

Mr Michel Forst  
UN Special Rapporteur on the situation of human rights defenders  
**By email**

16 February 2015

Dear Mr Forst

**Attacks and reprisals against the Australian Human Rights Commission and its President, Professor Gillian Triggs**

The International Service for Human Rights would like to bring your attention to a series of recent government-led or supported attacks and reprisals against Australia's national human rights institution, the Australian Human Rights Commission, and its President, Gillian Triggs, and request that you take all such public and private action as is possible in response.

The attacks and reprisals against the Australian Human Rights Commission and its President have taken three primary forms, involving:

1. Persistent attempts to undermine the credibility, integrity, impartiality and judgment of the President and to procure or pressure her resignation;
2. A very substantial reduction in funding to the Commission; and
3. The appointment of a Commissioner without any proper process and with the commitment of that appointee to 'advance the ... government's agenda'.

Each of these matters is detailed further below.

**Persistent personal attacks against the President of the Australian Human Rights Commission**

Professor Gillian Triggs was appointed President of the Australian Human Rights Commission in 2012. She was previously Dean of the Faculty of Law and Challis Professor of International Law at the University of Sydney and Director of the British Institute of International and Comparative Law.

On 3 February 2014, the Australia Human Rights Commission launched a national inquiry into children in immigration detention, led by Professor Triggs, in accordance with its mandate and functions under the *Australian Human Rights Commission Act 1986* (Cth).

The Commission provided the Australian Government with a final copy of the report of the national inquiry on 31 October 2014.<sup>1</sup> By law, the Australian Government was required to table this report and its response in parliament by 11 February 2015.

Between November 2014 and February 2015, the Australian Government led and fed a sustained and unprecedented attack on the integrity, impartiality and judgment of Professor Triggs, as illustrated by the following examples:

---

<sup>1</sup> See <https://www.humanrights.gov.au/news/stories/locking-children-taints-us-all-says-commission-president>.

- On 8 December 2014, the Prime Minister of Australia stated publicly that a non-binding decision made by Professor Triggs – which found that the long-term detention of a refugee, John Basikbasik, who had been convicted of criminal offences was arbitrary and in breach of Article 9 of the ICCPR – was ‘pretty bizarre’ and displayed ‘very questionable judgment’.<sup>2</sup>
- The decision was also attacked by other senior Government Ministers, including Immigration Minister Peter Dutton who described it as ‘offensive’, and Social Services Minister Scott Morrison who accused Triggs of ‘always arguing for a fair go for those who have forfeited that right by their own behaviour’.<sup>3</sup> Professor Triggs’ decision in the case of Mr Basikbasik was publicly defended in an open letter by 24 of Australia’s leading international human rights experts, who stated that ‘in our view, the President of the Australian Human Rights Commission has carried out her duties under the Act with independence, impartiality and professionalism’.<sup>4</sup>
- On 28 January 2015, it was reported that members of the Australian Government were seeking to initiate an inquiry into ‘systemic bias’ within the Australian Human Rights Commission and to examine the desirability of its abolition. The same report foreshadowed a possible parliamentary ‘no confidence’ motion in Professor Triggs in an effort to force her to resign.<sup>5</sup>
- Two weeks prior to the tabling of the report of the national inquiry, Professor Triggs was asked to resign from her position by the Secretary of the Attorney-General’s Department, acting on behalf of the Attorney-General; a request which she rejected.<sup>6</sup>

These attacks intensified following the public release of the report of the national inquiry into children in immigration detention on 11 February 2015, as illustrated by the following examples:

- On 12 February 2015, the Prime Minister Tony Abbott said that the inquiry conducted by the President was ‘a blatantly partisan, politicised exercise and the Human Rights Commission ought to be ashamed of itself’. He further said that ‘it would be a lot easier to respect the Human Rights Commission if it did not engage in what are transparent stitch-ups’.<sup>7</sup>
- Subsequently, Attorney-General George Brandis endorsed the Prime Minister saying, ‘I entirely agree with the Prime Minister’s remarks,’ while Social Services Minister Scott Morrison said that Prime Minister Abbott was ‘spot on’.<sup>8</sup>

---

<sup>2</sup> AAP, ‘Abbott attacks Gillian Triggs over call to free convicted refugee John Basikbasik’, *The Guardian*, 8 December 2014, at <http://www.theguardian.com/australia-news/2015/jan/08/abbott-attacks-gillian-triggs-over-call-to-free-convicted-refugee-john-basikbasik>.

<sup>3</sup> See, eg, Jared Owens, ‘Ministers unite against Gillian Triggs over wife killer John Basikbasik’, 8 January 2015, at <http://www.theaustralian.com.au/national-affairs/immigration/ministers-unite-against-gillian-triggs-on-wife-killer-john-basikbasik/story-fn9hm1gu-1227177754165>.

<sup>4</sup> See ‘Legal scholars’ statement in support of Gillian Triggs’ at <http://theconversation.com/legal-scholars-statement-in-support-of-gillian-triggs-36476>.

<sup>5</sup> Jared Owens, ‘MPs mull inquiry into ‘bias’ at HRC’, *The Australian*, 28 January 2015, at <http://www.theaustralian.com.au/national-affairs/mps-mull-inquiry-into-bias-at-hrc/story-fn59niix-1227198901506>.

<sup>6</sup> Lenore Taylor and Shalailah Medhora, ‘Brandis asked Gillian Triggs to resign before critical child detention report’, *The Guardian*, 13 February 2015, at <http://www.theguardian.com/australia-news/2015/feb/13/brandis-asked-gillian-triggs-to-resign-before-critical-child-detention-report>.

<sup>7</sup> Stephanie Balogh, ‘Tony Abbott slams ‘blatantly partisan’ Triggs call on children’, *The Australian*, 12 February 2015, at <http://www.theaustralian.com.au/national-affairs/immigration/tony-abbott-slams-blatantly-partisan-triggs-call-on-children/story-fn9hm1gu-1227216895923>.

<sup>8</sup> Ibid.

- Government parliamentarian and committee chair George Christensen, called on Professor Triggs to resign, saying, ‘I have more confidence in getting impartial advice from Green Left Weekly than from Gillian Triggs ... She has effectively sidelined herself and the HRC from having any credibility with the Abbott government. If she wants to do the right thing by the Commission and have their views listened to by the government again, she needs to tender her resignation.’<sup>9</sup>

On 15 February 2015, a group of 50 leading academics, together with the Australian Bar Association and the Law Council of Australia, published open letters in which they defended the impartiality and independence of Professor Triggs and the Australian Human Rights Commission, stated that attacks on Triggs and the Commission undermined democracy and the rule of law, and called on current and future governments to respect the integrity and function of independent commissions.<sup>10</sup>

### **Significant funding cuts to Australian Human Rights Commission**

On 15 December 2014, the Australian Government announced a substantial reduction in funding, of approximately 30 percent, to the Australian Human Rights Commission.<sup>11</sup> This is despite the fact that Australia is the lead sponsor of the thematic resolution on national human rights institutions at the UN Human Rights Council, the most recent text of which calls on States to ‘strengthen [NHRIs] to enable the effective fulfilment of their mandate’<sup>12</sup> and ‘stresses the importance of financial and administrative independence and the stability of national human rights institutions’.<sup>13</sup>

The December 2014 decision to significantly defund the Australian Human Rights Commission was criticised by the Human Rights Law Centre as likely to ‘significantly weaken the Commission and reduce the government’s accountability on human rights at a time when rights are being severely threatened, in particular by harsh migration and counter-terror laws’.<sup>14</sup> The HRLC also said that ‘it’s hard to avoid the conclusion that the cuts are a politically motivated response to the [Commission’s] children in immigration detention inquiry’.<sup>15</sup>

---

<sup>9</sup> Ibid.

<sup>10</sup> See Amanda Meade, ‘Academics and law bodies warn attack on Gillian Triggs threatens democracy’, 15 February 2015, at <http://www.theguardian.com/australia-news/2015/feb/15/academics-and-law-bodies-warn-attack-on-gillian-triggs-threatens-democracy>.

<sup>11</sup> The funding cuts to the Australian Human Rights Commission announced on 15 December 2014 amount to \$5 million over three years, or more than \$1.6 million per year: see Australian Government, ‘Mid-Year Economic and Fiscal Outlook: Appendix A – Policy Decisions Taken since the 2014-2015 Budget: Expense Measures’, at [http://www.budget.gov.au/2014-15/content/myefo/html/11\\_appendix\\_a\\_expense.htm](http://www.budget.gov.au/2014-15/content/myefo/html/11_appendix_a_expense.htm). See also Human Rights Law Centre, ‘Slashing funding for human rights watchdog is dangerous for human rights and democracy’, Media release, 15 December 2014, at <http://hrlc.org.au/slashing-funding-for-human-rights-watchdog-is-dangerous-for-human-rights-and-for-democracy/>.

<sup>12</sup> ‘National institutions for the promotion and protection of human rights’, UN Doc HRC/Res/27/18, para 2

<sup>13</sup> Ibid, para 8

<sup>14</sup> Human Rights Law Centre, ‘Slashing funding for human rights watchdog is dangerous for human rights and democracy’, Media release, 15 December 2014, at <http://hrlc.org.au/slashing-funding-for-human-rights-watchdog-is-dangerous-for-human-rights-and-for-democracy/>.

<sup>15</sup> Ibid.

The December 2014 cuts are in addition to an earlier decision, in May 2014, to defund the position of a full-time Disability Discrimination Commissioner, a reduction in funding to the Commission of \$1.7 million over four years.<sup>16</sup>

In total, the cuts to the Commission announced over the last year amount to almost \$7 million over four years.

These very substantial funding cuts are notably incompatible with a recommendation accepted by Australia at its last Universal Periodic Review to 'ensure the provision of sufficient funding and staffing' to the Australian Human Rights Commission.<sup>17</sup>

### **Appointment of Human Rights Commissioner without proper process**

In addition to Australia's NHRI being weakened by political attacks and severe funding cuts, the independence and effectiveness of the Commission has also been significantly weakened through the recent appointment of a Commissioner – namely, the Human Rights Commissioner – directly by the Attorney-General (a Government Minister) without any advertisement, transparency, or consultation with civil society or even parliament.

This is despite the guidance to the Paris Principles recommending that any appointment is made following a public advertisement, transparent process and broad and pluralistic consultation.<sup>18</sup>

Upon appointment, the new Human Rights Commissioner pledged to 'advance the government's freedom agenda', a statement clearly at odds with the mandate and duties of an independent commissioner.<sup>19</sup>

### **Conclusion**

In our view, the actions of the Australian Government and its representatives, as outlined above, are inconsistent with the Paris Principles and manifestly incompatible with Human Rights Council resolution 27/18 on national human rights institutions. That resolution, which was led by Australia and adopted by consensus in September 2014, relevantly provides that 'national human rights institutions and their respective members and staff should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries'.<sup>20</sup>

---

<sup>16</sup> Australian Government, 'Budget 2014-2015: Budget Paper No 2 – Part 2: Expense Measures – Attorney General's', at [http://www.budget.gov.au/2014-15/content/bp2/html/bp2\\_expense-05.htm](http://www.budget.gov.au/2014-15/content/bp2/html/bp2_expense-05.htm).

<sup>17</sup> See Australia's response to Recommendation 27 of the Report of the Working Group of the Universal Periodic Review, UN Doc A/HRC/17/10/Add.1, at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf).

<sup>18</sup> See OHCHR, National Human Rights Institutions: History, Principles, Roles and Responsibilities (2010), UN Doc HR/P/PT/4/Rev.1, pages 38-9 at [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf).

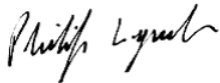
<sup>19</sup> 'Tim Wilson to head freedom campaign as human rights commissioner', news.com.au, 17 December 2013, at <http://www.news.com.au/national/tim-wilson-to-head-freedom-campaign-as-human-rights-commissioner/story-e6frfkp9-1226784792400>.

<sup>20</sup> 'National institutions for the promotion and protection of human rights', UN Doc HRC/Res/27/18, para 9.

The resolution further emphasises, at paragraph 11, that ‘any cases of alleged reprisal or intimidation against national human rights institutions and their respective members and staff or against individuals who cooperate or seek to cooperate with national human rights institutions should be promptly and thoroughly investigated, with the perpetrators brought to justice.’

In accordance with Human Rights Council resolution 27/18, together with your own mandate, we call on you to take all such action, both publicly and privately, as is possible to defend the independence and effectiveness of the Australian Human Rights Commission and its President, to end attacks and reprisals against them, and to call for and promote accountability for such unacceptable acts.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Philip Lynch', written in a cursive style.

Philip Lynch  
Director