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Decision concerning the determination of an amount of compensation for the claims of family members of deceased detainees relating to mental pain and anguish taken by the Governing Council of the United Nations Compensation Commission at its 135th meeting, on 11 March 2004

The Governing Council,

Recalling, the request made by the Government of the State of Kuwait at the fiftieth session of the Governing Council, held in December 2003, with respect to the claims that it will file with the Commission pursuant to Governing Council decision 12 (S/AC.26/Dec.12 (1992)), relating to the 605 former detainees in Iraq determined to be dead, concerning the amounts of compensation that can be claimed by family members for mental pain and anguish relating to death under section A of Governing Council decision 8 (S/AC.26/Dec.8 (1992)),

Recalling also, the Council's decision at the fiftieth session that, in recognition of the particular mental pain and anguish suffered by the family members of the detainees, because of the fact that they endured prolonged uncertainty about the fate of their loved ones, and being aware that no provision for such mental pain and anguish is made in decision 8, in addition to the section A decision 8 claims, a separate loss element would be created for the family members of the detainees,

Noting that following extensive exchanges on the subject of the amount to be awarded for this separate loss element, the need to establish an amount which is consistent with decision 8 and which at the same time recognizes the prolonged duration of this loss,

Noting also, the Council's decision that a single claim will be filed under this loss type per family unit, with awards to be distributed in accordance with the domestic laws applicable to the deceased,

Noting further that the existing rights of family members of the deceased detainees are not affected, and that family members are entitled to make claims for mental pain and anguish relating to death under section A of decision 8,

1. Decides that the compensation to be awarded for this newly created loss type per family unit be calculated on the basis of a monthly amount of USD 1,100 for the duration of the loss,

2. Notes, that this amount is payable in addition to compensation that can be awarded to a family unit under section A of decision 8 for death,

3. Decides also, that compensation for mental pain and anguish shall be subject to a ceiling of USD 200,000 for the cumulative awards under this decision and decision 8.
