Mandates of the Special Rapporteur on the right to food and of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 22/9 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the rights to food and to the enjoyment of the highest attainable standard of physical and mental health and wellbeing of the population of the Republic of Yemen. We have grave **concerns regarding access to healthcare, as well as widespread malnutrition, starvation and spread of infectious diseases, particularly amongst children, pregnant women and the growing number of internally displaced persons**.

According to information available from the WFP and UNDP, the health of 82 per cent of the population of the Republic of Yemen is adversely affected by the conflict. Eighteen million people are in need of assistance of which ten million are in acute need of food and medical assistance. [1]

As early as August 2015, in my capacity as Special Rapporteur on the right to food, I warned that the Republic of Yemen was spiraling into a major food crisis[2]. Since then, the ongoing conflict has seen an alarming rise in rates of acute malnutrition. The number of food insecure people in the Republic of Yemen has risen by three million in the last seven months alone. According to a joint assessment carried out by FAO, UNICEF and WFP, in cooperation with authorities in the Republic of Yemen, more than two-thirds of Yemen's population lack access to food and consume an inadequate diet. Currently 17.1 million people are food insecure, of which approximately 7.3 are considered to be in need of emergency food assisstance. The assessment has found that rates of acute malnutrition have passed the "critical" threshold in four governorates.[3] The situation is particularly severe for vulnerable groups, including the 3.11 million internally displaced persons (IDP),[4] as well as children and pregnant mothers. It is estimated that 2.2 million children in the Republic of Yemen are malnourished. Of these, 1.7 million are moderately malnourished, while the remaining 460,000 children are severely malnourished. If no immediate action is taken, an entire generation could be affected by widespread famine.

The agricultural sector has been adversely impacted by the conflict, with potentially catastrophic results for a population where 60 per cent of households depend on agriculture as their main source of livelihood. FAO suggests that 2016 saw a 30 per cent reduction in agricultural output and a 70 per cent decrease for fisheries.[5] Lack of access to critical agricultural inputs, destruction of farming and fishing infrastructure, and limitation of farming activities due to the ongoing insecurity has placed up to 1.5 million households in need of emergency agricultural support. Blockades of coastal areas are depriving communities from their main source of food and livelihood, namely fishing. Growing numbers of IDPs are also straining already limited food resources.

The Republic of Yemen relies on imports for more than 90 per cent of its staple food. The ongoing naval blockade, fighting around the port of Aden and air strikes on the port of Hudayah have severely reduced such imports since 2015, leading to alarming price inflation for basic food products. On average, basic commodity prices are 26 per cent higher than prior to the conflict. Financial complications triggered by the conflict has aslo led trading partners to demand 100 percent cash collaterals for any trade. Such restrictions have caused severe delays in obtaining food products and are a major driver of the current humanitarian situation. Furthermore, Yemen's banks have been classified as 'high risk' and thus transfers and other banking transactions from abroad have become increasingly problematic, reducing another valuable source of assistance from Yemeni nationals living abroad.

Three-quarters of all households are estimated to experience worsened economic situations and substantially reduced purchasing power compared to before the crisis, with more than half having to buy food on credit.[6] It is estimated that the national GDP has decreased by approximately 8 per cent during 2016. Prior to the conflict about 1.5 million people were recipient of some form of social benefit, but nevertheless 50 per cent were under the national poverty line. Since the start of the conflict, social support mechanisms have all but ceased. The poverty rate has doubled to 62 per cent, with public sector salaries, including of medical staff, paid irregularly or not at all. All of these factors have contributed to a situation where all but three provinces of the country are in a situation of food emergency or crisis.[7]

The blockade has also caused a significant shortfall of fuel and medicines. Only 24 per cent of required amounts of fuel have been permitted entry into the country, causing the price of fuel to increase by 400 per cent in some areas. [8] This has had substantial ramifications on a variety of sectors and services, including health care, sanitation, and water purification.[9] Lack of fuel, coupled with insecurity and damage to roads, is also preventing the distribution of essential food and medical supplies.

The negative impact of the blockade on the enjoyment of basic human rights of people in the Republic of Yemen, in particular rigths to food and health, was addressed in a communication sent to the Kingdom of Saudi Arabia on 17 November 2016 (AL SAU 6/2016) a copy of which was transmitted to your Excellency's Government.

Sieges in a number of governorates have also prevented staple food items from reaching civilians, while air strikes have reportedly targeted local markets and trucks laden with food items. Sieges have also severly undermined the health system and ejoyment of the right to health by the population in certain parts of the country. According to OHCHR reports, since August 2015, residents in Taizz have witnessed a serious deterioration of the health situation and a near collapse of the health system as a result of the siege imposed by the Popular Committees affiliated with the Houthis and Army Units loyal to Ali Abdallah Saleh. In August 2015, except the emergency unit and the kidney ward at the Thawra and Al-Jumhurri hospitals, all six public hospitals in Taizz were no longer operational. Smaller private hospitals have limited capacity to cope with the needs of those injured during the fighting. Furthermore, at the time, an outbreak of dengue fever worsened the health situation for civilians besieged in Taizz.[10]

The healthcare situation in the Republic of Yemen, including health infrastructure, was already poor prior to the conflict. The conflict has both directly and indirectly impacted the healthcare system, including the situation of healthcare workers, and health outcomes. According to UNICEF, 63 healthcare facilities have been attacked. Since March 2015, 13 health care workers lost their lives and a further 31 were injured since the beginning of the conflict.[11]

OHCHR reports that Coalition forces have allegedly conducted aerial strikes whilst pro-Houthi and pro-Saleh forces have shelled hospitals. Two such specific incidents included the bombing of a hospital in Hyden on 26 October 2015 which served approximately 200,000 people in that region. Similarly, a hospital in Thawra was allegedly shelled on 11 November 2015.[12] It is alleged that hospital staff are frequently threatened by militants on both sides, who often enter facilities and make threats and demands on medical staff. Combatants also seem to operate in the proximity of hospitals to launch attacks, putting the safety of staff, patients and medical infrastructure in jeopardy. It has been alleged that ambulances have been attacked, commandeered and threatened by the military as well.[13] The information received about destruction of health care facilities seems to indicate a lack of respect for the principles of precaution, distinction and proportionality under international humanitarian law, which has a direct impact on the enjoyment of human rights in conflict settings.

Due to lack of resources, lack of medical professionals and shortage of medicines, the WHO has found that of the approximately 3,500 healthcare facilities across the Republic of Yemen are either closed or are only partially operational. Furthermore, 42 per cent of districts are serviced by two or less doctors. There is also a severe lack of beds in hospitals.[14] The loss of substantial medical infrastructure has meant that more and more patients have to travel longer distances to reach much needed medical services. This puts people with chronic ailments at greater risk of being caught up in the fighting, while drastically reducing the chances of survival for people with acute medical conditions. In many cases, it also means that certain procedures cannot be performed on patients.[15] In addtion to this, as of 31 December 2016, there have been 48,000 casualites including

7,500 deaths of civilians in the conflict which has naturally further put pressure on the healthcare system.

Over 1,200 children have died directly as a result of injuries sustained in the fighting.[16] Due to the above mentioned shortfalls in the health system, it is reported that only one in two children have access to healthcare, and only half of all births are attended by a skilled medical professional.

The conflict has also caused destruction of sanitation infrastructure. For example, only 55 per cent of the population have access to improved drinking water. According to UNICEF, there are substantial numbers of children who die due to communicable diseases such as diarrhoea.[17] There have been over 15,000 suspected cases of cholera with 11 confirmed and 99 suspected deaths. WHO estimates that a further 76,000 people are at high risk of contracting cholera.[18] Such illnesses disproportionately affect children particularly under the age of five. One in 20 children die before the age of five, a substantially higher figure than in other countries in the region. [19]

Beyond the alarming figures of direct casualties from the armed conflict, it is understood that civilian casualities as a result of disease, lack of food and clean drinking water, and acute malnutrition are widely under-reported and unrecorded. Such "silent deaths" particularly affect children.[20]

Grave concern is expressed regarding the general health of the population of the Republic of Yemen, as well as worsening food and fuel shortages. The conflict places specific populations at particular risk of violence, malnutrition and hunger, and poor health, especially women, children and IDPs. Furthermore, it is with the gravest of concerns that we note the reported attacks against medical facilities, staff and patients, contrary to principles of international human rights and humanitarian law which grant them with protected status. We further wish to note that the deliberate starvation of civilians in both international and internal armed conflict may constitute a war crime, and could also constitute a crime against humanity in the event of deliberate denial of food.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments(s) you may have on the above-mentioned allegations.

2. Please provide any details regarding steps taken to ensure the adequate availability and accesibility of food, medicines, fuel and other necessary goods for the wellbeing of the civilian population.

3. Please provide information regarding any measures to ensure the availability and accessibility of health infrastructure and staff to care for the needs of the population of the Republic of Yemen.

4. Please indicate steps taken to maintain and increase the domestic production and transportation of food.

5. Please provide any information regarding steps taken to reduce or contain the spread of communicable diseases, particularly cholera.

6. Please provide full details of steps taken to ensure that medical staff, medical infrastructure such as hospitals and ambulances and patients are not targeted or harassed by combatants.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting public attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please, also note that a copy of the present letter will be sent to the Kingdom of Saudi Arabia for information.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Hilal Elver
Special Rapporteur on the right to food

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw attention of your Excellency's Government to the applicable international human rights norms and standards.

Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which the Republic of Yemen ratified on 9 February 1987 – stipulates that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" and requires them to "take appropriate steps to ensure the realization of this right."

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, has further defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfill the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to fulfill (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly. The Committee states that especially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food (E/C.12/1999/5, para. 13). Also, as a State party to the ICESCR, the Republic of Yemen has an immediate minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights including the right to food (CESCR, General Comment 3, para.10). The obligation to achieve these minimum essential levels is not dispensed with during times of crisis and recovery.

As a fundamental human right, the right to adequate food applies in emergency situations, including armed conflicts. International humanitarian law contains numerous provisions aimed at facilitating humanitarian assistance to persons in need, which impose obligations both upon the parties to the hostilities and upon States not taking part in the

conflict. Parties to the conflict must allow humanitarian assistance whenever the basic needs of the civilian population, including food, are not fulfilled and an impartial humanitarian organization offers such assistance.

Furthermore, we would like to bring to your Excellency's Government's attention that the right to the enjoyment of the highest attainable standard of physical and mental health is reflected, inter alia, in article 12 of the International Covenant of Economic, Social and Cultural Rights, acceded by the Republic of Yemen in 1987. Article 12 imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. This right includes an obligation on the part of all State Parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. (General Comment CESCR 14, Paras.33-34)

The obligation to respect the right to health requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations. (GC 14, paras.33, 48 and 49)

We would also like to underline the State´s obligation to utilize maximum available resources towards realization of economic social and cultural rights, including the right to health. An aspect of this obligation is that the right to health is progressively realizable. However, due to the destruction or diversion of resources to military needs, conflicts often reduce the availability of resources which may, at times, be detrimental to the right to health. Even where resources are available, States may not be able to make use of them due to the insecurity and poor infrastructure in many conflict environments. Nonetheless, progressive realization is a specific and continuous State obligation. It does not dilute certain immediate obligations of States, including taking concrete steps towards the full realization of the right to health to all, without discrimination and regardless of the status of persons as combatants or civilians.

Furthermore, the right to health framework imposes upon States certain core obligations. Core obligations are minimum essential levels of the right to health, non-compliance with which cannot be justified even in times of resource constraints as they are non-derogable. These include, inter alia, the obligation of States to ensure equitable distribution and access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; the obligation to provide essential medicines; and the obligation to formulate a national health plan or policy in a transparent and participatory way, taking into consideration the special needs of

vulnerable populations. Therefore, even if conflicts result in resource constraints, States are required to ensure the availability, accessibility and acceptability of good quality health facilities, goods and services, especially to groups rendered vulnerable by conflict.

Regarding the protection of healthcare in times of conflict, including medical personnel and infrastructure, we would like to refer to Security Council resolution 2286 (2016), which condemns acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and deplores the long-term consequences of such attacks for the civilian population and the health-care systems of the countries concerned. The Security Council urges all parties to armed conflicts to fully comply with their obligations under international law, including international human rights law, as applicable, and international humanitarian law, in particular their obligations under the Geneva Conventions of 1949 and the obligations applicable under the Additional Protocols thereto of 1977 and 2005, to ensure the respect and protection of all medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities.

As highlighted by the former Special Rapporteur on the right to health (A/HRC/19/69), we would like to recall that, accessibility and acceptability of quality health facilities, goods and services are critical in times of conflict. A functioning health system, including health-care workers, is vital to the enjoyment of the right to health of people affected by and/or involved in conflict.

Moreover, destruction of health infrastructure by States, or failure to protect against such destruction by third parties, impairs the availability and accessibility of quality health facilities, goods and services. Intentional targeting of health facilities also constitutes a violation of the principle of distinction under international humanitarian law, which obliges parties to the conflict to refrain from attacking medical personnel, units, material and transports unless they are used to commit hostile acts outside their medical and humanitarian functions. Acts that do not involve specific targeting of health facilities may also violate the right to health where the acts increase the risk of damage to the facility or decrease patient access to it, such as by locating military outposts or weapons in the vicinity of a clinic.

In this regard, health-care workers are essential for ensuring availability of health-care services. States therefore have an immediate and continuous obligation to provide health-care workers and humanitarian organizations with adequate protection during periods of conflict. However, attacks on health workers including assaults, intimidation, threats, kidnapping, and killings, as well as arrests and prosecutions, are increasingly used as a strategy in conflict situations. Conflict-affected areas increasingly record disruption in supply chains, looting of health facilities, demanding of confidential information about patients, intentional and recurrent shelling and bombardment of clinics and hospitals, and shooting at ambulances carrying patients to target civilians and health-

care workers as a military strategy. In countries with poor health infrastructure, as may be the case with most conflict-affected regions, destruction of even a single hospital or attacks on already scarce health-care workers can have a devastating impact on the availability and accessibility of health services and therefore on public health. Furthermore, health-care workers may condemn the actions of security forces or may not cooperate in providing information about patients where laws may violate fundamental human rights. Such health-care workers may frequently be harassed, relocated, tortured, arrested and sentenced.

In addition, such attacks not only violate the right to health of people affected by conflict, including people involved in the conflict, but may also cripple the health-care system as a whole. Insecurity, stemming from the targeting of health-care workers by either the State forces or non-State groups, may result in health-care professionals fleeing, creating a dearth of trained medical professionals in these regions.

We would also like to remind that militarization refers to the taking over or use of health facilities and services by armed forces or law enforcement agencies for achieving military objectives. Such military use poses a serious risk to the life and health of patients and healthcare workers and erodes the role and perception of hospitals as a safe space to access health care. The impartiality of medical facilities is often compromised by the constant presence of security forces in hospitals and intimidation of patients and health-care workers in hospitals and clinics. Militarization of health care has also led to undesirable fallouts in respect of access to basic health care as widespread fear of persecution leads civilians to avoid seeking treatment at health facilities and resort to treatment in unsafe conditions instead. Such persecution violates the right to health of persons by impeding their access to quality health services.

Furthermore, conflict may aggravate women's vulnerability to ill-health, discrimination and gender-based violence. Women often experience higher incidence of poor health outcomes in conflict owing to their physical and reproductive needs during pregnancy and childbirth. Most maternal deaths in conflict occur during delivery or in the immediate post-partum period due to lack of availability of quality reproductive and maternal care, such as family planning, emergency obstetric services, and pre- and post-natal care. Children are particularly vulnerable in conflict due to poor hygiene and food insecurity. Malnutrition, in particular, undermines children's immunity and resistance to preventable and communicable diseases, such as diarrhoea or malaria. The breakdown of disease surveillance and vaccination systems also contributes to the vulnerability of children to ill-health and hinders their right to health.

[1] UNDP Humanitarian Needs Overview 2017 p.4
http://reliefweb.int/sites/reliefweb.int/files/resources/YEMEN%202017%20HNO_Final.pdf
[22] Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16307&LangID=E
[3] Abyan, Al Hudaydah, Hadramaut and Taizz.Source: Emergency Food Security and Nutrition Assessment, FAO-UNICEF-WFP, see news release: http://www.fao.org/news/story/en/item/470024/icode/, 10 February 2017
[4] WFP Yemen Situation Report number 24, 14th November 2016 at

http://documents.wfp.org/stellent/groups/public/documents/ep/wfp288756.pdf?_ga=1.261390541.1726057752.1484217656; and OCHA Yemen page at http://www.unocha.org/yemen 2017 data

[5] FAO in the 2016 humanitarian appeals, p.36, at http://www.fao.org/3/a-i5320e.pdf

[6] See footnote 3

[7] WFP Fighting Hunger Worldwide, special focus Yemen, November 2016
http://documents.wfp.org/stellent/groups/public/documents/ena/wfp288497.pdf?iframe

[8] FAO in the 2016 humanitarian appeals. p36, http://www.fao.org/3/a-i5320e.pdf

[9] UNDP Humanitarian Needs Overview 2017 p8
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[10] OHCHR, 2016 Situation of human rights in Yemen, A/HRC/33/38, para.42
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[11] OCHA Yemen Crisis Overview http://www.unocha.org/yemen/crisis-overview

[12] A/HRC/33/38, paras. 44-47

[13] Yemen Health care under siege in Taiz – MSF p14
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[16] UNDP Humanitarian Needs Overview 2017 p11
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[17] UNICEF Yemen Fragile to Failed
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[19] UNICEF Yemen Fragile to Failed p4
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20 The Lancet, Yemen's silent Killers, 18 February 2017