

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Via mail, fax and e-mail**

May 9, 2013

Dear Mr. Attorney General,

This letter raises issues of utmost gravity specific to the State Department's repeated and egregious disregard to respond in a timely or even satisfactory manner to the Global Justice Center's FOIA Request, begun on February 27, 2012, Case Control # **F-2012-23464**.

The February 27, 2012 FOIA request by GJC is to inform its "August 12<sup>th</sup> Campaign," named after the anniversary of the Geneva Conventions. The "August 12<sup>th</sup> Campaign" comprises of a growing coalition of over 3,000 global organizations and the country of Norway, seeking an executive order from President Obama lifting the imposition of a "no abortion" clause on all humanitarian aid contracts which cover services for girls and women raped in armed conflict.

It has been over a year since our initial request was made on February 27, 2012, and State **has failed to turn over ANY** documents, contracts, e-mail and memoranda requested by the GJC on February 27, 2012 with regard to US humanitarian aid for medical care and other services for girls and women subjected to rape as a weapon of war. Many of the documents requested involve State's policies and disbursements under U.S. appropriations for victims of torture. State's continuous stonewalling on providing documents critical to the rights of women raped in armed conflicts undermines the integrity of US foreign policy, encourages US non-compliance with Security Council resolutions, and covers up violations of the rights of women under the laws of war.

We take umbrage with the most recent written response from State, dated February 10, 2013, in which they assert that "[t]he estimated completion date for this request is June 30, 2014." This is a full 589 business days or two years and four months to complete the request, a timeframe that could not be deemed to be "timely disclosure of information" as required by both yourself and President Obama in the directives regarding FOIA.

The continued delay by State undermines US compliance with its international obligations, including Security Council resolutions which mandate that states ensure that international humanitarian law is enforced for female survivors of rape in conflict situations, who Former Secretary of State Clinton describes as "war's most vulnerable and violated victims."<sup>1</sup> The US has repeatedly confirmed that

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<sup>1</sup>"Remarks on the Adoption of a United Nations Security Council Resolution to Combat Sexual Violence in Armed Conflict," Remarks Hillary Rodham Clinton, United Nations Headquarters, New York City, September 30, 2009 at <http://www.state.gov/secretary/rm/2009a/09/130041.htm>.

girls and women raped in armed conflict are victims of torture. Further, State flouts President Obama's directives on open government and shields its own contracts and policies from view by unlawfully putting up road blocks and delays, stating that certain departments will take longer to review documents. The explanation given to GJC by Jeff Baron, the State Department Reviewer on this case, during a February 2, 2013 call was that documents from outside State may take longer to review, but documents from inside State may also take longer to review. These assertions do little more than to show that State is seeking to obfuscate the matter instead to producing documents.

Accordingly, the vague and unsatisfactory responses that GJC has continually received should serve to trigger a broader review of State's FOIA related pattern and practice, which reflect system-wide non-compliance with its own FOIA guidelines as well as those issued by your office.

### **State FOIA Request– Case Control # F-2012-23464**

The following is a brief summary of GJC's FOIA request timeline and the issues that have been encountered. The complete chronology that summarizes all communications that GJC has had with the State with regards to FOIA # **F-2012-23464** from February 27, 2012 to date is found in Exhibit 1.

1. FOIA # **F-2012-23464** was submitted by the Global Justice Center (GJC) to USAID on February 27, 2012, 303 working days ago (as of May 9, 2013). (Exhibit 2)
2. Expedited process was granted on May 17, 2012 in a letter from Mary Therese Casto, Chief, Requester Communications Branch. (Exhibit 3)
3. In the same letter, dated May 17, 2012, Ms. Casto stated "we will notify you as soon as responsive material has been retrieved and reviewed."
4. Until a February 5, 2013 call with State Department FOIA Reviewer, State had failed to provide any opportunity to narrow the scope of the request in order to accelerate the process as required by 5 U.S.C. § 552, 6(b)(ii).<sup>2</sup>
5. USAID has not complied with the statutory limit for expedited processing.
  - a. GJC's February 27, 2012 FOIA request included a request for expedited processing, as permitted under 5 U.S.C. § 522(a)(6)(E), including a demonstration of "compelling need," as required. (Exhibit 2).
  - b. State FOIA responded on May 17, 2012 stating that "after consideration of your request for expedited processing under the Department's rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing."
  - c. Once expedited processing is granted, the FOIA statute requires State to "process as soon as practicable any request for records to which the agency has granted expedited processing." 5 U.S.C. § 522(a)(6)(E)(iii). To date, 303 working days after the original FOIA request, GJC has received **no documents**. This violates (and continues to violate) the statutory requirements governing expedited processing.
  - d. Despite being granted expedited processing, the State Department, on January 10, 2013 sent an email, in response to multiple letters by GJC requesting status updates,

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<sup>2</sup> "the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request."

in which they stated “[t]he estimated completion date for this request is June 30, 2014,” 589 business days after the original request was sent.

- e. As of May 7, 2013, 246 business days after State granted expedited processing, State has failed to turn over to the GJC any State contracts or internal department materials regarding medical care for torture victims. This is despite the assertion by State Department FOIA reviewer Jeff Baron during a call with the GJC on February 5, 2013 that he and his team had identified “lots of documents” ready to be sent. He then failed to give a reason as to why these documents had yet to be sent.

Due to these failures, the GJC does not have the vital and necessary information needed to fully analyze and disseminate information about the US abortion restrictions on foreign assistance, including with regard to possible breaches of the rights of torture victims under the Geneva Conventions and Convention against Torture. It is for this reason we have brought this matter to the attention of the Justice Department. It is of the utmost importance that the Global Justice Center’s FOIA request be immediately fulfilled and it is to that end that I bring this matter to your attention.

Thank you for your consideration to this matter which is of the highest concern to this Administration and central to the Global Justice Center’s mission of advancing justice through the rule of law.

Please do not hesitate to contact me if you have any further questions. I can be reached by e-mail at [jbenshoof@globaljusticecenter.net](mailto:jbenshoof@globaljusticecenter.net) or by phone at 212.725.6530, ext. 206. We also request that you please cc [aradhakrishnan@globaljusticecenter.net](mailto:aradhakrishnan@globaljusticecenter.net) on all correspondence.

Regards,



Janet Benshoof

President, Global Justice Center

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