6 August 2008

Mr. Vladimir Goryayev
Executive Director
UNRoD

Re: Comments on the draft Claim Form

Dear Mr. Goryayev:

I would first like to thank you for hosting us in Vienna last week. Dr. Issac, Ms. Rashed and I were all very grateful for the opportunity to meet with the Board members and your staff in the Secretariat.

Indeed, the Palestinian National Committee (PNC) is appreciative of the candid and constructive discussions we had about the Register, and we look forward to our continued co-operation ~~between us~~. In this light, we once again want to extend an invitation to the Board members to visit the Occupied Palestinian Territory.

As discussed during our last meeting, **attached** are the PNC's ~~our~~ comments on the latest draft of the Claim Form. We appreciate the opportunity to provide our input. It is very clear that much thought and deliberateness have gone into the design of this Form.

Nonetheless, we would like an opportunity to review the latest Arabic-language Form. The purpose would be to review it for language, not to suggest other substantive changes. The concern arises from the fact that we noted a number of language problems in the first Arabic draft.

Furthermore, as you yourself said during one of our meetings, the coming months will be a learning process, and we expect that UNRoD will "test-run" the Claim Form. Once a reasonable number of claims are filed in the pilot area(s), the Claim Form should be re-assessed for its utility, effectiveness and efficiency, and modified accordingly if necessary.

Finally, it must be said that it has been a challenge to review the Claim Form without the benefit of the overall legal framework which we expect is codified in UNRoD's rules and regulations. We would appreciate you sharing the rules and regulations for our information, if not our review.

Once again, thank you for receiving us in Vienna. We look forward to continuing our co-operation to make your very important mandate a reality.

Sincerely yours,

Tayseer Khaled

Comments on Draft Claim Form

6 August 2008

The purpose of this document is to provide the UNRoD with comments on the draft Claim Form it shared with the Palestinian National Committee on the Register of Damage during its visit to UNRoD headquarters in Vienna, Austria on 30 July 2008. It is hoped that the UNRoD will find these comments helpful in its revision of the draft Claim Form.

I. General Comments

Conceptual organization and structure

- Although a significant improvement over the previous draft of the Form, we continue to have concerns that the organization of the questions mixes up the different concepts of causation, damage, valuation and evidence. We suggest that the entire Form be reviewed to ensure that all necessary information for each of these is requested, and to ensure that the sequencing of the question is logical.

Heads of damage

- We reiterate our view that both material and **non-material damages**, including social and psychological damage, should be receivable by the Register. As you know, UNGA Res. A/ES-10/17 stipulates that "[t]he Board shall, guided by the relevant findings of the advisory opinion, general principles of international law and principles of due process of law, also determine the criteria of damage." General principles of international law, including the law on state responsibility, guarantee reparation not only for material but also for non-material damages. This is not in any way inconsistent with the ICJ's Advisory Opinion, which states at operative para. 163(C) that Israel has an obligation to make reparation for "all damage" caused by the construction of the Wall. As you know too well, this is also consistent with the practice of numerous international claims mechanisms. Therefore, limiting the registration to material damage would be an unduly restrictive interpretation of the ICJ's Advisory Opinion.

- It remains our view that claims for **wrongful death and personal injury** should be receivable by the Register, and not just those caused by lack of or restricted access to medical care. Incidents have occurred in which Palestinians approaching the vicinity of the Wall or trying to reach their lands on the other side of the Wall, for instance, have sustained injuries or a worse fate at the hands of Israeli soldiers stationed at or near the Wall in violation of international laws. In our view, the causal link between such incidents and the Wall is sufficiently close to include them in the Register. In any event, as a matter of due process, the Claim Form, itself, should not be used as a tool to limit the receivability of claims – the inclusion of any given claim should be decided on its merits.

- Similarly, claims for **public revenues and extraordinary public expenditures** should also be receivable by the Register.

Quantification of losses

- It also remains our view that the Form, in some instances, does not collect sufficient information to quantify the losses. ~~and does not require claimants to provide a breakdown of how they calculated the losses.~~ While UNRoD is not a claims commission now, it may become one in the future, or another entity may be created for this purpose. Indeed, registering losses, itself, is not the end, but the means to eventually provide reparations to the victims of the Wall. We expect UNRoD to approach its mandate with this ultimate objective in mind. Documenting and collecting today as much information as is needed to adjudicate the claims tomorrow should be UNRoD's goal. Otherwise, the entity that becomes responsible for adjudicating the claims will be required to collect more information from the claimants at a later time, which would not be the most efficient means of operating.

  Claimants should be allowed to submit a breakdown of their own calculations. It would then be up to UNRoD or the appropriate entity to have a specific methodology to review the evidence and ensure that claims are not overstated. One should not start with the assumption that claimants will systematically overstate their claims.

Who is eligible to file

- The Form does not address whether non-residents of the West Bank are eligible to file a claim. Many Diaspora Palestinians, who have not been permitted to come or return to the West Bank by Israel, may still have property rights or interests in the West Bank. Similarly, Palestinians in Gaza, who are generally not permitted to come to the West Bank, may also have property rights or interests in the West Bank. Others may have been residents of the West Bank and recently left. All such persons may therefore have suffered losses due to the Wall, particularly agricultural or commercial losses. They should be able to appoint a personal representative to submit a claim on their behalf if it is too onerous for them to do so themselves.

Evidence

- While space is provided for claimants to submit "other" kinds of documentary evidence wherever documentary evidence is requested in the Form, the lists of documents consistently do not include witness statements or other third party evidence. While UNRoD may wish to indicate a preference for those kinds of evidence that have greater evidentiary value, it should also convey the possibility of submitting witness statements if other forms of evidence are not available.

- In some instances, the lists of documents differ from one another even though the documentation is requested to establish the same kind of fact. For example, on page C7, under "Tenants/Residents: DOCUMENTS showing tenancy/residency", "rent receipts" are listed as evidence to establish the fact of tenancy. However, on page C8,

under "Address of new residence", rent receipts are not listed as evidence. While the difference may not be intended to be significant, claimants may perceive the inconsistency to be significant. It is therefore suggested that the lists of documents be reviewed for internal consistency.

Space

- The amount of space provided in the Form, albeit an improvement over the previous draft of the Form, remains inadequate, particularly in the sections on "causation" and "other". The restricted space may dissuade or impede claimants from providing all the necessary information to establish their claims. Therefore, as a a matter of due process, claimants should either be given the option of continuing their narrative on additional pieces of paper, or a **Statement of Claim** page should be added to the Form.

Numbering of questions

- We remain of the view that numbering questions would bring out the organizational structure of the Form and relationship between different questions, and be helpful for reference purposes.

II. SPECIFIC COMMENTS

Page	Field	Comment and Questions
Explanatory Note to Claimants		
	What you can claim for	"Damage sustained behind or on the Green Line" requires clarification.
	The next steps	It is not clear whether a claimant has a right to appeal a decision not to register a claim.
Claimant Identification		
ID1	Have you already submitted a Claim Form to UNRoD?	A number box should be used for the Claim Form Number.
ID1	Corporations, Organizations, Public or Other Entities	Space should be included for the "governorate".
Category A – Agriculture		
A2	Please explain how you obtained the right to access and use the land	What is the rationale behind this question?
A2	If you are a co-owner, co-tenant or user: State your share	As a fraction? In dunums?

Page	Field	Comment and Questions
A2	For owners/co-tenants: DOCUMENTS	What is the "registration certificate" in reference to?
~~A2~~	~~Details of affected land~~	~~"Mawat" should be deleted, as mawat, by definition, is vacant.~~ **~~[check with Dr. Jad]~~**
A2	Size of land before construction of the Wall	What does this mean?
A2	Crops	Some trees have been uprooted and stolen. This should be reflected in the Form.
A3	Livestock	What does it mean to report a loss of or restricted access to livestock?
A3	~~Agricultural equipment and stock~~Agricultural structures before the construction of the Wall	~~Moveable property may have been confiscated or stolen. This should be reflected in the Form.~~What does it mean to have "access to water lost or restricted" number? Furthermore, additional information should be requested about the nature of the structures (*i.e.*, size, construction material, date purchased or constructed, cost of construction/purchase, etc.) as in the case of commercial business premises on page B5 or residences on page C7.
A3	Agricultural equipment and stock	Moveable property may have been confiscated or stolen. This should be reflected in the Form. Also, additional information should be requested about the nature of the asset (*i.e.*, date purchased or constructed, cost of construction/purchase, etc.).
A3	Agricultural produce and water	Is the claimant requested to provide the income for just the year before the construction of the Wall? Or any benchmark year would be possible? It would be better practice to request figures for the past three years. (This comment applies anywhere where the annual gross income is requested.)
A4	What happened to your agricultural activities as a result of the construction of the Wall? – Reduced output/income	A field for "yearly gross income before the Wall" should be added.
Category B – Commercial		
B5	Distance between the affected business and the Wall	You may wish to have this field precede the "type of legal entity".
B5	Business premises	Questions on the year of construction, year of purchase, and cost of construction/purchase should be added.

Page	Field	Comment and Questions
B5	What happened to your business as a result of the construction of the Wall? – Business premises damaged on	The "Description of damage" field does not provide sufficient space.
B5	Loss of or restricted access to business premises	These should be broken out into two separate causes of damage. Also, it is unclear what is the difference between this cause and the one "Loss of or restricted access to suppliers and/or market place" below.
B5	Business vehicles affected	The "description" field does not provide sufficient space. It is not clear how "loss of access" is different from "loss of use". Consider deleting "loss of use". "Loss of rental income" does not seem to fit here. A loss of rental income could be caused by any of the other heads (destruction, damage, loss access, restricted access).
B5	Business equipment affected	The "description" field does not provide sufficient space. It is not clear how "loss of access" is different from "loss of use". Consider deleting "loss of use". "Loss of rental income" does not seem to fit here. A loss of rental income could be caused by any of the other heads (destruction, damage, loss access, restricted access).
B5	Business stock affected	The "description" field does not provide sufficient space. It is not clear how "loss of access" is different from "loss of use". Consider deleting "loss of use". "Loss of rental income" does not seem to fit here. A loss of rental income could be caused by any of the other heads (destruction, damage, loss access, restricted access).
B5	Loss of contract	You should ask for the value of the contract.
B6	Ceased operations and Temporarily interrupted and Reduced operations	No documentary evidence is requested to establish these facts.
B6	Changed business	Claimants are asked to report under an "annual net income"

Page	Field	Comment and Questions
	activity on	basis against a "yearly gross income" basis. This is inconsistent.
B6	Commercial land	It is not clear why this category of loss is listed separately and at the end of this Section. In addition, it is not clear what is meant by "commercial land". Explanation is required. Furthermore, it is not clear where a claimant would claim for loss of or restricted access to vacant land that is not currently used for residential, commercial or agricultural purposes, but which *could* be used for some purpose. The tickbox on page A2 is noted, however where would the claimant fill in the relevant information?
Category C – Residential		
C7	Tenants/Residents: DOCUMENTS showing tenancy/residency	How are mobile phone bills appropriate evidence of tenancy?
C7	Were you living in the above-mentioned residence before the construction of the Wall?	The date fields relate to the "yes" answer. So, for clarity, the "no" box should precede the "yes" box, placing the "yes" box immediately before the date fields.
C7	If yes, please provide proof of residence before the construction of the Wall	How are mobile phone bills appropriate evidence of residence?
C8	Residential land	It is not clear why this category of loss is listed separately and at the end of this Section. In addition, it is not clear what is meant by "residential land". Explanation is required. Furthermore, it is not clear where a claimant would claim for loss of or restricted access to vacant land that is not currently used for residential, commercial or agricultural purposes, but which *could* be used for some purpose.
Category D – Employment		
D9	Residence (before construction of the Wall) – Please state address	The "West Bank" tick box is not very telling. What is more telling is whether the location is west or east of the Wall. Also, there is insufficient space to fill in the address.
D9	How was your employment affected by the construction of the Wall? –	How do "salary slip/bank records" provide evidence of an interruption? In any event, be aware that most employees receive their salaries on a cash basis. Furthermore, claimants should be requested for evidence of

Page	Field	Comment and Questions
	Temporarily interrupted	their salary before the interruption, during the interruption and after the interruption.
D9	How was your employment affected by the construction of the Wall? – Reduced employment	The "salary/wage" field is missing "daily" "monthly" boxes, as well as a "payment in kind or benefits" field.
D9	How was your employment affected by the construction of the Wall? – Changed employment	You may wish to ask for the address of the new employment.
D9	Reasons why employment was affected	The most common reasons why employment is disrupted are because (1) the very presence of the Wall blocks the normal route(s) of access, and/or (2) delays at checkpoint terminals. The delay is not necessarily due to a gate closure or lack of permit. Delays are caused by the Wall's reduction of traffic routes, thereby creating congestion at checkpoint terminals, and by the discretion of soldiers at the checkpoint terminals. Therefore, you may wish to list these as additional reasons.
Category E – Access to Services		
E10	How was access restricted?	The most common reasons why access is restricted are because (1) the very presence of the Wall blocks the normal route(s) of access, and/or (2) delays at checkpoint terminals. The delay is not necessarily due to a gate closure or lack of permit. Delays are caused by the Wall's reduction of traffic routes, thereby creating congestion at checkpoint terminals, and by the discretion of soldiers at the checkpoint terminals. Therefore, you may wish to list these as additional reasons.
E10	Place of Residence – Please state address Place of required health facility – Please state address	The "West Bank" tick box is not very telling. What is more telling is whether the location is west or east of the Wall. Also, there is insufficient space to fill in the addresses. Also, the location of the health facility is also requested above in "Frequency of treatment required". You may wish to eliminate the redundancy.
E10	What happened as a result of lack of access?	There is insufficient space in the "Please describe:" field.
E10	What happened as a result of lack of access? – Additional	The tick boxes for "foot" and "car" are missing.

Page	Field	Comment and Questions
	transportation	
E11	Access to education services – Place of residence and place of educational establishment	The "West Bank" tick box is not very telling. What is more telling is whether the location is west or east of the Wall. Also, there is insufficient space to fill in the addresses. "Postal code" and "country" fields are not relevant.
E11	Reasons for interruption of your education	The most common reasons why access is restricted are because (1) the very presence of the Wall blocks the normal route(s) of access, and/or (2) delays at checkpoint terminals. The delay is not necessarily due to a gate closure or lack of permit. Delays are caused by the Wall's reduction of traffic routes, thereby creating congestion at checkpoint terminals, and by the discretion of soldiers at the checkpoint terminals. Therefore, you may wish to list these as additional reasons.
E11	Did you resume your education?	You may wish to add tick boxes to indicate whether the location of the new educational establishment is in West Bank, Seam Zone or other, as you did above with the original educational establishment.
Category F – Public Resources and Other		
F12	Public Resources	Some of the heads of damage lack clarity or comprehensiveness: "Loss of or inability to access" water resources should be "Depletion of, damage to, and/or loss of or restricted access to" water resources. "Damage to or loss or resources caused by the construction of the Wall in the oPt that negatively impacted the water supply in the region or area of jurisdiction" requires clarification. "Diminution" of natural resources should be "Depletion of, destruction of, damage to, and/or loss of or restricted access to" natural resources. "Damage to or destruction of" sites of archaeological value should be "Destruction of, damage to, and/or loss of or restricted access to" sites of archaeological value. Loss of public revenue, and extraordinary public expenditures should also be included.
F12	Religious property	It may not be obvious to religious institutions that they should complete this part of the Form. They may complete other parts of the Form.
Claimant's Declaration and Signature		

Page	Field	Comment and Questions
SIG13	Compensation claimed or received	Should the question be limited to compensation or should it extend to any kind of remedy claimed?