



Mr. Jamie McGoldrick
UN Humanitarian Coordinator for the occupied Palestinian territory and Deputy Special
Coordinator for the Middle East Peace Process

[submitted by email]

16 September 2020

Dear UN Humanitarian Coordinator for the occupied Palestinian territory,

Re: Outstanding concerns regarding the Gaza Reconstruction Mechanism and request to consider the feasibility of an alternative enhanced UN-led access mechanism for Gaza

We write on the six year anniversary of the Gaza Reconstruction Mechanism (GRM) agreement made between the Government of Israel, the Palestinian Authority and the United Nations, to respectfully request your urgent consideration of whether the UN's continued role as a party to the GRM is tenable, and of the feasibility of rapidly developing and implementing an alternative enhanced UN-led access mechanism for Gaza.

We make this request following email correspondence with you and your colleagues in September 2018 and April 2019. Despite the kind responses received which respectively referenced an imminent review of the GRM, and limited details on revisions to the GRM, we remain concerned that the UN continues to be a party to an agreement which is apparently incompatible with:

- i) applicable international law, including international humanitarian law,
- ii) the UN's human rights due diligence responsibilities and its Guiding Principles requiring that humanitarian assistance be provided in accordance with the four core principles of humanity, neutrality, impartiality and operational independence.

These concerns were first raised in a confidential [January 2015 legal opinion](#) by Nigel White, Professor of Public International Law at Nottingham University, which became public in January 2016 ('the Legal Opinion'). It raised significant concerns about the legality of the GRM, and how it effectively consolidates and legitimises the illegal closure imposed at enormous humanitarian cost on the population of Gaza.

We do not question the good faith and intent by the UN to mitigate the punitive closure imposed upon the entire population of Gaza by successive Israeli government since June 2007. However, the apparent legal and human rights shortcomings of the GRM have a real and substantial effect: they lead to systemic ineffectiveness in the provision of adequate and timely humanitarian relief to meet the significant humanitarian need in Gaza. It is vital that these fundamental legal, human rights and humanitarian concerns are fully and transparently addressed. This is especially the case given that GRM has become de facto entrenched, contrary to express wording in the agreement that "*the parties consider this to be a temporary*



access mechanism” when it came into force in September 2014. This letter accordingly concludes with four specific requests for your careful consideration, including requests for material information, and we would be grateful for constructive dialogue with you on the issues raised.

The GRM has serious systemic flaws compromising its ability to provide for vital and timely reconstruction to meet humanitarian need in Gaza

Far from allowing for the timely provision of desperately needed building materials which supports long-term recovery and development, the Legal Opinion found that the GRM effectively facilitates the continuation of the Israeli government's closure of the Gaza Strip by limiting building materials such as aggregate, cement and steel bars to much lower quantities than needed. We are concerned that this fundamental flaw, despite some improvement in results since January 2015, appears to still exist to this day.

For example, as highlighted in a [July 2018 briefing](#) by LPHR, the access of building materials for construction of urgently needed water, sanitation and electricity infrastructure, and housing, has been beset by significant restriction and delays. By the end of 2019, 7,400 of those made homeless during the 2014 hostilities because of the destruction or severe damage to their home remained displaced, [according to the UN Office for the Coordination of Humanitarian Affairs](#) (UN OCHA).

With particular consequence for combatting the Covid-19 pandemic where washing hands is an essential preventative measure, the [UN reported in July 2017](#) that construction of three Short Term Low Volume (STLV) desalination plants, which would produce an additional 13 Million Cubic Metres of water, as well as of sewage treatment plants in both the North, Middle and South areas of Gaza, had *“been delayed in large part due to restrictions on imports of the necessary dual-use material, and only 23% of the planned STLV interventions forecast to be completed by 2016 were achieved.”*

[Oxfam also reported in 2017](#) that: *“Almost 3,000 items needed to build infrastructure to meet the demand for water and sanitation are still waiting for approval to enter through the [Gaza Reconstruction] mechanism, which requires Israeli approval of projects as well as individual items. Recent research by Oxfam found that just 16% of items submitted for approval through the GRM for the water sector have actually made it into Gaza, a damning success rate that mirrors the dynamics of the blockade itself.”* [bolded for emphasis]

In relation to the ongoing electricity crisis in Gaza, which causes suffering for the residents of Gaza, the [UN reported in July 2017](#) that the functioning of Gaza’s sole power plant is, in part, 'impaired by Israeli restrictions on imports of spare parts and equipment'.

Further, the entry of certain medical materials and equipment is [denied or substantially restricted](#). These include X-ray scanners, carbon fibre and epoxy resins used in the production



of artificial limbs, and carbon fibre components for the stabilisation and treatment of complex limb injuries.

These examples of substantial consequences flowing from the systemic flaws of the GRM appear even more acute in the context of the Covid-19 pandemic, which is profoundly impacting all societies from a health, humanitarian, economic and human rights perspective. [UN OCHA's revised response plan published on 25 April 2020](#) appears to make general points that intimates the fundamental shortcomings of the GRM and its failure to adequately alleviate the harmful effects of Israel's imposition of an illegal closure regime (bolded for emphasis):

- *“While urgent medical items are being allowed to enter through the Erez crossing, the **continued shortage of medical equipment, skilled medical teams and drugs and disposables** means that complex surgical cases are being referred outside of Gaza.”*
- *“Items requiring additional coordination by Israel and the Government of Palestine continue to enter through established channels. **Israel has offered to expedite these processes** in relation to the COVID response.”*

These examples call into question whether it continues to be tenable, from a legal and / or humanitarian perspective, for the UN to continue supporting the GRM.

Outstanding questions regarding whether the the UN is in compliance with its legal obligations, human right due diligence responsibilities, and humanitarian requirements as a party to the GRM

With specific reference to the UN being a legal party to the GRM agreement, the Legal Opinion by Professor Nigel White identifies that the UN's role under the GRM is incompatible with the UN Guiding Principles on Humanitarian Assistance, which require that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality, and in ways that are supportive of recovery and long-term development. We further note it finds that in light of the numerous duties placed on the UN under the GRM that effectively serve the Israeli government, by becoming a party to the GRM agreement, the UN has agreed to undertake a partial role in breach of its own principles.

Against this context, we note UN OCHA's publication of a [“Minimum Framework for the Provision of Humanitarian Assistance in Gaza”](#) on 30 April 2009, over five years prior to the establishment of the GRM, which appears distinctly relevant to objectively assessing whether the GRM falls short of the UN's own Guiding Principles requiring that its humanitarian assistance be provided in accordance with the four core principles of humanity, neutrality, impartiality and operational independence.



The Legal Opinion contends that the GRM agreement amounts to an internationally wrongful act that entails the international responsibility of the Government of Israel, the Palestinian Authority and the UN for acting in breach of international law obligations, and that the UN did not meet its human rights due diligence responsibilities to protect human rights and uphold international law in all its operations. In light of this finding and in order to meet its due diligence obligations that require it i) not to be implicated in any internationally wrongful conduct and ii) prevent enabling the Government of Israel from continuing its internationally wrongful conduct of its closure of Gaza, the Legal Opinion recommends that the UN should:

- Urgently seek to amend the GRM agreement to include guarantees that it meets basic human rights and humanitarian law obligations, and that Israel should not be able to block imports that are necessary to meet this objective; or,
- Withdraw from the GRM and seek to set up a UN-led mechanism for the delivery of building materials (and humanitarian relief more broadly) in which its role as a neutral and impartial organisation is regained, and in which it is empowered to deliver humanitarian assistance free from Israeli security controls.

We are cognisant that a review process was undertaken in the latter half of 2018 which could have remedied the systemic flaws of the GRM, consistent with the first remedial option outlined above. We are concerned, however, that: i) the results of the review were not fully published; ii) the status quo of the GRM's incompatibility with international law obligations remains in question; and iii) that six years on from the commencement there is apparently no binding time-frame for ending the GRM which is incompatible with the stipulation in the opening of the GRM agreement that it is to be a “temporary access agreement”. Meanwhile, it is clearly foreseeable that there is substantial risk of ongoing serious harm to the population of Gaza by the preservation of onerous restrictions placed on the supply of essential items into the closed occupied territory.

Conclusion and four urgent requests:

We are deeply concerned that it remains unclear whether the UN has been able to amend the GRM agreement to necessarily enable: i) full compliance with basic international human rights and humanitarian law obligations, and ii) full compliance with its human rights due diligence responsibilities and the UN Guiding Principles on Humanitarian Assistance.

We query whether it can be tenable for the UN to continue to be a legal party to a “*temporary access mechanism*” on the basis that: i) it can no longer be accurately classified as *temporary*, but rather has become entrenched, and ii) the track record of inadequate and delayed reconstruction to date suggests that it does not provide *access* sufficient to meet humanitarian need, contrary to international law requirements and its own guiding principles.



In light of these concerns, we have four important requests to respectfully make to you in your dual capacities of Deputy Special Coordinator for UNSCO and UN Humanitarian Coordinator for the occupied Palestinian territory:

1. In the public interests of transparency and accountability, we request information on whether the UN carried out a human rights due diligence assessment when it became a party to the GRM agreement in September 2014. We kindly request publication of this assessment, subsequent updates to it, and any internal assessment performed by the UN to determine whether the GRM is compatible with the UN's "Minimum Framework for the Provision of Humanitarian Assistance in Gaza" published in April 2009.
2. In the public interests of transparency and accountability, we kindly request full publication of the review undertaken by the parties to the GRM in late 2018. We further request clarification whether the review led to a revised agreement, and if it did, whether that agreement includes guarantees that it meets basic human rights and humanitarian law obligations, and that the Government of Israel should not block imports that are necessary to meet this objective. We additionally request publication of subsequent documents detailing the 'on-the-ground' results of implementation of the review.
3. We request details on any modifications to the operation of the GRM in the context of Covid-19 pandemic to ensure that the public health needs of the population of the Gaza – including access to vital medical equipment and clean water – are not being dangerously restricted.
4. In light of the fundamental concerns raised above, and dependent on the extent to which the review of the GRM has remedied the previous concerns, we urge you to urgently consider: i) whether the UN's continued role as a party to the GRM is tenable ii) the feasibility of rapidly developing and implementing an alternative enhanced UN-led access mechanism for Gaza. We would also be grateful for you to confirm whether a time-frame has been discussed and/or agreed for ending the GRM.

We would welcome constructive dialogue with you on this very important matter. Thank you for considering the above and we look forward to your reply.

Yours sincerely,

Tareq Shrourou (Director), Natalie Sedacca
Lawyers for Palestinian Human Rights