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Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
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By email: jscfadt@aph.gov.au

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Dear Secretary

**Inquiry into Human Rights Mechanisms and the Asia-Pacific:
Submission on Australia's role in the work of the Asian Development Bank**

I am grateful for the opportunity to make a submission to the Committee's Inquiry into Inquiry into Human Rights Mechanisms and the Asia-Pacific. A brief description of my background and relevant expertise appears at the end of this submission.

Overview

2. In this submission I address the potential contribution that Australia can make to the furthering the fulfilment of human rights in the region through its participation in the work of the Asian Development Bank and, by extension, other international financial institutions of which it is a member.

3. The terms of reference for the Inquiry request the Committee "to inquire and report on international and regional mechanisms currently in place to prevent and redress human rights violations, with a view to providing options on possible models that may be suitable for the Asia-Pacific region". This formulation appears to envisage discussion primarily of institutions designated as "human rights institutions". However, in this submission I argue that it is of considerable importance for the advancement of human rights in the region that Australia also use the influence and opportunities it already has as a member of one existing regional institution, the Asian Development Bank (ADB). While the ADB is not a classical "regional human rights organization", it nonetheless is a regional institution whose work has enormous potential to advance the enjoyment of human rights by the people of the Asia Pacific region, and one in which Australia already plays an influential role.

4. This submission proposes that the Committee recommend that--
- (a) a review be undertaken of the extent to which human rights frameworks are taken into account in the work of the Asian Development Bank (ADB)(and other multilateral financial institutions of which Australia is a member), and that
 - (b) Australian representatives at the ADB take appropriate measures to ensure that greater explicit use is made of applicable international human rights in the policies, analysis and operations of the ADB, with a special emphasis on the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

Human rights obligations and development cooperation

5. Promoting the observance and realization of human rights in developing countries should be a core element of Australia's development assistance policy, both in the design of its goals and in the methods for achieving them. Australia is subject to obligations under various treaties to ensure that its development policies are consistent with human rights (and this is in any event good policy). Australia's bilateral development partners and those countries (whether developing or developed countries) that are members of multilateral development institutions of which Australia is a member, are subject to similar obligations.

6. While the obligation to ensure that development cooperation activities promote the enjoyment of human rights can arguably be derived from a number of treaties to which Australia is party, the Convention on the Rights of Persons with Disabilities (CRPD)¹ makes it very clear that in relation to the rights of persons with disabilities, Australia is under an obligation to ensure that it adopts an inclusive and disability-sensitive approach to its international cooperation activities, including through its participation as a member of international financial institutions such as the ADB.² Article 32 of the CRPD provides:

“International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

- (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

¹ [2008] ATS 12 (ratified by Australia on 17 July 2008, in force for Australia thirty days later)

² In its draft strategy released in September 2008, AusAID recognised the importance of Article 32 to Australia's international development programmes, though it did not discuss the relevance this might have to Australia's participation in the work of the multilateral development banks: *Development for All: A Disability Strategy for the Australian Aid Program 2009–2014 (Draft)*, available at <http://www.ausaid.gov.au/keyaid/disability.cfm>.

- (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
 - (c) Facilitating cooperation in research and access to scientific and technical knowledge;
 - (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.
2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.”

Australia and the ADB³

7. Australia is a founding member of the Asian Development Bank (ADB), a regional international organisation established in 1966. At present the ADB has 67 members: 48 of these come from the Asia-Pacific region, while 19 come from other parts of the world. Australia currently contributes about 5.8% of the ADB’s capital and has about 5% of the votes.⁴ Australia has one Governor on the Board of Governors (the highest policy-making body of the ADB -- all members have one Governor). At present, Australians serve as Director and alternate Director on the Board of Directors for the constituency of countries with which we are grouped.⁵

8. The ADB started out its life as an institution that was intended to assist developing member countries (DMC) in the region to develop economically. Over the years that underlying mission has remained but it has also evolved to reflect broader understandings of development; there has been an increasing emphasis on poverty reduction (to be achieved through sustainable economic growth). The ADB assists governments in the process of development through the provision of loans at commercial rates, loans at concessionary rates, grants, and technical assistance funding.

9. Under its new Long Term Strategic Framework, *Strategy 2020*,⁶ adopted in 2008, the ADB has set three strategic agendas: inclusive growth, environmentally sustainable growth, and regional integration. These are to be pursued by focusing on five “drivers of change”: (i) private sector development and private sector operations, (ii) good governance and capacity development, (iii) gender equity, (iv) knowledge solutions, and (v) partnerships. Progress will be assessed by a new Results Framework, which has been adopted in provisional form, but which “will continue to be refined and improved through time in response to the transformation of the region and the institution”.⁷ It contains almost no reference to rights-based indicators.

³ “Australia’s interactions with the Asian Development Bank”, *Australia and the International Financial Institutions 2006-2007* (2008), Section 4, available at http://www.treasury.gov.au/documents/1386/HTML/docshell.asp?URL=ifi_2008-06.htm

⁴ Available at <http://www.adb.org/About/membership.asp>

⁵ Australia, Azerbaijan, Cambodia, Georgia, Hong Kong, China, Kiribati, Federated States of Micronesia, Nauru, Palau, the Solomon Islands, and Tuvalu.

⁶ Available at <http://www.adb.org/Strategy2020/default.asp>

⁷ *ADB Results Framework*, August 2008, available at <http://www.adb.org/Documents/Policies/ADB-Results-Framework/r166-08.pdf>

Human rights and the ADB

General approach

10. Although ADB is not as such a “regional human rights organisation”, nevertheless as a regional development institution many of its goals overlap with human rights goals: the existence of poverty in the region means that millions of people fail to enjoy basic human rights – in particular fundamental economic and social rights, such as the right to an adequate standard of living, the right to health, and the right to education, among others.

11. The ADB has been reluctant to embrace human rights standards explicitly in many of its policy documents, or to use a human rights framework systematically in its policies and operations, although in a number of cases it has in fact made explicit use of international human rights standards. This reflects concerns among many member States about issues of sovereign and universal human rights standards, reflected in the prohibition on “political activity” contained in Article 36(2) of the ADB Charter,⁸ which provides:

“The Bank, its President, Vice-President(s), officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.”

12. This reluctance to embrace rights explicitly at the policy level includes those instruments which have been accepted by all or nearly all of the member States (such as the Universal Declaration of Human Rights), or treaties ratified by most ADB members (such as the United Nations Conventions on the Rights of the Child or the UN Convention on the Elimination of All Forms of Discrimination against Women). At the same time, the ADB has been prepared to embrace other international standards of lesser normative standing, such as the Millennium Development Goals, as part of its framework for analysis and action.

13. Many have argued that adopting a rights-based approach to development is likely to lead to more effective and fair development. Rights analysis is important to the setting of goals (for example, defining what type of development projects are needed, to produce what results), as well as a critical part of the process of achieving them (for example, participation of communities in decision-making is likely to lead to more effective projects, as is observance of rights to freedom of expression and organisation, and equality and non-discrimination on the basis of sex, race, ethnic or other status).

Core labor standards and the ADB

14. The importance of using a rights framework to design and monitor the effectiveness of development projects has in fact been recognised by ADB in a number of respects, the most prominent of which has been in relation to Core Labor Standards, which are based on international labour conventions.

⁸ Agreement establishing the Asian Development Bank [1966] ATS 13

15. In 2002 the ADB entered into a cooperation agreement with the International Labour Organisation,⁹ under which both organisations recognised their overlapping areas of responsibility and the importance of international standards on decent work in the development process. Most, though not all, ADB members are members of the ILO and are therefore bound by basic human rights principles in the field of work,¹⁰ in addition to any specific ILO treaties they may have ratified. These fundamental human rights standards were declared by the General Conference of the ILO to be binding on all members in its 1998 Declaration on the Fundamental Principles and Rights at Work.¹¹

16. International labour standards – embodied in ILO conventions and recommendations – are human rights standards. The prohibition of “political activities” in Article 32(2) of the ADB Charter does not appear to have stood in the way of ADB acceptance of these human rights standards as a useful analytical, monitoring and evaluative tool in areas relevant to the ADB’s operations. Indeed, the ADB has gone further, endorsing the use of Core Labour Standards in its work:¹²

“ADB supports the Core Labor Standards, a set of four internationally recognized basic rights and principles regarding the work environment.

The Asian Development Bank (ADB) is committed to working with its developing member countries (DMCs) to promote good labor and social protection practices in Asia and the Pacific. ADB believes that decent working conditions help reduce poverty, raise living standards, and enhance the quality of economic growth by increasing productivity.

CLS is a set of four internationally recognized basic rights and principles regarding the working environment. These are freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, effective abolition of child labor, and elimination of discrimination for employment and occupation.

As ADB-funded projects utilize labor and generate employment in the region, labor questions are considered in analyzing the social and economic viability of all ADB-assisted projects. Likewise, ADB seeks to ensure that for ADB-financed procurement of goods and services, contractors, subcontractors, and consultants abide by a developing country’s expressed compliance with CLS. ADB is committed to establishing mitigation measures for those adversely affected by ADB interventions.”

17. Core labor standards were incorporated into ADB’s *Social Protection Strategy*, and covenants are frequently included in loan agreements under which the borrowing member

⁹ Memorandum of Understanding between the Asian Development Bank and the International Labour Organization, available at <http://www.ilo.org/public/english/bureau/leg/agreements/asdb.htm>

¹⁰ These are freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

¹¹ Available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

¹² ADB, “Core Labor Standards and ADB”, April 2007, available at <http://www.adb.org/Documents/Brochures/InBriefs/2007/Core-Labor-Standards.pdf>

country undertakes to ensure observance of these standards. The ADB's *Social Protection Handbook* states:¹³

“The existing ADB social impact assessments, mandated by Management and the Board since 1991 (Operations Manual OM 47: Incorporation of Social Dimensions into Bank Operations) will continue to ensure that vulnerable groups are not negatively affected by an ADB intervention. Specific social protection issues include the following:

...

(ii) (a) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards;

(b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation (e.g., minimum wages, safe working conditions, and social security contributions, etc.) as well as with the Core Labor Standards; and

(iii) as part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.”

18. The ADB also makes use of its own standards in its own safeguard policies and guidelines that are substantively very similar to human rights standards. For example, international human rights standards on the right to adequate housing and forced eviction are particularly pertinent to the issue of involuntary resettlement, but the ADB's *Policy on Involuntary Resettlement*¹⁴ makes no mention of the extensive human rights jurisprudence on this topic. Other areas where human right standards might be usefully drawn on include the right to education in relation to education loans, and the right to health for health sector loans – and there are many other examples.

A greater role for the explicit use of human rights frameworks in the work of the ADB

19. There is therefore no reason in principle why the ADB should not adopt a similar approach to human rights standards other than ILO standards that are relevant to its operations, and seek to make greater and explicit use of those standards in its work. The CRC and the CEDAW Convention are obvious candidates for this. Indeed, the ADB's advisory group, the External Forum on Gender and Development, has regularly urged the ADB to make greater use of the CEDAW Convention and the CRC as a framework and set of detailed standards for its work,¹⁵ a call which has not been taken up, other than on an occasional and ad hoc basis.

20. In addition, in view of the specific obligations in Article 32 of the Convention on the Rights of Persons with Disabilities, this is instrument that should also be given prominence by ADB in its work. It is likely that most, if not all, of the members of the ADB will

¹³ ADB, *Social Protection: Our Framework, Strategies and Policy* (2003), para 84, 56-57 (footnote omitted), available at http://www.adb.org/Documents/Policies/Social_Protection/default.asp

¹⁴ Available at <http://www.adb.org/Resettlement/default.asp>

¹⁵ See, e.g., *Report of the Seventh Session of the External Forum on Gender and Development(29-31 May 2006) – Outcome Document*, available at http://www.adb.org/Documents/Conference/Gender_Development/Gender-Development-Jul2006.pdf

eventually become parties to the treaty – certainly as many as are members of the ILO. All these members will be bound by the Convention to incorporate disability perspectives in their development cooperation activities and this should extend to their participation in directing and supervising the policy and operations of the ADB.

21. Although the ADB undertook a number of activities relating to disability some years ago, there has been relatively little done since that to incorporate disability perspectives systematically in its work,¹⁶ despite the fact that persons with disability in the region are estimated to number 400 million and are consistently among the poorest of the poor. The Convention on the Rights of Persons with Disabilities should provide the stimulus for more focused attention to be devoted to this issue and its importance for inclusive development. The Governors of the ADB and the Board of Directors have an important role to play in putting this and other human rights on the ADB agenda.

Recommendations to the Committee

22. I would urge the Committee to make two recommendations, namely that:

(a) a review be undertaken of the extent to which human rights frameworks are taken into account in the work of the Asian Development Bank (ADB)(and other multilateral financial institutions of which Australia is a member); and

(b) Australian representatives on the ADB's Board of Governors and Board of Directors take appropriate measures to ensure that greater explicit use is made of applicable international human rights be made in the policies, analysis and operations of the ADB, with a special emphasis on the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

Yours sincerely



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¹⁶ Andrew Byrnes, "A New United Nations Treaty on Disability - An Opportunity for the Asia Development Bank?", *Asian Development Bank Gender Network News*, September 2006, available at <http://www.adb.org/Documents/Periodicals/GNN/newsletter-16.pdf>

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