of the events in 1947.

2.205. The witness [witness 14] stated the following:

"3. What can you tell us about the death of Mrs. [plaintiff 19]'s husband ? [P-1] and [brother] were both shot. Both, [P-1] and [brother] , are brothers of mine.

4. Who shot them? They were shot by the NICA.

5. How do you know that?

Because I was there. People had gathered at that place and I saw that [P-1] and [brother] were shot.

6. I'd like you to tell us what you saw. From beginning to end.

There were two people who were also sowing rice. That was the village chief, or the head, sir [village chief] and the spiritual leader sir [spiritual] . They were also shot.

7. And what did you see of shooting [P-1] ?

They asked [P-1], do you know who disasterokers are or insurgents and [P-1] said 'no' and then he was shot.

8. Who asked him? NICA.

9. Where exactly did that happen?

It happened in Bulo Wattang on the side of the road and that was near the house of the village chief, Mr. [village chief] and it was also near a guard post.

(...)

17. I'm gonna talk to you now about what you saw and what happened. How far was the place you were standing about from where the men were gathered?

About five meters.

18. Did you get a good look at what happened?

I saw very clearly how [P-1] and [brother] were shot.

19. And that place where you were standing, were you there alone, or were there other people there?

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah. I was alone on the other side of the road, because I was herding carts and that was close to the rice field.

20. Am I to understand that you happened to be in the neighborhood when it happened?

I saw people being taken there, from the rice paddies where I was and that's why I ran there.

21. Who brought the people there?

They were taken there by the NICA from the rice field. They were brought close to the house of the village chief.

22. And which people were taken there?

Five people were brought there. [P-1] , [brother] , [... 7] , the village chief Sara and the lord [cleric] .

23. And what happened when those people were taken to that place?

After they were taken there, they were all shot. [P] , [brother] , [... 7] , the [village chief] and the spiritual leader [cleric] .

24. Were they shot immediately, or did something else happen first?

They were questioned about who fed the guerrillas and there was no answer and then they were shot immediately.

25. Were any more people shot that day than these five men?

There were many who were shot. But I only remember these five names.

26. How did those other people, other than those five, shoot that?

There was one person who appointed people and his name was [name 4] . After this man had appointed people they were shot.

Remark Judge: the witness, while saying this, makes a pointing gesture with his right hand. Repeatedly. As if he's depicting people being designated.

27. Who was that [name 4] who pointed out those

people? [name 4] was someone who lived in Bulo

Wattang.

28. How was that pointing and then shooting that? Was it going to be one by one, so appoint one then shoot, or appoint a group and then shoot a number of men at the same time?

They were designated one by one. Designated, shot, designated, shot.

Remark Judge: the witness makes the same gesture while saying this; point, shoot and then point again.

29. Were the men taken to another place after they were assigned? Or were they shot where they were sitting or standing?

They were shot in the same spot. They weren't separated from the rest, but they were shot immediately.

30. What happened to that [name 4]?

Eventually, after that, [name 4] was also shot.

31. How many Dutch people, or NICA, were there? There were many. I don't know how many.

32. What did they look like?

They had white skin.

33. And what clothes were they wearing? They were wearing military clothing. Green. (...)

34. Did you see the Dutch arrive in the village? (...)

I only saw the people being taken from the rice fields and taken away, that's when I saw it. I didn't see them coming. All I know is that they were from Rapang.

35. How do you know they were from Rapang?

Because that's where the Dutch were. In Rapang.

36. Do you also know how the Dutch, possibly by which means of transport, they came to the village? They came by car.

37. Did you see the Dutch leave the village?

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah. I saw them leave Bulu Wattang after that shooting. Cause I was on the side of the road.

38. Which way did they go?

They left, went back to Rapang. They had a house in Rapang. to ask for help. Pu Pannu."

2.206. On the basis of the witness statements of [witness 24] and [witness 14] , both of which have stated concretely and in detail from their own observation about the shooting of [P] by Dutch soldiers, the District Court considers the cause of death of [P] as established by [plaintiff 19]. What this means for the assignability of its claims will be discussed under (d) below.

[plaintiff 20]

2.207. states that her husband [Q-1] / [Q] was killed in February 1947 by Dutch soldiers on the third day after being arrested and imprisoned in Rappang prison.

2.208. The witness Dabong allowed in the case of [plaintiff 20] died before he could be heard and [plaintiff 20] could not be heard for health reasons. Plaintiff 20] now states that its offer to hear [witness 25] and [witness 26] as witnesses

was wrongly passed over, with reference to the court's consideration that, in so far as a statement is based solely on the collective memory, the offer to hear witnesses cannot be accepted. Plaintiff 20] now points out that it can be deduced from the statement she had submitted that [witness 25] could have stated from her own knowledge about what she had heard (shortly) after the death of [Q-1], and that the statement of [witness 26] also does not exclude that he could have provided relevant information from his own observation. Claimant 20] argues that this witness offer should not have been rejected. Therefore the written statements in her case must be able to contribute to the evidence, according to Manne.

2.209. Insofar as [plaintiff 20] hereby requests to return to the passing of the offer of evidence in respect of these two witnesses, the District Court sees no reason to do so. The District Court does not share the - otherwise not further specified - conclusions of [plaintiff 20] from the written statements of [witness 25] and [witness 26]. In what [plaintiff 20] states, the District Court sees no reason either to include the written statements submitted in the assessment of evidence in its case - unlike in the cases of the other widows and children.

2.210. It is therefore concluded that [plaintiff 20] has failed to produce evidence. Her claim must be dismissed.

[plaintiff 21]

2.211. states that her husband [R] was shot dead by Dutch soldiers in 1947 in his house in Rijang Panua (Kulo). Claimant 21] has been allowed to prove this. She is also allowed to prove the State's disputed marriage relationship with [R].

2.212. With the State, the Court finds that [plaintiff 21] did not succeed in proving [R]'s alleged cause of death. The witness [witness 27] has stated the following:

"10. (...) I am now going to another subject and that is the death of [R]. What can you tell us about that?

The Dutchmen came to the house and the father told everyone to run, but [R] did not run and then there was a gunshot and he was shot dead.

11. Were you at home with [R] when the Dutch came?

In the house, or in his house (it can be both; Mrs [... 5]).

12. Whose house did you belong to?

The house of [R] himself.

13. What place was that [R] house? It

was also in the village of Simae.

14. Can you tell me from start to finish what you remember about that day?

It was the afternoon I went to [R]'s house. We heard gunshots. The father of [R] said, "Go run." He didn't go, he didn't run away and the Dutch came and he was shot.

15. Did you see [R] get shot? I didn't see that

because we were already gone.

16. Am I to understand that you did run away?

Yeah, we started running when we heard gunshots. When we heard gunshots.

17. Did you see any Dutchmen that day?

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah. I've seen the Dutch shoot [R].

18. What exactly did you see? Can you tell us?

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah.

53. Did you see them leave the village too?

We didn't see them leave, because we were gone before."

2.213. In so doing, [witness 27] has not made a consistent and concrete statement on the basis of which the cause of death of [R] alleged by [plaintiff 21] can be assumed. It is true that he has seen [R] with a wound in his chest, after his father had said that everyone had to run and [R] had not done so - which indicates that [R] was shot - but the circumstances of [R]'s death and in particular the question whether [R] was shot by Dutch soldiers do not follow sufficiently from his statement. Nor does it follow from the statement of the

witness [witness 28] , who mentions another place of death. [witness 28] has stated the following:

"2. I want to talk to you first about Mr. [R]'s death. What can you tell me about that? I remember, after Mr. [R] was dead, people came to tell me.

(...)

4. How long after [R] was dead did you hear about his death?

I knew of Mr. [R]'s death just over an hour after the event.

[... 6] notes that the question to the witness was in Indonesian: 'How long after that event did you know? The witness' answer was, "Not long after that." Then the interpreter in Bulgarian asked, "Was it about an hour after that?"

5. Where were you when you heard of [R]'s death ? Where were you ?

I was in the house the moment I heard of his death. At the time, if something happened in the village, it was reported to me.

6. Why was that reported to you if something happened in the village?

Things were reported to my father, reported because my father was an important man. The only important man in the village.

7. So it was told to your father. And where were you when that happened? At home.

My father didn't like the presence of the Dutch.

[... 6] notes that the witness said in Bulgarian that because his father was not happy with the presence of the Dutch, things like this were reported to his father].

8. Who came to tell your father that [R] was dead?

The one who brought that message was called [name 5] . One of the codes to indicate that there were Dutch people was that he said: "I am looking for a dog, or for dogs".

9. Were you there when this was told to your father? Or did you hear it from your father again? I heard it directly from my father's informant.

[... 6] notes that something else was said in Bulgarian, namely: 'Because my father had already heard about the death of Mr [R], he had already fled'.

(...)

12. Did you see [R]'s body after he was shot? No, that's right. I didn't see that.

13. So if I understand correctly, you didn't see [R] get shot and you didn't see his corpse after that. All you heard was that he was shot.

I just heard. I didn't see the shooting, and I didn't see the corpse.

14. Did you see any Dutch soldiers in the village that day?

On that day, Dutch soldiers had come to the village, but had not gone beyond the house of sir [R] .

15. How do you know that?

I knew through that informant of my father, that there were Dutch soldiers at the house of [R].

16. Have you seen any Dutch soldiers?

I didn't see any Dutch soldiers. I only heard that information.

17. Where were you when [R] was shot? At the time of the shooting, I was at home.

18. Is that far, or near, from where [R] was shot? Can you explain that to us?

The distance between my house and the house of Mr. [R] is about one kilometer.

19. Have you heard anything? Shots, for example? I didn't hear anything.

20. Just to check: that distance of about a kilometer, then we're talking about your house then and the place where [R] was shot?

Yeah, my house back

then. (...)

22. Were other people shot that day in the village? No one else was shot then except sir [R].

[... 6] indicates that part of the answer has not been translated: "There were many other dead, but they were not killed by the Dutch, but by their own people. Those others were not killed by the Dutch."

(...)

24. I'd like to know what's meant to be said. Is meant to say there were only Boeginese killed and no Dutchmen? Or is it meant to say that people were killed by the Dutch and by the Boeginese?

There were Boeginese who were accomplices of the Dutch who were ordered to kill my father.

[... 6] adds that the witness also said in Bulgarian: 'Only Mr [R] was killed by Dutch soldiers. There were Boeginese who were ordered by the Dutch to kill other Boeginese. My father refused; he would rather die than carry out that order of the Dutch.'

25. In what place was [R] shot? The kampong name? The kampong where Mr. [R] was executed is kampong Sima.

26. What's the name of that kampong now?

That kampong is still called kampong Sima, but the inhabitants have moved to another place because they are afraid to live there.

27. Rijang Panua: Where is that relative to Sima?

The site of kampong Sima with the former site of the kampong is about three kilometers away from the former site. The people from the kampong have moved to another place, that is about three kilometers from the original place.

28. And Rijang Panua, where is that relative to Sima?

Kampong Rijang Panua is north of that place, from Sima.

29. I'm talking about then. Was it then too? I want to know if Rijang Panua was then also about three kilometers north of Sima.

From then on, it's three kilometers away. There are relatives of mine who don't want to move from Panua.

(...)

19] discuss. They claim compensation for material and immaterial damage, plus statutory interest.

Intangible damage

2.218. In its interlocutory judgments of 11 March 2015⁷ and 27 July 2016⁸, the court ruled that on the basis of the old Civil Code (applicable in these cases) immaterial damage suffered by widows and children is not eligible for compensation. To this end, the District Court considered the following (in its judgment of 11 March 2015):

"Immaterial damages"?

- 4.63 Pursuant to Article 1406 of the Dutch Civil Code (old), only the damage suffered by the surviving relatives, who habitually suffered as a result of the work of a deceased person, as a result of the loss of the livelihood they received from the deceased person, is eligible for compensation. Only a shortfall in their means of subsistence must be compensated by the person liable for compensation in accordance with the applicable BW (old).
- 4.64 It has been established case law of the Supreme Court that it is not possible for surviving relatives to enforce compensation for immaterial damage by relying on Section 1401 of the Dutch Civil Code (old) in court. The Supreme Court has expressly blocked this (legal stealth) route to escape the specific provision of Section 1406 of the DCC (old), see, for example, HR 27 February 1925, NJ 1925, 566, HR 2 January 1931, NJ 1931, 348 and HR 8 April 1983, NJ 1984, 717. The reliance on article 1401 BW (old) of the widows and children must therefore be rejected.
- 4.65 The court also rejected the appeal to HR 21 May 1943, NJ 1943, 455. After all, this concerned a granted claim for immaterial compensation of a wrongfully injured victim himself, and not a claim for immaterial compensation of a surviving relative of a wrongfully killed victim.
- 4.66 Compensation for immaterial damage to surviving relatives is not legally anchored in Dutch law either. See, for example, HR 9 October 2009, NJ 2010, 387. In March 2010, the Senate rejected the Bill on Affection Damage with number 28 781, which was intended to change this statutory system.
- 4.67 The widows and children have pointed to the Healthcare and Affection Damage Bill, which recently saw the light of day. It is unclear whether this second bill will reach the finishing line. Apart from that, there is not a single starting point to judge that the doctrine prevailing at the time was laid down on this point.
- 4.68 The widows and children also fail to rely on the current Section 6:106(1) of the Civil Code, which lays down the rule that, in the case of damage which does not consist of pecuniary loss, the injured party is entitled to compensation to be determined on an equitable basis in the case of 'the intention of the person liable to cause non-material damage', and on the relevant judgment of the Supreme Court of 26 October 2001, NJ 2002, 216. Parliamentary history shows that this rule did not apply under the old law to be applied in these proceedings concerning South Sulawesi (see TM, PG Book 6, p. 378).
- 4.69 The widows and the children also argued that the State should be obliged to pay non-material damages on the basis of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which deals with the fundamental right to life. The Court does not share this view. The ECHR entered into force for the Netherlands in 1954. The ECHR has no retroactive effect. This means that the widows and children cannot rely on the ECHR, already because in their case it concerns conduct prior to the entry into force of the ECHR and furthermore there is no continuous situation of violation of the ECHR that

extends beyond the entry into force of the ECHR.

4.70 *Also the reference to the court judgments in the "Srebrenica cases" of Mustafic (HR 6 September 2013, ECLI:NL:HR:2013:BZ9225) and Nuhanovic (HR 6 September 2013, ECLI:NL:HR:2013:BZ9228) and of the Mothers of Srebrenica (District Court of The Hague 16 July 2014, ECLI:NL:RBDHA:2014:8562) against the State cannot benefit the widows and children. In the first two cases Bosnian law has been applied. In the third case, in which Dutch law was applied, it was ruled that the State was liable and the case was referred to a loss assessment procedure for the assessment of damages, without any judgment being given as to which types of damages qualify for compensation.*

4.71 *The foregoing leads the court to the conclusion that the widows and the children have no legally enforceable right to compensation for immaterial damage".*

2.219. This judgment was confirmed in the judgment of the Court of Appeal of The Hague of 1 October 2019 in the interim appeal against the interlocutory judgment of 11 March 2015.

The court considered the following:

"Intangible compensation

20. *Under the old law, surviving relatives of a "deliberately" killed person were only entitled to compensation for the shortfall in the means necessary for their maintenance, at least in so far as they were maintained by the killed person (Section 1406 (old) of the Civil Code). Until the introduction as of 1 January 2019 of the Securities Collateral Damage Act¹⁷, a similar scheme applied under current law (Section 6:108(1) of the Civil Code). Until 1 January 2011, therefore, the next of kin could not claim compensation for so-called loss of affection (grief for the death of a loved one).*

21. *Already under the old law, the next of kin have attempted to persuade the court to award compensation for loss of affection by means of a direct appeal to Section 1401 of the Civil Code, but these attempts have failed¹⁸. Attempts under the current law to obtain compensation for loss of affection by relying on Section 6:106(1)(b) of the Civil Code ('otherwise affecting the person') have also been unsuccessful. In short, under the current law a person who has lost a loved one can only in two cases claim compensation for pain and suffering by means of a direct tort action, namely (i) in the situation as referred to in Section 6:106 subsection 1 (a) of the Dutch Civil Code, i.e. if the person liable has had the intention to inflict immaterial damage on the loved one (with the explicit requirement that the intention must have been aimed at the specific damage for which compensation is claimed) and (ii) the situation of so-called "shock damage": if the direct confrontation - to be proved - with the serious consequences of the violation of a traffic or safety standard which caused the death or injury of a person has caused a violent emotional shock to the neighbour, resulting in mental injury¹⁹.*

22. *[internees] do not claim damages as next of kin, but as direct victims. In doing so they do not (also) invoke the cases referred to under (i) and (ii) above, but confine themselves to invoking the 'other harm to the person' referred to in Section 6:106(1)(b) of the Dutch Civil Code²⁰. The Court of Appeal understands that the case law in which it has been ruled that no compensation for loss of affection can be claimed in this way does not apply in their case, because it does not concern loss that has arisen as a result of the death of their father as a result of the execution, but loss that has arisen as a result of the hole in their lives as a result of that execution. As a result of the loss of a father figure, they have been seriously affected in their person, so that there need not be any (clinical) psychological injury, according to [interviewees] They refer to a judgment of the District Court of Rotterdam of 18 December 2013²¹. In their opinion, this reasoning also holds true under old law.*

23. *This argument fails. The fact that the summary executions caused pain and sorrow to the children of the killed men is easily understandable, but that does not mean that the claim is admissible. After all, from what has been considered above, it appears that the right up to 1 January last did not provide a basis for a right to compensation for that emotional suffering. The distinction that [internees] make between, on the one hand, immaterial damage as a result of the death of their father - of which they acknowledge that he is not eligible for compensation - and, on the other hand, immaterial damage as a result of the disappearance of a father figure and the resulting hole in their lives, is artificial and unconvincing. The contrary opinion of the District Court of Rotterdam in 2013 is not in accordance with the system of the law and established case law.*

24. *[internees] did not invoke the violation of the ECHR as a possible basis for the granting of compensation for grief on appeal, since the ECHR had not yet entered into force in 1947. Needless to say, the Court of Appeal notes that although the nature and the seriousness of the violation of the standards and of the consequences thereof for the injured party may imply that there is a violation in the person in some other way, as referred to in Article 6:106 paragraph 1 (b) of the Civil Code, such a violation does not already exist in the case of the mere violation of a fundamental right²², not to mention the question as to who the violation in question was made against.*

25. *The District Court has thus correctly held that [internees] are not entitled to compensation for immaterial damage".*

2.220. The starting point in these cases, to be judged under old law, is therefore that there is no ground for compensation for *loss of affection*. However, immaterial damages can also relate to compensation for *shock damage*. It appears from the considerations cited above that the court has not yet addressed this issue. Nor has the court done so. However, it does seem to follow from its legal considerations 24 and 22 that the Court of Appeal has seen the possibility of compensation of shock damage ex officio, but that it did not find any point of departure for this in the debate of the parties held until then.

2.221. The court must now re-evaluate, by final judgment, the compensation to which those who have succeeded in furnishing the evidence resting upon them are entitled vis-à-vis the State. In what has been stated during the interrogations of witnesses in the case of [plaintiff 1] and of its own motion in addition to the legal grounds, the court sees reason to return to its final decision in that case that the immaterial damages claimed must be rejected. Indeed, it follows from the evidence submitted that [plaintiff 1] clearly meets the criteria formulated in case law for compensation of so-called shock damage. The District Court further considers this as follows.

Shock damage

2.222. The Supreme Court has already left room under the old law applicable in this case for a claim for mental injury resulting from the observation of or being confronted with a serious accident of a third party. This follows from the Van der Heijden/Holland judgment in combination with the preceding conclusion of A-G mr. Franx, in particular under ⁵¹⁰. This has already been noted in the parliamentary history of book 6 BW, written in the 1980s:

"For the sake of clarity, it should also be noted that the aforementioned case of grief for others must be distinguished from that of damage caused by a "shock" resulting from observing or being confronted with a fatal accident. The question arises as to whether such a "shock" may give rise to injury or other harm to the person, in respect of which article

6.1.9.11 entitled to compensation for any other financial loss. This article does not preclude its adoption, depending on the circumstances, nor is it excluded by HR 8 April 1983, NJ 1984,717, cited by the Commission in this respect (see point 4.1, last paragraph). (...)"¹¹

(...)

82. *Did you see the men's bodies before they were actually buried?*

I didn't see them again, because I was very sad. I went on and on crying. (...)

88. *And what you said about shooting your father, did you see that, or did you tell him?*

I've seen it for myself. Because my dad was off the jeep and he had to get out and then he had to walk around and then he was beaten from behind and then he's dead. I saw that for myself.

89. *I'll check if I got it right. Did I get it right that after you saw your father shot, you cried so much that you didn't see what happened next?*

Yeah, yeah, yeah, yeah, yeah, yeah, yeah, yeah. I didn't get a good look, because I kept crying.

2.225. Apart from his testimony, in which he also stated that he was sad, nothing is known about [plaintiff 1] and the consequences he suffered from the confrontation with the summary execution of his father. Nevertheless, the court assumes that [plaintiff 1] suffered serious psychological harm as a result of the confrontation with his father's summary execution and that he meets the requirement of mental injury consisting of psychiatric recognized illness.

2.226. The District Court holds first and foremost that this yardstick is geared to the Dutch situation. However, [plaintiff 1] is a (very) old man who grew up and lives in South Sulawesi. Here, too, the Court takes into account the fact that [plaintiff 1] - just like the other witnesses who made purification actions - comes from a different era and a different world. Also in this respect, in the opinion of the District Court the modern Western frames of reference cannot simply be applied, and the District Court has an eye for the cultural differences that are not up for discussion, which are expressed in other traditions and lifestyles. This means that what is customary in the Netherlands for persons with a recognized clinical picture in psychiatry, cannot be applied to [plaintiff 1]. The court considers it of common knowledge that in the time of events (also in the Netherlands) it was unusual to seek help for psychological complaints, which can once again be assumed for [plaintiff 1], who lived in simple circumstances in Indonesia. In the fact that it is not known whether [plaintiff 1] was ever subjected to a psychiatric diagnosis or underwent psychiatric treatment, the court therefore sees no obstacle in this special, concrete case to assume that [plaintiff 1] meets the requirement of mental injury for shock damage.

2.227. In view of the special circumstances of this case, the existence of mental injury of [plaintiff 1] can, in the opinion of the District Court, be established on the basis of the following. In doing so, the District Court first of all takes into account the gruesome nature of the facts that [plaintiff 1] was forced to witness as a ten-year-old child: the first beating and then executing his imprisoned father. Furthermore, the court takes into account the violent emotions that this caused him at that moment, which follow from his statement. Finally, in view of the circumstance that [plaintiff 1], as a ten-year-old child, lived together with his father in a family context and the involvement with each other that tends to exist within such a family context (which *family life* is now protected by Article 8 ECHR), the court considers it beyond any doubt that observing the shooting of his father in this way before [plaintiff 1] was a (very) traumatic event and that he suffered psychologically as a result. Moreover, during the interrogation it was clear to the court how much this enormous grief is still there.

2.228. The Court will, as is customary in the personal injury practice, estimate the immaterial damages of [plaintiff 1] according to current standards. That means that, in addition to the

hereinafter referred to as the amount, there is no entitlement to compensation for statutory interest. The court will refer to the amounts of immaterial damages that currently tend to be compensated in the event of serious psychological injury as a result of the deliberate killing of a person/the infliction of bodily injury. The court will take as a starting point the execution of his father observed by [plaintiff 1]. Furthermore, the court takes into account what is known about his person and what it has considered about the serious psychological suffering of [plaintiff 1].

2.229. This leads to the determination of the amount of immaterial damages that [plaintiff 1] can claim from the State at € 10,000.

Material damage: loss of livelihood

2.230. The court will not, as claimed, refer the cases to the damage statement proceedings. After all, there has already been an extensive and documented debate about the extent of the loss of livelihood of the widows and children, and the parties agree on a number of principles for estimating this loss. Therefore, based on the parties' statements on this matter, the court will estimate the loss of maintenance of the widows and children. It does not need any further information for this purpose.

2.231. Based on the fact that under the old law one has reached the age of majority by reaching the age of 21, or by getting married, the children ([claimant 1] , [claimant 2] and [claimant 5]) eventually claim loss of maintenance until the moment their mothers remarried, or the moment they themselves reached the age of majority, with reaching the age of 21 or their own (previously contracted) marriage. The State believes that this is the right approach. The court takes this approach as a starting point when estimating the loss of maintenance. Assuming this, the children are entitled to foregone maintenance for the following period:

- [plaintiff 1] : until 1957, when his mother remarried.
- [plaintiff 2] : until 1963, when he turned 21.
- [plaintiff 5] : until 1953, when she turned 21 and got married.

The court will always count this year in the estimation.

2.232. The parties assume that 12% of the lost income in this period would have flowed to a child. The court will adopt this percentage in the estimate of the damage.

2.233. The widows are claiming loss of livelihood from the execution until the date they remarried. The State believes that this is the correct approach. The court therefore takes this approach as the starting point for the estimation of the loss of livelihood. On this basis, widows are entitled to foregone maintenance until 1955 ([claimant 6]), 1958 ([claimant 7]), 1957 ([claimant 13]), 1954 ([claimant 15]), 1950 ([claimant 17]) and 1951 ([claimant 19]). Here, too, the court will always include the year mentioned in the estimate.

2.234. The parties dispute how to estimate the damage suffered by widows who have not remarried ([Claimant 14] and [Claimant 18]). These widows ultimately claim compensation for loss of maintenance throughout their own lives, whereas the State argues that a man's life expectancy in 1947 should be taken into account.

2.235. The court endorses the State's approach. In doing so, it will maintain the life expectancy in force in 1960, not the life expectancy of a man born in 2014 as advocated by the widows. This means that a life expectancy of

for a little over 47 years. The State argues that, assuming an average age of 21 years (as the widows argue) for a man who died in 1947, and assuming a life expectancy in that year which will not have been higher, the duration of the foregone maintenance may continue for a maximum of 26 years after 1947, i.e. a maximum until 1973. The Court follows this approach when estimating the loss of maintenance of [plaintiff 14] and [plaintiff 18] .

2.236. Hardly any data are available on the income level of families in South Sulawesi in 1947. The State had an expert report drawn up by Professor Lindblad. In this report the income levels of persons in South Sulawesi in the 1940s were examined. The widows and children adjusted the estimated annual incomes of their fathers and husbands downwards as a result of this expert report. They also comment on the expert report and argue that more distinction is possible than Lindblad has made, based on the professions and social positions of the executed men. According to the widows and children, additional expert research is actually necessary to properly investigate the material damage suffered by plaintiffs. At the same time, they raise the question of what additional research could yield in view of the lack of concrete data. The arguments of the widows and children therefore lead to the conclusion that Lindblad's expert report cannot be decisive for the loss of livelihood in cases like this. The widows and children advocate an approach in which, on the basis of what they do know about the position of their fathers and spouses, an estimate is made of the family income for the purpose of calculating the loss of maintenance which, in their view, does more justice to reality than Lindblad's expert report.

2.237. The parties agree that € 100 per year can be taken as the annual income of persons such as the deceased husbands/fathers of the widows and children, insofar as the men were farmers at the time. According to the State, this amount is a broad estimate of the income of all men. Claimant 1] , [F] and [Claimant 5] claim that in their case a higher estimate should be assumed, because their fathers were not farmers or had other incomes. They explain this as follows:

- [plaintiff 1] 's father was a spokesman (pabbicara) for [residence 1] and was also of nobility. Claimant 1] states that he does not know exactly how much his father earned, also because in practice, from his position as spokesman and his noble descent, he also had a lot of social status, which in the rural community in which he lived would have been conducive to the level of prosperity of his family. However, his work and his ancestry meant that he would have had a higher income than the average farmer. claimant 1] estimates the annual income in 1947 at € 200 (200% of the average income of a farmer).
- [plaintiff 2] Father was a goldsmith. It is unknown how much [F] exactly with his work deserved it. On behalf of [plaintiff 2] it has been put forward that it must have been more than an average farmer, not in the least now that he earned his money by making jewelry of precious metal. The annual income in 1947 is therefore estimated at € 150 (150% of the average income of a farmer).
- [plaintiff 5] Dg. Pabeta, the father of [plaintiff 5] was a vacciner and was therefore civil servant in the service of the government. Claimant 5] argues that his income will therefore also have been higher than that of an average farmer. His annual income in 1947 is estimated at € 175 (of 175% the average income of a farmer).

2.238. The appeals of the fathers of [plaintiff 1] . plaintiff 2] and [plaintiff 5] are not in dispute. Nevertheless, the State is of the opinion that this approach cannot be followed, since the amount of €100 is already a broad estimate, which already takes into account possible variations in income within the population group to which plaintiffs belonged. The State is of the opinion that, in view of this, there is no reason to apply a differentiation to this basic income in each individual case, apart from the fact that this is also not feasible from a practical point of view. The State sees an additional argument for this in the fact that these children do not have any evidence to substantiate the claim.

have put forward a higher annual income than € 100 and actually suffice with the statement "it will have been more than an average farmer".

2.239. The court does not share this view of the State. An estimated amount of damages should - as much as possible - approach reality. This is very difficult in the cases of widows and children, due to the lack of factual data. Therefore, starting points and averages are used. This does not alter the fact that what is known - such as the profession of the man in question - must be taken into account in the estimate of damages. In the District Court's opinion, the approach advocated by the State ignores the factual fact that the perished fathers of [plaintiff 1] , [plaintiff 2] and [plaintiff 5] were not farmers and had appeals with which they will undeniably have generated a higher income. What income - in relation to an average farmer - that was, cannot be determined precisely. The Court does not see why the percentages mentioned by [plaintiff 1] , [plaintiff 2] and [plaintiff 5] would not correctly approximate this reality. It will use those percentages when estimating the loss of maintenance by multiplying the amount of loss of maintenance resulting from the State's table (see below under 2.243) by this percentage.

2.240. The next question is how the incomes of the deceased men would have developed. Parties assume that in the 50s of the last century an income of 5000 rupiah (according to the exchange rate at that time about \$ 450, converted approximately € 335) concerned a high income in Indonesia, which was reserved only for middle and senior management of government officials and employees of the Indonesian government.

big companies. Furthermore, it is not disputed that the average annual income in Indonesia in the period 1958-1962 was about 4000 rupiah.

2.241. The State points out that the widows and children come from very poor villages in South Sulawesi. Together with the State, the court is of the opinion that, without further substantiation - which is lacking - for the period 1958-1962 it cannot be taken as a starting point that the deceased men would have generated this average annual income. Rather, it is plausible that they would have generated a (much) lower annual income than 4000 rupiah. In view of this, the District Court will take the income development advocated by the State as the starting point for the damage assessment. The court finds a reason for this approach all the more in the circumstance that in principle it can be assumed - as explained by the widows and children and follows from various village chief statements submitted by them - that people in the Indonesian context are usually taken care of by their families, including widows with children.

2.242. The dispute over the current income can remain unresolved, since this income is not relevant for the estimation of the loss of income, since the relevant period is up to 1973 at the most.

2.243. The foregoing means that the Court will use the table prepared by the State in the estimation of foregone maintenance, provided that in the cases of [Claimant 1] , [Claimant 2] and [Claimant 5] it will multiply the amounts resulting from this table (€112.32, €192.36 and €70.56) by 200%, 150% and 175% respectively, so that the amounts of foregone maintenance to which they are entitled are as follows

224,64 ([Claimant 1]), 288,54 ([Claimant 2]) and 123,48 ([Claimant 5]).

2.244. On the basis of the table, [Claimant 14] and [Claimant 18] are each entitled to €3,634 in loss of maintenance. The other widows are - based on the year of remarriage mentioned after their name - entitled to the following amounts: claimant 6] (1955):

762, [plaintiff 7] (1958): €1,023, [plaintiff 13] (1954) €675, [plaintiff 15] (1954): €675, [plaintiff 17] (1950): €327 and [plaintiff 19] (1951): €414.

Legal interest

2.245. Pursuant to the applicable Section 1286(3) of the Dutch Civil Code (old), the statutory interest is only due after a reminder or writ of summons. Section 1286 DCC (old) is also applicable with regard to the period after 1 January 1992. ¹³ In the opinion of the District Court, the required notice lies in the entitlement of the widows and children to statutory interest in their liabilities. In cases without prior liability, the effective date of the statutory interest shall be the date of summons. This means that the statutory interest on the amounts referred to under 2.243 and 2.244 will be allocated as from 5 May 2012 ([claimant 1] , [claimant 2] and [claimant 5]), 18 September 2013 ([claimant 6] , [claimant 7] , [claimant 13] and [claimant 14]) and 12 May 2014 ([claimant 15] , [claimant 17] , [claimant 18] and [claimant 19]).

Slotsom

2.246. In conclusion, the claim for immaterial damages of [plaintiff 1] will be awarded up to an amount of €10,000. His claim for compensation for material damage will also be allowed up to the amount referred to above under 2,243, with interest as determined under 2,245. The claims for damages for material loss of [Claimant 2] , [Claimant 5] , [Claimant 6] [Claimant 7] , [Claimant 13] , [Claimant 14] , [Claimant 15] , [Claimant 17] , [Claimant 18] and [Claimant 19] shall be allowed up to the amounts specified above under 2,243 and 2,244, with interest as provided for under 2,245. Their other claims are rejected. The claims of [Claimant 3] , [Claimant 4] , [Claimant 8] , [Claimant 9] , [Claimant 10] , [Claimant 11] , [Claimant 12] , [Claimant 16] , [Claimant 20] and [Claimant 21] are rejected. Earlier, the court has already ruled that the claim of the K.U.K.B. Foundation must be rejected.

2.247. Finally, the District Court considered that, according to current Dutch and also Indonesian standards, the awarded claims for material damage are (very) low amounts, which do not fit in with the idea that in the year 2020 in the Netherlands in general one will have to pay compensation for damage in the form of loss of livelihood as a result of the unlawful shooting of a man. However, it should be borne in mind that in South Sulawesi, 70 to 40 years ago, the loss of maintenance was € 100 per year for most men who were farmers. Furthermore, only a small part of that lost livelihood accrued to the children and in most cases the period of lost livelihood is short.

2.248. Furthermore, the District Court considered that these low amounts of material damages are not in proportion to the pain and grief that the executions of the spouses and fathers have unmistakably caused to the widows and children. However, the amounts awarded do not provide for compensation for that pain and grief. Nor is this possible, since the law applicable to the claims - as it applied until 1 January 2019 - does not provide a basis for a right to compensation for this emotional distress (the so-called affection damage).

2.249. The extrajudicial compensation on the basis of the Announcement¹⁴ of € 20,000, which reimburses all possible claims of the relevant claimant against the State, is (much) higher than the currently estimated amounts of material compensation.

The path of applying for compensation under the Notice is not open to children, but to widows. It is reasonable for the State, following the (final) judicial determination that the spouses of [plaintiff 6] , [plaintiff 7]

claimant 13] , [claimant 14] , [claimant 15] , [claimant 17] , [claimant 18] and [claimant 19] have been killed as a result of misconduct by Dutch soldiers, (as yet) proceed to pay compensation on the grounds of the Announcement, so that they too will ultimately receive a total of € 20,000 from the State in connection with the execution.

Legal costs

2.250. The litigation costs must be determined per party. However, the District Court sees in the special nature of these cases and the fact that the widows and children have litigated as a group, in which part of them were found to be in the right and part of them in the wrong, as grounds for compensating the costs of the proceedings, in the manner set out below.

3 The decision

The court

3.1. declares that the State has acted unlawfully towards [plaintiff 1] , [plaintiff 2] , [plaintiff 5] , [plaintiff 6] [plaintiff 7] , [plaintiff 13] , [plaintiff 14] , [plaintiff 15] , [plaintiff 17] , [plaintiff 18] and [plaintiff 19] , whose fathers or husbands were shot dead by Dutch soldiers in 1947.

3.2. orders the State to pay €10,000 in immaterial damages to [plaintiff 1] .

3.3. Condemns the State to pay the following amounts of material damages (loss of income):
plaintiff 1] : € 224.64, plus statutory interest as from 7 May 2012; [plaintiff 2] : € 288.54, plus statutory interest as from 7 May 2012; [plaintiff 5] : € 123.48, plus statutory interest as from 7 May 2012; [plaintiff 6] : € 762, plus statutory interest as from 18 September 2013; [plaintiff 7] : € 1.023, plus statutory interest as from 18 September 2013; [plaintiff 13] : € 675, plus statutory interest as from 18 September 2013; [plaintiff 14] : € 3,634, plus statutory interest as from 18 September 2013; [plaintiff 15] : € 675, plus statutory interest as from 12 May 2014.
claimant 17] : € 327, plus statutory interest from 12 May 2014; [claimant 18] : € 3,634, plus statutory interest from 12 May 2014; [claimant 19] : € 414, plus statutory interest from 12 May 2014.

3.4. rejects it by the parties referred to in point 3.3, more or differently.

3.5. rejects the claims of the other parties.

3.6. offsets the costs of the proceedings, in so far as the parties bear their own costs.

This judgment was rendered by Mr L. Alwin, Mr M.J. Alt-van der Endt and Mr D.R. Glass and publicly delivered on 25 March 2020 in the presence of the Registrar.

¹ Code of Civil Procedure.

² ECLI:NL:RBDHA:2016:700.

³ ECLI:NL:RBDHA:2016:8635.

⁴ Article 164(2) of the CoR.

⁵ Verg. HR 17 October 2003, ECLI:NL:HR:2003:AF9446.

⁶ Netherlands Institute of Military History.

⁷ ECLI:NL:RBDHA:2015:2442

⁸ ECLI:NL:RBDHA:2016:8642 and ECLI:NL:RBDHA:2016:8635

⁹ ECLI:NL:GHDHA:2019:2524.

¹⁰ HR 8 April 1983, NJ 1984, 717 (Van der Heijden/Holland) m.nt. JHB.

¹¹ Parl. Gs. NBW, Introduction Books 3, 5 and 6. Book 6, General part of the law of obligations, M.v.A. I Inv., p. 1274.

¹² Verg. HR 22 February 2002, ECLI:NL:PHR:2002:AD5356 (Taxi bus)

¹³ Verg. HR 24 Oct. 1997, ECLI:NL:HR:1997:ZC2465 and HR 27 November 1998, ECLI:NL:HR:1998:ZC2788

¹⁴ Announcement by the Minister of Foreign Affairs and the Minister of Defence of 10 September 2013, no. MinBuZa.2013-256644, of the contours of a civil law settlement to compensate widows of victims of summary executions in the former Dutch East Indies of comparable seriousness and nature to Rawagedehen Zuid Sulawesi (Netherlands Government Gazette 2013, 25383), last extended by decree of 9 July 2019 (Netherlands Government Gazette 2019, 39358).
