



January 16, 2016

**Using Science and Medicine to
Stop Human Rights Violations**

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama,

Physicians for Human Rights (PHR) is gravely concerned about the increased frequency of attacks on hospitals and medical personnel across the globe, including the devastating October airstrikes by United States military on a Médecins sans Frontières (MSF) hospital in Kunduz, Afghanistan. In the aftermath of this incident, it is essential that the United States address what happened thoroughly and in accordance with its obligations under domestic and international law. The November 25, 2015 press briefing in Kabul summarizing the findings of the internal Department of Defense (DoD) investigation was an important first step; it is indeed encouraging to see the Department deliver the clear message that a hospital should not be targeted. However, many questions about this incident and the U.S. government response remain.

We urge you:

- (1) To ensure that the initial report produced by the Department of Defense as a result of its probe into the Kunduz hospital bombing be made available to the public promptly and to ensure that the recommendations resulting from the DoD's full investigation are forthcoming and transparent, contain active pursuit of criminal liability – including at the command level – and are communicated to the public in a timely manner;
- (2) To publicly assert the United States' commitment to universally-recognized principles of International Humanitarian Law (IHL), which afford hospitals and medical personnel heightened protections during armed conflict and respect the obligation of medical personnel to treat the sick and wounded without interference, regardless of their identity or affiliation; and
- (3) To convene a Court of Inquiry, utilizing your general court-martial convening authority under Uniform Code of Military Justice (UCMJ) art. 135(a), 10 U.S.C. § 935(a) and UCMJ art. 22(a)(1), 10 U.S.C. § 822(a)(1), charged with examining and inquiring into the incident and directed to offer findings, opinions and recommendations including coverage of punitive and corrective phases of the matter under investigation.

As you know, the United States has historically played a leadership role in conceptualizing and drafting the protections afforded to civilians and wounded combatants, as well as the special protections afforded to hospitals and medical professionals during armed conflict. The Kunduz

incident undermines this commitment, even if the bombing of the hospital was a “terrible mistake.” It is imperative that the United States vigorously enforce the protection of health care facilities and personnel during armed conflict and pursue full accountability for this incident. We see it as critical that the highest levels of U.S. government now visibly reaffirm respect for fundamental principles of IHL worldwide.

While investigations into the Kunduz hospital bombing unfold, an unprecedented number of attacks against health facilities continue in Syria. Hospitals in Yemen have also been the target of bombings.

For almost 30 years, as PHR has documented assaults on health care in various contexts throughout the world, we have seen how bombings of hospitals in armed conflict not only threaten those in need of urgent care; they also undermine the health of populations who are not able to access medical care and are therefore at increased risk of infections, disease, and death. We are alarmed that these violations have reached such a devastating level.

In this context, we hope that the United States government will send the clearest possible message to the U.S. military, the U.S. public, and the international community that the laws of war prohibit attacks on health facilities and personnel and that the United States is committed to taking every step possible to protect civilians as well as sick or wounded combatants, as required under the Geneva Conventions and Protocols and U.S. military manuals, including the recently-published Department of Defense Law of War Manual of 2015.¹

We note the importance of your immediate acknowledgment of the U.S. bombing of the MSF hospital, your prompt and direct apology to the organization, and the expeditious launch of an investigation under the direction of General Campbell. However, we are deeply concerned by the DoD announcement that U.S. rules of engagement were not followed, such that the targeting of the hospital was the result of avoidable error. This concern is heightened by MSF’s detailed report released on November 5, 2015, which describes the organization’s repeated delivery of the hospital’s coordinates to U.S. and Afghan military authorities and recounts desperate pleas to the U.S. military command to stop the bombing runs, which continued even after the U.S. military was notified of the ongoing attack. We are also troubled by the existence of differing accounts that suggest Afghan forces may have directed the U.S. military toward the hospital target. We urge you to direct the DoD to thoroughly review these accounts, the integral role of commanders as the incident unfolded, and its responsibilities in all allied or joint military operations to assure protection of civilians and civilian objects, including health facilities.

¹ See DoD Law of War Manual § 17.14 “Protection of the Wounded, Sick, Shipwrecked, and DEAD in NIAC” and §17.15 “Protection of Medical and Religious Personnel and Medical Transports in NIAC” with reference to Protocol (II) Additional to the Geneva Conventions of 12 August 1949; see also Additional Protocol II art. 7, 9-12 and commentary to Article 11 of Additional Protocol II, Protection of medical units and transports, p. 4727.

Furthermore, given the gravity of harm and the reported failures to follow protocol – which appear to constitute serious negligence as well as possible willful violations of established procedures to protect civilians – it is essential that the United States actively pursue criminal liability in accordance with the U.S. Military Code of Justice. Preserving the integrity and universal application of civilian protection in times of war can only be achieved through a combination of robust commitment to IHL and accountability for those who disregard these principles. For the United States to promote respect and adherence to IHL around the world effectively, it is critically important that the U.S. government take steps to assure global confidence in the findings of this investigation. Independent review, in practice and perception, is a necessary step to achieve this end. PHR supports your appointment of a Court of Inquiry to serve as an independent fact-finding body outside the chain of command. We strongly urge that this mechanism be utilized to its full extent through appointment of military and civilian personnel with technical and subject-matter expertise to participate in the proceedings and advise members of the court.

We urge you to act on the aforementioned recommendations to help prevent the erosion of essential protections for medical care in times of conflict. Doing so, we believe, will serve to demonstrate to the world at this critical juncture, in no uncertain terms, that the United States takes seriously its responsibility, and that of other states, to avoid harm to civilians and to uphold the principle of noninterference with medical services during armed conflict and civil unrest.

Thank you for your consideration. I look forward to your response.

Sincerely,

A handwritten signature in black ink, reading "Donna McKay". The signature is fluid and cursive, with the first name "Donna" and last name "McKay" clearly distinguishable.

Donna McKay
Executive Director
Physicians for Human Rights

Cc: Ambassador Susan Rice, National Security Council;

Secretary Ashton Carter, Department of Defense;

Secretary John Kerry, Department of State;

Secretary Sylvia Mathews Burwell, Department of Health and Human Services