

Outline for civil law settlements to compensate the children of victims of mass executions in the former Dutch East Indies, 1945–1949

The Minister of Foreign Affairs and the Minister of Defence announce that the State will apply the outline below to establish civil law settlements to compensate the children of victims of summary executions in the former Dutch East Indies of a comparable nature and severity to those in Rawagede and South Sulawesi.

1. Introduction

After the proclamation of the Republic of Indonesia on 17 August 1945, a war of independence broke out in the former Dutch East Indies in which there were many casualties on both the Dutch and Indonesian sides. During this period Dutch military personnel carried out summary executions in a number of places, executing part of the male population of villages without any form of trial.

One of these places was Rawagede, Java. A number of widows of men who were the victims of summary executions there lodged civil claims against the State of the Netherlands (hereinafter: the State) seeking compensation for a wrongful act (*onrechtmatige daad*). By judgment of 14 September 2011 The Hague District Court allowed the widows' claims and held the State liable for the damage incurred by the widows as a result of their husbands' deaths.¹ After the court gave its judgment, the State agreed an amicable settlement to compensate the Rawagede widows.

The State subsequently decided to offer to amicably settle the claims of the widows of victims of summary executions in the former Dutch East Indies who were demonstrably in an equal position to the Rawagede widows by concluding a settlement agreement under private law. The outline for determining which widows are eligible for the conclusion of a settlement agreement was published in the Government Gazette of 10 September 2013, no. 25383. Under that settlement scheme, the deadline to submit requests for compensation, after several extensions, was 11 September 2021.²

Subsequently, children asserting that their fathers were victims of summary executions carried out by Dutch military personnel in South Sulawesi also lodged claims against the State. The State argued that the claims of these children – which arose more than 70 years ago – were time-barred. In its interlocutory judgment of 1 October 2019, The Hague Court of Appeal held that the State could not rely on the claims being time-barred against the children, provided the claims were submitted within a reasonable period after the claimants had been apprised of the possibility of seeking compensation from the State.³ In its final judgment of 25 March 2020, The Hague District Court awarded compensation to three of these children.⁴ The State subsequently decided not to appeal this final judgment.

Against this background, the State decided to examine whether an amicable settlement could be reached with the children of victims of summary executions in the former Dutch East Indies of a comparable nature and severity to those in Rawagede and South Sulawesi. The starting point is – and will remain – that the claims against the State by these claimants are time-barred on the basis of the Statute of Limitations 1924 (*Verjaringswet 1924*) or of article 2004 of the former Dutch Civil Code, as the limitation period expired either five or 30 years (respectively) after the summary executions took place, and that any request for compensation must be submitted within a reasonable period after the claimant has been apprised of the possibility of seeking compensation from the State.

On 12 November 2020 the motion submitted by MP Sjoerd Sjoerdsma et al. regarding the reasonable period was adopted by a majority of the House of Representatives. Further to that motion, under the scheme claims will be examined solely to determine whether the claimant meets the substantive conditions for eligibility for compensation. If a claimant fulfils the substantive conditions set in this settlement scheme and is therefore eligible for compensation, the claim will not be assessed to determine whether it was submitted within a reasonable period. The

¹ ECLI:NL:RBSGR:2011:BS8793.

² See Government Gazette, 17 July 2019, no. 39358.

³ ECLI:NL:GHDHA:2019:2524.

⁴ ECLI:NL:RBDHA:2020:2584.

requirement of submission within a reasonable period is no longer a condition for eligibility for compensation under this settlement scheme.

The State is willing to amicably settle claims arising from a wrongful act that meet the substantive conditions set out in this scheme by concluding settlement agreements under private law with the claimants.

The outline given below describes which persons are eligible for the conclusion of such a settlement agreement. Given the purely private law nature of the claims that the claimants have against the State and the decision to settle these claims by means of settlement agreements under private law, the outline for determining who is eligible for the conclusion of a settlement agreement has no basis in public law, nor is there any intention to create such a public law basis.

A model settlement agreement is annexed to this document.

2. Conditions for eligibility for compensation

In order to be eligible for compensation for damage incurred, a claimant must satisfy the following requirements.

- They must be the child of a man who was executed by Dutch military personnel in a summary execution.
- The summary execution in which the claimant's father died must have been of a comparable nature and severity to the executions in Rawagede and South Sulawesi.
- The summary execution in which the claimant's father died must be referred to in existing publicly available sources.

The claimant will be required to establish satisfactorily that they meet these requirements. To do so, the claimant must provide at least the following documentation:

1. valid proof of the claimant's identity, showing at least his or her full name, place of residence and date of birth;
2. a recent extract from the local population register (this may take the form of a family card);
3. proof of the claimant's family ties with the deceased by means of a document issued by the local or national authorities, for example a family card;
4. proof that the claimant's father died in a summary execution as described above (this may take the form of two or more statements, one of which may be a statement by the claimant);
5. Dutch or English translations of all the statements specified in 3 and 4 above.

3. Compensation

If the State is of the opinion that it has been satisfactorily established that the claimant satisfies the requirements set out above, the claimant will be eligible for compensation for the damage suffered as a result of their father's death. The compensation will be €5,000, all-in. This amount covers all potential claims against the State by the claimant and also any costs incurred in submitting the compensation request.

4. Submission deadline

To be eligible for the aforementioned compensation, claimants must submit their request for compensation within five years after the announcement of this settlement scheme. The complete request must therefore be received by the State before 28 April 2026.

5. Submission procedure

Requests for compensation (including the necessary documentation) must be submitted by post to:

Kantoor Landsadvocaat
Claim Indonesische kinderen
Postbus 11756

2502 AT Den Haag
Nederland

ANNEXE

Model Settlement Agreement

The Parties

The State of the Netherlands (the Ministry of Foreign Affairs and Ministry of Defence),
which has its seat in The Hague,

hereinafter: **the State**,

legally represented in this matter by [x],

and

[name of claimant], residing in [claimant's place of residence], hereinafter [x],

legally represented in this matter by [x],

Considering

- i) On the basis of the announcement published in the Government Gazette (*Staatscourant*) [XX], describing the outline for a broader settlement scheme, [claimant] submitted a request to the State on [date] for the conclusion of a settlement agreement under civil law, as referred to in the aforementioned publication.
- ii) On the basis of the documentary evidence with which [claimant] has substantiated their request, the State is of the opinion that it has been satisfactorily established that [claimant] satisfies the requirements laid down in the announcement in the Government Gazette referred to in paragraph (i) above, subject to which the State is willing to waive the limitation period on the claim by [claimant] and to offer compensation for the damage incurred by [claimant] as a result of the death of their father, [name of father], in a summary execution on [date of execution] in [place].
- iii) This settlement agreement, which provides for an amicable settlement for the damage that [claimant] has incurred or will incur in the future as a result of the death of [name of father], exclusively concerns the legal relationship between [claimant] and the State. No other persons or legal entities can derive any rights from this settlement agreement.

Have agreed as follows:

Article 1 Payment

The State will pay a sum of €5,000 (five thousand euros) to [claimant] as final settlement for all damage that [claimant] has incurred or may yet incur in connection with the death of their father, [name of father], including any costs of legal assistance or other costs that [claimant] may have incurred for the submission of the compensation request referred to in paragraph (i) of the preamble to this agreement or to obtain satisfaction out of court in any other way. Payment will be made by means of a transfer to [...] within [...] days after this settlement agreement is signed on behalf of the parties.

Article 2 Final discharge

The parties declare that, notwithstanding the provisions of this settlement agreement, they have no further claims against each other regarding the death of the father of [claimant] in the summary execution referred to in paragraph (ii) of the preamble to this agreement or any consequences that have arisen or may yet arise from it of any nature whatsoever. The parties grant each other full and final discharge in this respect.

Article 3 Additions or amendments

Additions or amendments to this settlement agreement can be made only in the form of a written document signed by both parties.

Article 4 Termination and rescission

The parties waive the right to termination or rescission of this settlement agreement.

Article 5 Applicable law

This settlement agreement is governed by Dutch law.

Article 6 Entry into force

This settlement agreement enters into force on the day on which it is signed by both parties.

Agreed, drawn up and signed in duplicate.

The State of the Netherlands
Ministry of Foreign Affairs and
Ministry of Defence

[claimant]

Represented by: [x]

Represented by: [x]

Date:

Date:

Place:

Place:

Signature:

Signature: