



Security Council

Distr.
GENERAL

S/AC.26/2005/8 *
8 July 2005

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS OF THE “D1” PANEL OF COMMISSIONERS
CONCERNING THE SPECIAL INSTALMENT OF “BEDOUN” CLAIMS

* Reissued for technical reasons.

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction.....	1-13	1
I. PROCEDURAL OVERVIEW	14-34	6
A. Preliminary screening of “bedoun”	14-15	6
B. Development of computer system and launch of the “bedoun” programme in Kuwait	16-20	7
C. The registration process.....	21-25	7
D. Claim form	26-28	8
E. Filing of claims by representation	29-31	8
F. Matching of claims	32-34	9
II. THE LEGAL FRAMEWORK.....	35-36	9
Applicable law and evidentiary standard.....	35-36	9
III. ISSUES ARISING IN THE PANEL’S REVIEW OF “BEDOUN” CLAIMS	37-47	10
A. Introduction	37	10
B. Residency requirement	38	10
1. Claimants provisionally eligible according to the Executive Committee database	39	10
2. Claimants provisionally ineligible according to either database....	40-41	10
3. Claimants not listed in either database.....	42-44	11
C. Acquisition of nationality.....	45-47	11
IV. THE GROUPING OF “BEDOUN” CLAIMS AND THE PANEL’S FINDINGS	48-63	11
A. Introduction	48-49	11
B. Claimants listed in the PACI database.....	50	12
1. Claimants provisionally eligible according to the PACI database.....	51-52	12
2. Claimants provisionally ineligible according to the PACI database.....	53-56	12
C. Claimants not listed in the PACI database	57	13
1. Claimants listed in the Executive Committee database.....	58-61	13

(a)	Claimants provisionally eligible according to the Executive Committee database.....	58-59	13
(b)	Claimants provisionally ineligible, or with uncertain eligibility, according to the Executive Committee database	60-61	13
2.	Claimants not listed in either database.....	62-63	13
V.	REVIEW OF ONE LANDMINE CLAIM.....	64-68	14
VI.	REVIEW OF NINE ADDITIONAL DECEASED DETAINEE CLAIMS.....	69-80	15
A.	Introduction	69-72	15
B.	Losses asserted in the nine additional deceased detainee claims	73-74	15
C.	Deemed date of death for loss of support claims	75-76	16
D.	Claims for MPA.....	77-80	16
VII.	OTHER ISSUES.....	81	17
Interest	81	17
VIII.	RECOMMENDED AWARDS.....	82	18
IX.	SUBMISSION OF THE REPORT.....	83-84	19

Introduction

1. This is the twenty-sixth report to the Governing Council of the United Nations Compensation Commission (the “Commission” or “UNCC”) submitted pursuant to article 37(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”) by the “D1” Panel of Commissioners (the “Panel”), being one of two Panels appointed to review individual claims for damages above 100,000 United States dollars (USD) (category “D” claims).
2. At the forty-seventh session of the Governing Council of the Commission held in March 2003, the Government of Kuwait (“Kuwait”) requested the Council’s authorization to file “late claims” on behalf of “bedoun”¹, a community that has lived in Kuwait for many years and whose members have frequently served in the police and the armed forces of Kuwait over several generations. Most members of this community had not been granted nationality either by Kuwait or any other country. The Panel notes with regret that no Government or authority accepted responsibility for filing claims on behalf of “bedoun” during the regular filing period. In consequence, “bedoun” were unable to claim full compensation, available to other claimants.
3. The Council, mindful of the fact that the filing deadline for claims in categories “A”, “B”, “C” and “D” had expired on 1 January 1996, and noting that the lateness of Kuwait’s request made it impossible for “bedoun” claims to be filed and dealt with in these individual claims categories within the parameters and time constraints of the UNCC’s Work Programme, took the request under consideration.
4. At its fifty-first session on 9-11 March 2004, the Governing Council directed the secretariat of the Commission to establish the nature and availability of information concerning potential “bedoun” claimants, as well as the types of losses and amounts of compensation expected to be claimed. A technical mission to Kuwait was undertaken in April 2004 in order to consult with the relevant authorities in Kuwait on these and related matters and report back to the Governing Council.
5. After considerable deliberation on the request, and after receiving further information from Kuwait and the UNCC secretariat indicating that no claims had been filed earlier on behalf of “bedoun” for various historical and political reasons, and taking account of the fact that “bedoun” had suffered losses during Iraq’s invasion and occupation of Kuwait as well as on humanitarian considerations, at its fifty-second session held from 29 June to 2 July 2004, the Governing Council decided to establish a special “late claims” programme for “bedoun” (the “‘bedoun’ programme”). Under the programme a fixed amount of USD 2,500 would be awarded to each “bedoun” who met the criteria established by the Council and reflected in decision 225 (S/AC.26/Dec.225 (2004)).

6. Decision 225 provides, inter alia, as follows:

“The Governing Council,

...

1. Decides, to create an accelerated, special claims programme for the individual bedoun, who meet the following eligibility criteria:

(a) were 18 years of age or older on 2 August 1990, i.e., the starting date of Iraq’s invasion and occupation of Kuwait;

(b) were residents of Kuwait on 2 August 1990 and remained as residents of Kuwait until the 1 January 1996 expiration of the filing deadline for the UNCC’s regular claims programme;

(c) suffered losses as a direct result of Iraq’s invasion and occupation of Kuwait, and provide any available evidence of those losses;

(d) have not had their claims filed with the UNCC by any Government or international organization in any claims category during the regular claims programme²; and

(e) have not held the nationality of any State during the period from 1 January 1992 to 1 January 1996.”

7. In arriving at its decision to establish the “bedoun” programme, the Governing Council adopted the following recommendation of the Working Group of the Council:

“The Working Group notes that the secretariat will provide to the Government of Kuwait the claim form to be used to file the bedoun claims, which will include, *inter alia*, an affirmation by the claimants that they suffered direct losses as a result of Iraq’s invasion and occupation of Kuwait and had no earlier opportunity to file claims with the Commission. The claimant will also be required to provide any available evidence to demonstrate such losses. The Working Group recommends that the panel of Commissioners, with the assistance of the secretariat, be requested to examine, on a sample basis, the evidence submitted by the bedoun in support of their claims. In providing a fixed amount of compensation in the decision the Working Group notes that this amount may not necessarily provide the same compensation that the bedoun claimants could have received under the regular claims programme. The Working Group notes that the secretariat will also determine the technical parameters by which claims shall be submitted to the Commission.”

8. At the direction of the Governing Council, the Executive Secretary referred “bedoun” claims to the Panel for review.

9. The Governing Council further directed that all “bedoun” claims were to be filed with the Commission by 31 December 2004. A total of 31,868 claims were filed by Kuwait’s Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression (“PAAC”) on behalf of individual “bedoun” by the filing deadline.

10. Due to the large number of “bedoun” claims filed and the time constraints for the completion of the “bedoun” programme, the Panel was requested to adopt expedited procedures in its review of “bedoun” claims. These procedures, which are described in greater detail below, use mass claims processing techniques and rely upon statistically representative sampling rather than the individual review of each claim.

11. The Panel commenced its review of “bedoun” claims in January 2005, and conducted the eligibility assessment directed by the Governing Council in respect of all “bedoun” claims. This assessment required the Panel to determine whether claimants satisfied the eligibility criteria established by the Governing Council in decision 225.

12. In addition to ad hoc communications among the Commissioners and with the secretariat, the Panel held meetings at the Commission’s headquarters in Geneva on 31 January-1 February, 22-24 March and 28-29 April 2005 to consider issues pertaining to “bedoun” claims.

13. This report also covers 10 other claims referred to the Panel by the Governing Council for review. These claims were filed pursuant to Governing Council decision 12 (S/AC.26/1992/12). They include one category “D” claim filed by Kuwait on behalf of an individual who was recently killed as a result of a landmine explosion. In addition, they include one additional deceased detainee claim filed through Kuwait on behalf of an Iranian national. They also include eight additional deceased detainee claims filed by the Government of the Kingdom of Saudi Arabia (“Saudi Arabia”). Further details of these 10 claims are set out below at paragraphs 64-68 and paragraphs 69-80, respectively.

I. PROCEDURAL OVERVIEW

A. Preliminary screening of “bedoun”

14. In implementing the Council’s decision for the processing of “bedoun” claims, as a first step it was necessary to establish that the individual claimants were “bedoun”. During the technical mission to Kuwait in April 2004, it was ascertained that a database was maintained in Kuwait by the Public Authority for Civil Information (“PACI”) containing information on 176,968 “bedoun” in Kuwait, which was used as the primary, but not exclusive, source of information concerning potential “bedoun” claimants. This PACI database was electronically “screened” to identify those individual “bedoun” who provisionally appeared to satisfy the eligibility criteria established by the Governing Council in decision 225.

15. Based on these screening procedures, 38,296 “bedoun” in the PACI database were identified as being provisionally eligible, with the remaining 138,672 “bedoun” identified as provisionally ineligible, to participate in the “bedoun” programme. The PACI database, as screened, was used to

identify those individuals for whom a claim form should be completed and submitted to the Commission. This provisional determination of eligibility was subject to confirmation by the Panel.

B. Development of computer system and launch of the “bedoun” programme in Kuwait

16. It was necessary at the outset of the “bedoun” programme to develop a computerised system for the registration of claimants in Kuwait and the transmission of the resulting data from PAAC to the Commission in Geneva.

17. The secretariat, in consultation with the Panel, developed the system, and devised a claim form, discussed below, for the “bedoun” programme, which was utilized by PAAC to register claimants and complete the claim form. A technical mission to Kuwait was undertaken during the period 24 August to 9 September 2004 to set up the necessary equipment and procedures in consultation with PAAC, as well as to provide guidelines to assist with the launch of the registration process.

18. On 5 September 2004 PAAC formally announced the commencement of the “bedoun” programme in Kuwaiti newspapers and began the process of registering claims.

19. Once registration began, claims data was electronically transmitted to the Commission’s database in Geneva on a daily basis by means of a secure data connection.

20. The implementation of the computer application designed to process “bedoun” claims was observed by the quality assurance team on three separate technical missions over the lifetime of the project in September, October and December 2004. It made two detailed reports to the Executive Secretary on 27 September 2004 and 1 November 2004 and one summary report was made to the Panel of Commissioners dated 17 November 2004, all of which reported compliance with the guidelines.

C. The registration process

21. Two “screening stations” were established as part of the registration process. At the first screening station, individual claimants presented themselves with personal identification so that their provisional eligibility status in the PACI database could be confirmed. The 29,065 individuals who appeared to be provisionally eligible according to the PACI database were interviewed, a claim form was completed and it was electronically scanned and registered.

22. Claimants who were found to be provisionally ineligible at the first screening station on the basis of information in the PACI database, challenged this assessment and asserted that the data in the PACI database was inaccurate. Those individuals who were able to produce prima facie documentary evidence to support their assertions were referred to a second screening station where a case-by-case review was conducted to determine whether an interview should be granted. Based on this review, claims were registered for 398 claimants, subject to confirmation by the Panel, who provided documentary evidence that apparently refuted the PACI data.

23. Claimants who presented themselves but were not listed in the PACI database were also sent to the second screening station. Due to the larger than expected number of these cases, alternative procedures were formulated requiring these individuals to provide documents to demonstrate that they were “bedoun” and that they provisionally satisfied the Governing Council’s eligibility criteria.

24. Many of the claimants not listed in the PACI database provided a “bedoun” registration card issued by the Executive Committee for Illegal Residents Affairs (“Executive Committee”) within the Kuwaiti Ministry of Interior, as evidence that they are “bedoun”. The Panel understands that “bedoun” could register with PACI, the Executive Committee or both and that, as a result, the Executive Committee has its own database of “bedoun”. This database was made available to the Commission. An analysis of the Executive Committee database indicated that a maximum of 5,751 individuals who appear in that database are not listed in the PACI database. A total of 2,866 of these individuals were identified, through electronic screening, as “bedoun” who provisionally appeared to satisfy the Governing Council’s eligibility criteria.

25. After a case-by-case review, interviews were granted to 2,405 individuals who were able to provide appropriate documentation. Of these 2,405 claimants, 1,446 are listed in the Executive Committee database. The remaining 959 are neither listed in the PACI database nor in the Executive Committee database. The Panel’s determinations with respect to the legal issues that arose in the course of the review of claims filed by these individuals are discussed later in this report.

D. Claim form

26. Kuwait was provided with the claim form referred to above which was devised for “bedoun” claims. A simple claim form tailored to the unique requirements of the “bedoun” programme was designed. It records basic details about the claimant and notes what available evidence, if any, was provided by the claimant.

27. The claim form contains an affirmation by the claimant that he or she suffered direct losses as a result of Iraq’s invasion and occupation of Kuwait and has not previously filed a claim with the Commission. By signing the claim form, the claimant also authorizes Kuwait, through PAAC, to apply for and to receive the fixed amount of USD 2,500 on the claimant’s behalf in the event that the Panel determines that the claimant is eligible to participate in the “bedoun” programme.

28. Finally, the claim form requires a certification from the PAAC official who conducted the interview confirming the claimant’s signature and that the affixed photograph is a true likeness of the claimant.

E. Filing of claims by representation

29. Claimants were instructed to appear in person in order to file a claim. Exceptions were permitted only on behalf of individuals who were deceased (but who were alive on 1 January 1996, i.e. the filing deadline for the UNCC’s regular claims programme) or who were too disabled or ill to

attend at PAAC's offices, provided that the fact of death, disability or illness and authority to act were established by appropriate documentary evidence.

30. The Panel was concerned that these exceptions may be too limited to enable all potentially eligible individuals to register claims, and therefore sought clarification from the Governing Council. At its fifty-fourth session on 7-9 December 2004, the Governing Council directed that the Panel could exercise its discretion to permit the representation of claimants by their family members or other authorized representatives where the Panel determines that such representation is warranted.

31. Family members of some "bedoun" who are currently serving prison sentences also requested that they be permitted to file claims on behalf of the imprisoned individuals. The Panel determined to permit such representation, provided that the representative presented documentary evidence of his or her identity and family relationship to the incarcerated individual, and evidence of that individual's identity and imprisonment.

F. Matching of claims

32. Prior to the review of "bedoun" claims, further electronic searches were undertaken to determine whether claimants in the "bedoun" programme had previously filed claims with the Commission. These searches were conducted using a matching programme that automatically runs in the UNCC database and that identifies matching claimants across all claims categories.

33. Claims identified by the matching programme as potential matches underwent manual verification to confirm whether they were in fact matches. A total of 37 confirmed matches were identified, which related either to claims filed by the same claimant within the "bedoun" programme or to claims filed by the same claimant in different claim categories.

34. Pursuant to the Governing Council's direction, any individual who has previously filed a claim with the Commission is not permitted to participate in the "bedoun" programme. Furthermore, claimants who filed more than one eligible claim within the "bedoun" programme will receive compensation only with respect to one of those claims.

II. THE LEGAL FRAMEWORK

Applicable law and evidentiary standard

35. Pursuant to Security Council resolution 687 (1991), the Security Council established Iraq's liability under international law for any direct loss arising as a result of Iraq's invasion and occupation of Kuwait. Security Council resolution 687 (1991) provides, in paragraph 16, that Iraq:

"...is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

36. Article 31 of the Rules identifies the law to be applied by panels of Commissioners in their consideration of claims. Specifically, panels are to apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any relevant decisions of the Governing Council. When necessary, panels are to apply other relevant rules of international law.

III. ISSUES ARISING IN THE PANEL'S REVIEW OF "BEDOUN" CLAIMS

A. Introduction

37. During its review of "bedoun" claims, the Panel identified a number of factual or legal issues. In considering these issues and their resolution, the Panel was mindful of the humanitarian nature of the "bedoun" programme. The issues and the Panel's findings and recommendations are set out below.

B. Residency requirement

38. The most common legal issue encountered in the individual review of claims was the sufficiency of documentary evidence provided by claimants to prove their residence in Kuwait from 2 August 1990 to 1 January 1996, as required under Governing Council decision 225. The Panel decides that claimants need not establish continuous physical presence in Kuwait from 2 August 1990 to 1 January 1996 in order to prove residence in Kuwait during this period.

1. Claimants provisionally eligible according to the Executive Committee database

39. The Panel notes that the data in the Executive Committee database concerning residency in Kuwait is less precise than the data in the PACI database. The Panel therefore reviewed examples of the documentation submitted by claimants listed in the Executive Committee database to determine if these claimants have satisfied the residency requirement. Based on such review, the Panel determines that it is reasonable to apply a presumption of residence in Kuwait through 31 December 1995 to the 978 "bedoun" claimants found to be provisionally eligible according to the Executive Committee database.

2. Claimants provisionally ineligible according to either database

40. The Panel decides that for such claimants to prove their residency, they must provide documentary evidence to refute the data in the relevant database; and that a mere assertion by a claimant of a date of entry into Kuwait is insufficient for this purpose.

41. The Panel examined these claims individually and made eligibility determinations on a case-by-case basis. The Panel finds that the majority of these claimants were able to furnish documentary evidence to refute the data in the relevant database and therefore considers such claimants eligible to participate in the "bedoun" programme.

3. Claimants not listed in either database

42. As stated in paragraph 62 below, there are 957 claimants³ who are not in the PACI or the Executive Committee database. As there is no information relating to these claimants available in either database, the Panel has examined each of these claims to determine whether the claimants have provided sufficient documentary evidence to establish their compliance with the eligibility requirements of decision 225.

43. With respect to the residency criteria, the Panel formulated guidelines concerning the documentary evidence required to prove compliance.

44. The Panel considers that there are three relevant periods with respect to residency: the period prior to 2 August 1990, the period from 2 August 1990 to 31 December 1995, and the period after 31 December 1995. The Panel finds that claimants who provide at least one document to demonstrate their residence in Kuwait for two of the three periods satisfy the residency requirement. The Panel further determines that claimants who provide at least two documents with respect to any one of the three periods also satisfy the residency requirement. In making these determinations, the Panel notes that virtually all of the claimants registered their claims in person, indicating their presence in Kuwait in late 2004, except for a few claimants who filed their claims through a representative.

C. Acquisition of nationality

45. As stated below, the Panel finds that most of the claimants found to be provisionally ineligible because of their acquisition of a nationality prior to 1 January 1996 are unable to disprove an entry to that effect in the PACI or Executive Committee databases.

46. A number of claimants found to be provisionally eligible according to the PACI database provided evidence indicating that they acquired Iraqi nationality after 1 January 1996.

47. The Panel considered the impact of Governing Council decisions 1 (S/AC.26/1991/1) and 7 (S/AC.26/1991/7/Rev.1), which provide that claims “will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State”. The Panel notes that these Governing Council decisions relate to claims in categories “A”, “B”, “C” and “D”, whereas “bedoun” claims do not belong to any of these claims categories. The Panel finds that the criteria applicable to “bedoun” claims are those that the Governing Council specifically formulated in decision 225, which do not disqualify a claimant who has acquired Iraqi nationality after 1 January 1996.

IV. THE GROUPING OF “BEDOUN” CLAIMS AND THE PANEL’S FINDINGS

A. Introduction

48. As stated above, the Governing Council intended that the “bedoun” programme be an expedited claims programme. The Panel therefore determined that the 31,868 “bedoun” claims⁴ filed by the filing deadline would be reviewed using mass processing techniques. These techniques consist primarily of statistically representative sampling of homogeneous claims and the individual review of

the sample claims, with further verification conducted where circumstances so warrant. These techniques were previously employed by the Commission in the review of category “A” and category “C” claims in accordance with paragraph 8 of Governing Council decision 1 and article 37 (a) and (b) of the Rules.

49. In order to most effectively apply sampling techniques, the Panel grouped claims with similar features. Five distinct groups of claims were identified by the Panel, as described below. The Panel determined that the claims in two of these groups could be reviewed using sampling techniques. The Panel further determined that the claims in the remaining three groups required individual claim review. In total, 2,331 claims were individually reviewed.

B. Claimants listed in the PACI database

50. In the course of claims review, the Panel determined that for claimants who are listed in the PACI database the eligibility determination should be based only on the claimants’ data in the PACI database, regardless of whether the claimants are also listed in the Executive Committee database.

1. Claimants provisionally eligible according to the PACI database

51. The largest group of claims consists of the 29,051 claims⁵ that were previously determined to be provisionally eligible as a result of the electronic application of the Governing Council’s eligibility criteria to each claimant’s data in the PACI database. The Panel decided to review this group of claims by means of a statistically representative sample, since it constituted a homogeneous population and did not give rise to specific legal or factual issues. Documentary evidence provided by claimants in the sample claims reviewed was examined to ensure that it did not render the claimant ineligible.

52. Based on the results of its review of the sample claims, the Panel concludes that all claimants in this first group of claims satisfy the Governing Council’s eligibility criteria for the “bedoun” programme and therefore recommends that each be awarded the fixed amount of USD 2,500.

2. Claimants provisionally ineligible according to the PACI database

53. A second group of claims was filed by the 387 claimants⁶ found to be provisionally ineligible according to the PACI database but who submitted documentary evidence to support their assertion that the PACI data was inaccurate, as described in paragraph 22 above. Most commonly, these individuals were determined to be provisionally ineligible because the PACI database indicated that they were either not registered with PACI on or before 2 August 1990 (and therefore presumed not to be resident in Kuwait at that time), that they were not 18 years of age on 2 August 1990 or that they acquired a nationality prior to 1 January 1996.

54. The Panel decided that all of these claims would be individually reviewed.

55. The Panel found that many of these claimants were able to prove with documentary evidence that they resided in Kuwait on or prior to 2 August 1990. Compliance with the age qualification was also easily established, as claimants were generally able to furnish a number of documents that attested

to their age. Some claimants provided certificates from PACI attesting to data entry error and confirming the correct information. The Panel found, however, that claimants who were provisionally ineligible by virtue of the apparent acquisition of a nationality prior to 1 January 1996 were rarely able to provide evidence to the contrary.

56. The Panel finds that 304 claims in this group are eligible for inclusion in the “bedoun” programme, as the claimants submitted satisfactory evidence to prove that the PACI data was erroneous. The remaining 83 claimants in this group do not satisfactorily refute the PACI data and thus are ineligible to participate in the “bedoun” programme.

C. Claimants not listed in the PACI database

57. The claimants who are not listed in the PACI database fall into two distinct groups: those who are listed in the Executive Committee database and those who are not listed in that database.

1. Claimants listed in the Executive Committee database

(a) Claimants provisionally eligible according to the Executive Committee database

58. As stated in paragraph 25 above, 1,436 claims⁷ were filed by claimants who are not listed in the PACI database but who are listed in the Executive Committee database. By electronic application of the Governing Council’s eligibility criteria to the data contained in the Executive Committee database, 978 of these claimants were identified as provisionally eligible.

59. The Panel decided to review the group of 978 claims by means of applying a statistically representative sample. Based on its review of this sample, the Panel finds that each of the claims in this group is eligible for inclusion in the “bedoun” programme. The Panel therefore recommends that each of these claimants be awarded the fixed amount of USD 2,500.

(b) Claimants provisionally ineligible, or with uncertain eligibility, according to the Executive Committee database

60. Another group of claims consists of 458 claims filed by claimants who are listed only in the Executive Committee database, but who were either provisionally ineligible as a result of electronic screening or whose eligibility status could not be determined from electronic screening alone. The Panel decided to review all of these claims individually.

61. The Panel finds that 433 claims in this group are eligible to participate in the “bedoun” programme and therefore recommends that each of these claimants be awarded the fixed amount of USD 2,500.

2. Claimants not listed in either database

62. The final group of claims contains 957 claims⁸ filed by claimants who are in neither the PACI nor the Executive Committee database. The Panel required these claimants to provide documentary

evidence to establish their compliance with each aspect of the eligibility criteria. The Panel decided to individually review these claims as well.

63. The Panel finds that 949 of the claims in this group are eligible for inclusion in the “bedoun” programme and therefore recommends that each of these claimants be awarded the fixed amount of USD 2,500.

V. REVIEW OF ONE LANDMINE CLAIM

64. Governing Council decision 12 enables individuals who suffer “losses and personal injuries resulting from public health and safety risks that occur after or within one year prior to the expiration of the established filing deadlines”⁹ to file claims with the Commission after the regular filing period. The reference to “public health and safety risks” refers most often to the explosion of landmines or other previously unexploded ordnance related to Iraq’s invasion and occupation of Kuwait that has resulted in the death of or injury to an individual.

65. A number of such claims have been filed, principally by Kuwait, on behalf of claimants since the end of the regular filing period. In June 2004, the Panel signed a special report in which it made recommendations concerning 30 such claims that had not previously been reviewed by the Commission.¹⁰ Kuwait subsequently filed two further category “D” claims pursuant to decision 12 on behalf of two individual claimants who suffered personal injuries resulting from landmine explosions.¹¹ These two claims were reviewed by the Panel as part of the special instalment of deceased detainee claims (the “special instalment”).¹²

66. With the approval of the Governing Council, Kuwait has filed one additional category “D” claim on behalf of one individual who was killed as a result of a landmine explosion.¹³ As stated above, at the direction of the Governing Council the Panel has taken up this claim for review together with “bedoun” claims.

67. The individual’s family seeks compensation for the mental pain and anguish (“MPA”) allegedly suffered as a result of the death of the individual following a landmine explosion. A claim for the loss of support has also been filed seeking compensation for the loss of financial support that the family would have received from the individual had he not been killed.

68. The Panel finds that these losses were suffered as a direct result of Iraq’s invasion and occupation of Kuwait. Consequently, the Panel finds that the individual’s family is entitled to receive an award of compensation for MPA in accordance with Governing Council decision 8 (S/AC.26/1992/8)¹⁴ and an award of compensation for loss of support calculated in accordance with the D3 (death) methodology based on the individual’s average monthly income.

VI. REVIEW OF NINE ADDITIONAL DECEASED DETAINEE CLAIMS

A. Introduction

69. The Panel has previously reviewed category “D” claims filed by Kuwait on behalf of the families of 605 individuals who were detained by the Iraqi regime during the period of Iraq’s invasion and occupation of Kuwait, and who were subsequently executed by that regime. The Panel’s findings and recommendations concerning those claims were set out in the special instalment report.

70. After the Panel had taken up that special instalment for review, Kuwait, on its own behalf and on behalf of two Iranian nationals, made requests to the Governing Council for approval to file additional claims on behalf of the families of other individuals who were also allegedly detained and subsequently executed by the Iraqi regime. The Governments of Saudi Arabia and Bahrain also made similar requests. The Governing Council referred these requests to the Panel for its determination as to whether any of the individual claims met the eligibility requirements set out in Governing Council decision 12 for filing with the Commission.

71. In accordance with the request of the Governing Council, the Panel examined each of the potential claims and the supporting documentation submitted by the families of the detainees and the relevant Governments. The Panel’s findings concerning the eligibility of each of these potential claims for filing with the Commission are set out at paragraphs 86-93 of the special instalment report. In summary, the Panel found that claims submitted in respect of two Iranian detainees and claims submitted in respect of eight Saudi Arabian detainees were eligible for filing with the Commission under decision 12. The Panel subsequently determined that the claim submitted in respect of one of the two Iranian nationals was not eligible for filing following the receipt of information that the individual was not in fact a deceased detainee, leaving only nine claims for the Panel’s consideration (“nine additional deceased detainee claims”). The Panel found that the remainder of the potential claims, including all of the claims in respect of Bahraini detainees, did not meet the criteria for filing set out in decision 12 and, consequently, it did not accept these claims for filing.

72. Having determined that the nine additional deceased detainee claims were eligible for filing with the Commission, the Panel has reviewed the claims in accordance with the applicable methodologies and in a manner consistent with its review of the claims included in the special instalment, as set out in the special instalment report, unless otherwise indicated below. The Panel’s findings and recommendations concerning the nine additional deceased detainee claims follow.

B. Losses asserted in the nine additional deceased detainee claims

73. The families of the nine additional deceased detainees seek compensation for the loss of financial support they would have received from the detainees had they not been detained and subsequently executed, together with compensation for the MPA that they suffered following the detention and death of their loved ones. Having reviewed the claims, the Panel recommends awards of compensation for the families’ claims for loss of support in accordance with the applicable methodology. In respect of the families’ claims for MPA, the Panel recommends awards of

compensation in accordance with the applicable decisions of the Governing Council referred to in paragraphs 77-79 below.

74. In addition, the family of the Iranian detainee seeks compensation for the detainee's cost of departure from Kuwait and for the loss of the detainee's personal property. The Panel makes no recommendation of compensation for the asserted departure expense for the same reason that the Panel rejected claims for similar losses in the special instalment, namely that an award of compensation for such losses is inappropriate in the light of information that indicates that the detainees were forcibly transported out of Kuwait by Iraqi forces.¹⁵ The Panel recommends an award of compensation in respect of the personal property of the Iranian detainee lost as a direct result of Iraq's invasion and occupation of Kuwait in accordance with the applicable methodologies.

C. Deemed date of death for loss of support claims

75. In the case of the claims in the special instalment, the precise date of death of the detainees could not be ascertained with any certainty. The Panel therefore had to consider an alternate "deemed" date of death for the purpose of its review of the special instalment claims. The Panel determined that the officially recorded date of capture of a detainee be deemed to be the date of his or her death for the purpose of calculating and recommending an award of compensation for a claim for loss of support.¹⁶

76. In respect of the nine additional deceased detainee claims, the Panel applies its previous determination concerning the deemed date of death in those cases where the date of an individual detainee's capture during Iraq's occupation of Kuwait is known. In those cases where the precise date of capture is not known, the Panel finds it appropriate to use 26 February 1991, being the final day on which an individual could have been captured by Iraqi forces in occupied Kuwait, as the "deemed" date of death for the purpose of calculating and recommending an award of compensation for a claim for loss of support made by the family of the deceased detainee.

D. Claims for MPA

77. Pursuant to Governing Council decision 8, the family of a person who died as a direct result of Iraq's invasion and occupation of Kuwait can be awarded up to USD 30,000 compensation for the MPA suffered as a result of the death of the family member. In respect of those claims in the special instalment, the Governing Council adopted decision 218 (S/AC.26/Dec.218 (2004)) by which it determined, inter alia, that compensation of up to USD 200,000 can be awarded to a family of a deceased detainee for the MPA suffered for the death of the family member and for the suffering that resulted from the prolonged period of time during which the fate of the detainee remained unknown. A detailed description of the application of decision 218 is set out at paragraphs 31-34 of the special instalment report.

78. One issue that arose during the course of the Panel's review of the nine additional deceased detainee claims was whether the provisions of decision 218 were applicable to the families of the nine detainees, who also assert that they were unaware of the fate of their loved ones for an extended period

of time. The Governing Council considered this matter and at its fifty-fifth session adopted decision 244 (S/AC.26/Dec.244 (2005)), by which it determined that the provisions of decision 218 were applicable to the families of all nine detainees. The Governing Council determined that these nine families had suffered MPA similar to that suffered by the families of the deceased detainees included in the special instalment due to the prolonged uncertainty about the fate of their loved ones.

79. Consequently, the Panel recommends awards of compensation for the MPA suffered by the families of the nine deceased detainees in accordance with decisions 8 and 218.

80. The Panel's recommendations of awards of compensation in respect of the nine additional deceased detainee claims are set out in the table of this report.

VII. OTHER ISSUES

Interest

81. In its decision 16 (S/AC.26/1992/16), the Governing Council specified that it would consider the methods of calculation and of payment of interest at a future date. Therefore in its previous reports and recommendations, the Panel only identified the date of loss from which interest on any award of compensation could run. The Panel notes that at its fifty-fifth session held on 8-10 March 2005, the Governing Council determined that it would not set a rate for the payment of interest on awards of compensation and in the result, interest will not be paid on awards of compensation.

VIII. RECOMMENDED AWARDS

82. The table below lists the awards recommended by the Panel for the claims resolved in this report. Each submitting entity will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the table, the total amount claimed is USD 83,687,457.23, against which the Panel recommends a total award of compensation of USD 83,744,688.09.

Summary of recommendations

<u>Submitting entity</u>	<u>Claims category</u>	<u>Number of claims not recommended for payment</u>	<u>Number of claims recommended for payment</u> ^a	<u>Total amount claimed (USD)</u> ^b	<u>Amount of compensation recommended (USD)</u>
Kuwait	Bedoun	153	31,715	79,670,000.00	79,287,500.00
Kuwait (landmine claim)	D	0	1	640,138.41	620,114.43
Kuwait (Iranian nationals)	D	0	1	310,458.48	506,931.96
Saudi Arabia	D	0	8	3,066,860.34	3,330,141.70
<u>Total</u>		153	31,725	83,687,457.23	83,744,688.09

^a The total number of claims recommended for payment includes 31,715 claims filed as part of the “bedoun” programme and 10 claims filed pursuant to decision 12, comprising one claim for losses resulting from landmine explosions and nine claims for the losses of additional deceased detainees.

^b This amount relates in part to claims for mental pain and anguish, in respect of which the claimants were not required to specify a particular claimed amount.

IX. SUBMISSION OF THE REPORT

83. The Panel hereby submits this report through the Executive Secretary to the Governing Council pursuant to article 38(e) of the Rules.

84. This is the final report of the “D1” Panel of Commissioners. The Panel commenced its work in December 1996 and concluded in April 2005. Throughout this period the Panel received excellent assistance and support from the secretariat, which it gratefully acknowledges.

Geneva, 23 June 2005

(Signed) R.K.P. Shankardass
Chairman

(Signed) G. Abi-Saab
Commissioner

(Signed) M.C. Pryles
Commissioner

Notes

¹ The term “bedoun” means “without” in Arabic and refers to individuals without nationality.

² At its fifty-fourth session held on 7-9 December 2004, the Governing Council clarified that any individual “bedoun” who had filed a claim with the Commission in any late claims programme is not permitted to participate in the “bedoun” programme.

³ As stated in paragraph 25, a total of 959 claims were filed by such claimants. However, two of these claimants filed duplicative claims in the “bedoun” programme, reducing the number of claims filed by such claimants to 957.

⁴ The 31,868 “bedoun” claims comprise:

(a) 29,051 claims filed by claimants previously determined to be provisionally eligible as a result of the electronic application of the Governing Council’s eligibility criteria to each claimant’s data in the PACI database;

(b) 387 claims filed by claimants found to be provisionally ineligible according to the PACI database but who submitted documentary evidence to support their assertion that the PACI data was inaccurate;

(c) 978 claims filed by claimants identified as provisionally eligible as a result of the electronic application of the Governing Council’s eligibility criteria to each claimant’s data in the Executive Committee database;

(d) 458 claims filed by claimants identified as provisionally ineligible or of uncertain eligibility according to their data in the Executive Committee database;

(e) 957 claims filed by claimants who are in neither the PACI nor the Executive Committee database; and

(f) 37 duplicative claims.

⁵ As stated in paragraph 21, a total of 29,065 claims were filed by such claimants. However, 14 of these claimants filed duplicative claims in the “bedoun” programme, reducing the number of claims filed by such claimants to 29,051.

⁶ As stated in paragraph 22, a total of 398 claims were filed by such claimants. However, 11 of these claimants filed duplicative claims in the “bedoun” programme, reducing the number of claims filed by such claimants to 387.

⁷ As stated in paragraph 25, a total of 1,446 claims were filed by such claimants. However, 10 of these claimants filed duplicative claims in the “bedoun” programme, reducing the number of claims filed by such claimants to 1,436.

⁸ See note 3 above.

⁹ See paragraph 1(a) of decision 12.

¹⁰ See the “Special report and recommendations made by the ‘D1’ Panel of Commissioners concerning 30 claims filed pursuant to Governing Council decision 12” (S/AC.26/2004/12).

¹¹ UNCC claim numbers 3013911 and 3013912.

¹² See the “Report and recommendations of the ‘D1’ Panel of Commissioners concerning the special instalment of deceased detainee claims filed pursuant to Governing Council decision 12” (S/AC.26/2005/1) (the “special instalment report”).

¹³ UNCC claim number 3013967.

¹⁴ Governing Council decision 8 provides that a ceiling amount of USD 15,000 may be awarded to an individual in respect of the death of a spouse, child or parent, and that a ceiling amount of USD 30,000 may be awarded to a family unit in respect of the death of a spouse, child or parent.

¹⁵ See paragraphs 49–50 of the special instalment report.

¹⁶ See paragraph 48 of the special instalment report.
