April 25, 2016

Brian P. McKeon
Principal Deputy Under Secretary of Defense for Policy
2100 Defense Pentagon
Washington, DC 20301-2100

Dear Mr. McKeon,

Thank you for your response to Physicians for Human Rights’ (PHR) January 2016 letter regarding attacks on hospitals and medical personnel and the U.S. military airstrike in Kunduz, Afghanistan.

We are encouraged by your assurances that the United States is committed to playing a leadership role in protecting civilians in armed conflict, and that the United States expects all parties engaged in armed conflict to comply with international humanitarian law (IHL), including the fundamental protections afforded to medical facilities and personnel. It is our hope that the President will reiterate this expectation and commitment to the international community in a major public platform. Unequivocal affirmation of IHL, at the level of both rhetoric and adherence to the rule of law, is critical to denounce the increased attacks on health care across the globe.

We are pleased that the results of the U.S. military’s investigation of the Kunduz hospital bombing will be made public, and we await the report’s forthcoming release. Your confidence that the U.S. military’s investigation resulted in an independent and complete report of the facts is noted, and it is our hope that the release includes recommended corrective measures to preserve the procedural integrity of U.S. rules of engagement.

We greatly value your assurances that personnel will be held accountable. News outlets have reported that approximately 12 officers and enlisted troops received largely administrative punishments to date. As shared in our January letter to the President, the gravity of harm caused by the reported failures to follow protocol in Kunduz appears to constitute gross negligence that warrants active pursuit of criminal liability. It is our strong hope and anticipation that the disciplinary process will include consideration of criminal liability up the chain of command; that an analysis of compliance with IHL and the U.S. Military Code of Justice assessing criminal liability will be made public; and that the victims and their families will be provided full and effective reparation including guarantees of non-repetition as well as a full opportunity to present...
their claims for compensation beyond the narrow claims they have been directed to.¹ We believe these steps are necessary to promote accurate application of IHL worldwide, to substantiate the United States’ stated commitment to IHL, and to bolster the international community’s confidence in the findings where the United States did not sanction inquiry by a body independent of the U.S. military.

We remain gravely concerned by the alarming and devastating erosion of laws protecting health facilities and the delivery of care to the sick and wounded. Restoring respect for international humanitarian law and commanding robust accountability for noncompliance is crucial within this climate. Thank you for your diligent attention and continued oversight of this investigation.

Sincerely,

Donna McKay
Executive Director
Physicians for Human Rights

Cc: Ambassador Susan Rice, National Security Council;
Secretary Ashton Carter, Department of Defense;
Deputy Assistant Secretary Anne Witkowsky, Department of Defense;
Secretary John Kerry, Department of State;
Secretary Sylvia Mathews Burwell, Department of Health and Human Services.