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***Via Email***

July 24, 2025

Asian Development Bank

Attn: European and all ADB Member State Shareholders

Attn: Mr. Masato Kanda, President; Priyantha Wijayatunga, Senior Director, Energy Sector Office  
6 ADB Avenue, Mandaluyong City 1550,

Metro Manila, Philippines

ADB Member States' emails below; [civilsociety@adb.org](mailto:civilsociety@adb.org); [pwijayatunga@adb.org](mailto:pwijayatunga@adb.org)

**Re: CSOs' Objection to Accelerated Adoption of ADB's Energy Policy Update and  
Profound Deficiencies in the Policy's Public Review, Comment, and Impact Assessment  
Process that Violates ADB's and its Member States' Obligations Under International Law**

Dear Asian Development Bank (ADB) Member State Shareholders, Mr. President Asakawa, Mr. Wijayatunga and to Whom it May Concern at ADB:

On behalf of Bank Climate Advocates (BCA) and the undersigned Civil Society Organizations (CSOs), we are writing to object the significantly shortened timeline and flawed public review process for ADB's Energy Policy Update (Policy) and to request that ADB and its Member States take corrective measures to adhere to their obligations under international law.

Specifically, we object to:

1. ADB's decision communicated to NGO Forum and select CSOs in July 2025 to move the adoption of the ADB's Energy Policy Update to early October 2025, from the prior relied upon timeframe communicated in May 2025, which was that the final draft would be released in Q4 2025 prior to an anticipated Board adoption date in Q1 2026;
2. The absence of a Strategic Environmental Assessment (SEA) or equivalent environmental and social impact assessment (ESIA) documentation analyzing, disclosing, and supporting findings and mitigation for the environmental and social impacts and risks of the contemplated Policy amendments;

3. The failure to release a complete draft of the revised Energy Policy Update for public review; and;
4. The failures to conduct an official and proper public comment period, and to notify the public at large about ADB's contemplated Energy Policy amendments.

Each of these failures violate ADB's and its member states' public notice and participation, due diligence, and harm prevention obligations under customary international law. They further violate (a) Aarhus Convention<sup>1</sup> treaty obligations of ADB's European and various Central Asian Shareholders when acting at the ADB and (b) Espoo Convention<sup>2</sup> and its Kyiv Protocol<sup>3</sup> treaty obligations of most of ADB's European Shareholders when acting at ADB.<sup>4</sup> Standing alone and when coupled together, if not corrected, these deficiencies would signal that ADB is significantly abandoning principles of good governance, transparency, and those ensuring opportunities for effective public participation.

We thus respectfully request that ADB immediately suspend the accelerated timeline for adoption of its Energy Policy Update, conduct and publicly release an SEA or ESIA supporting its amendments, and initiate a public comment period after provision of the Policy amendments to the public in accordance with internationally recognized procedural and substantive standards. As detailed below, our objections and these requests are firmly grounded in established international legal obligations and standard practices for public review and opportunity to comment, which are binding on states when acting at ADB and on international financial institutions like ADB. See Appendix A, *post*.

### **I. Abrupt Significant Shortening of Review Period Breaching Legal Obligations Pertaining to Reasonable Timeframe for Review and Effective Participation**

During CSOs May 5, 2025 meeting with Mr. Priyantha Wijayatunga to discuss the Energy Policy review that the Energy Policy requires to occur in 2025, Mr. Wijayatunga relayed that any Energy Policy amendments would likely go to ADB's board for approval in Q1 2026, and that the draft Policy Update would be provided for CSO review prior. This was confirmed and further detailed in a ADB briefing note provided to NGO Forum on ADB and select CSOs on May 30, 2025 providing: "Q4 2025/Q1 2026: Final Draft of Policy Review and Board consideration." See Exhibit 1.

On June 4, 2025, ADB reaffirmed this plan and timeline with CSOs in a NGO consultation at the Asia Clean Energy Forum. See Exhibit 2 (June 4, 2025 photo of ADB presentation.) Accordingly, the undersigned CSOs relied on this timeline to plan and shape their advocacy efforts for the Policy Update.

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<sup>1</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, UNECE (1998) (hereinafter "Aarhus Convention").

<sup>2</sup> Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, Finland, 25 February 1991, in force 10 September 1997, Doc. ECE/1250 (hereinafter "Espoo Convention").

<sup>3</sup> Protocol on Pollutant Release and Transfer Registers, Kiev, 21 May 2003, 2685 UNTS 140, entered into force 29 October 2009 (hereinafter "Kyiv Protocol")

<sup>4</sup> See Appendix A, *post*, analyses detailing the how both ADB, and independently its member state shareholders in ADB policy making, have obligations under international law.

However, in a ADB briefing note dated July 7, 2025, provided only to NGO Forum on ADB and select CSOs on July 8, 2025 - and not widely announced to the public nor posted on ADB's website - ADB abruptly informed CSOs that it was accelerating the adoption of the policy updates to September 2025. See Exhibit 3. During a call with various invited CSO organizations on July 22, 2025, Mr. Priyantha Wijayatunga then informed CSOs that the date for board adoption will be early October 2025. This timeline significantly truncates the period of public engagement that stakeholders, including our organizations, had reasonably anticipated would extend well into Q1 2026.

The accelerated timeline for adoption of ADB's Energy Policy Update is a direct contravention of the requirements under treaties and customary international law pertaining to allowing reasonable timeframes for public participation that allows for the public to prepare for and participate effectively in policy making processes that may impact the environment. This is because the abrupt significant shortening of the longer public review period ADB communicated to CSOs, and that CSOs reasonably relied upon over a course of two months to prepare and plan efforts around (such as by planning campaigns, affected community organizing and awareness efforts, and advocacy to ADB Member States and staff - even involving travel) is thwarting CSOs planned efforts and leaving CSOs scrambling to plan and fit in new lesser advocacy efforts over less time in already packed plans for the year. Thus, not only would the significant shortening of the relied upon review period have the effect of substantially impairing CSOs' and affected communities' effectiveness of participation – at the same time it would create unfair burdens on CSOs who have already allocated resources for various campaigns.

The Aarhus Convention, a cornerstone of international environmental governance, explicitly requires (a) a "reasonable time-frame" for public comment in public participation procedures and (b) "allowing sufficient time for the public to prepare and participate effectively during the environmental decision-making" in the preparation of plans, programs, and policies relating to the environment. See Article 7,<sup>5</sup> Article 6 (2(d), 3, 4, 8)<sup>6</sup>; see also Articles 1, 3, 5. Article 7 of the Aarhus Convention further provides "[e]ach Party shall make *appropriate* practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, *within a transparent and fair framework (emphasis added)*. The three-to-five-month reduction of the public comment and participation period previously communicated

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<sup>5</sup> The Aarhus Convention distinguishes between requirements for plans and programs on the one hand and policies on the other. It is our submission that ADB's adoption of its Updated Energy Policy constitutes a plan or program within the meaning of the Aarhus Convention, but even if it interpreted as equivalent to a State policy, the Aarhus Convention requirements still require (a) a reasonable time-frame for public comment in public participation procedures and (b) allowing sufficient time for the public to prepare and participate effectively during the environmental decision-making for the Policy Update. This is because given the severity of the risks of impacts from the Policy amendments, these requirements are facially appropriate and necessary (see Section II., *post*). Aarhus Convention Article 7 provides: "Each Party shall make *appropriate* practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavor to provide opportunities for public participation in the preparation of policies relating to the environment."

<sup>6</sup> Aarhus Convention Article 6 (3) provides: "The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making."

and relied upon by much of civil society following the Energy Policy Update is inherently unreasonable, unfair, and renders the opportunity to participate ineffective.

As emphasized by the Inter-American Court of Human Rights (IACtHR), procedural rights like public participation are essential for the realization of the right to a healthy environment, and these rights are meaningless without a genuine and reasonable opportunity for input. IACtHR Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia: The Environment and Human Rights, paragraphs 226-232; May 29, 2025 Inter-American Court of Human Rights, Advisory Opinion on the Climate Emergency and Human Rights, OC-32/2025 at paragraph 610 and fn. 1056. Public reliance on an extended period means resources (time, expert analysis, community engagement) have been invested. Abruptly shortening this period undermines public trust and the very notion of a transparent and fair framework. It is clear violation of customary harm prevention and human rights international law established by consistent state procedural practice and domestic legal frameworks, and ADB's European shareholders' Aarhus Convention treaty obligations.

## **II. Failure to Support Policy Amendments with Any or Supported Strategic Environmental Assessment (SEA) or Equivalent ESIA Analysis that is Disclosed to the Public for Review and Comment**

The “Brief Note on Asian Development Bank’s Energy Policy Review May 2025” and the “Brief Note on Asian Development Bank’s Energy Policy Review 07 July 2025” (“Briefing Notes”) ADB provided to NGO Forum on ADB and select CSOs, but not the public or all stakeholders, details numerous anticipated amendments and additions to the Energy Policy that open up the door for, and pose significant risks of, adverse environmental impacts from ADB investments and guarantees. See Exhibits 1 and 3.

However, the Briefing Notes fail to indicate that these proposed changes are supported by comprehensive Strategic Environmental Assessment (SEA) or ESIA impact analysis, or that such documentation is available for public review.

International law mandates that policies and plans likely to have significant environmental effects undergo appropriate assessment and that this assessment, and relevant information to support it, be disclosed for public review.

It is readily apparent that the amendments ADB has in mind for its Energy Policy Update are likely to have significant environmental and social impacts that necessitate thorough public review and robust environmental impact and harm prevention analysis. For example:

- **Contemplated Amendment to Remove the Ban on ADB Investing in Nuclear Power:** The proposed removal of the prohibition on financing investments in nuclear power is a monumental shift for ADB's energy policy. Nuclear power involves complex, long-term environmental and safety concerns, including radioactive waste management, accident risks, and security implications. Such a significant policy change demands the most extensive ESIA analysis thoroughly supported by study that identifies procedures and criteria ADB would use prior to considering nuclear power for investment. Furthermore, a transparent public consultation process that provides for opportunity to review a SEA or

ESIA is needed to address significant public concerns and to best ensure the highest standards of safety and sustainability.

- **Contemplated Addition to Stimulate ADB Investments in Methane Leakages and Routine Gas Flaring Reduction:** While methane reduction is important to meeting the 1.5°C warming limitation objective, an amendment to ADB’s Energy Policy to stimulate investments in existing upstream oil and gas fields for this purpose requires stringent public scrutiny, and careful study and policy controls. There is a risk that such investments could prolong the lifespan of fossil fuel infrastructure or legitimize continued fossil fuel extraction, rather than accelerating a just transition away from it. Detailed ESIA analysis outlining and supporting the criteria for ADB investments in methane leakages and gas flaring reduction informed by public comment is essential to ensure these investments succeed in contributing to decarbonization without creating new lock-in effects.
- **Contemplated Amendment to Promote ADB Support for Co-Firing in Coal and Gas Power Plants:** The cost, benefits, and criteria governing any co-firing with alternative less GHG intensive fuels, including biofuels, green ammonia, green hydrogen, in existing coal and gas power plants requires careful and supported SEA or ESIA analysis. While presented as an emission reduction measure, the environmental integrity of these technologies (e.g., sustainability of biofuel feedstocks, lifecycle emissions of green ammonia/hydrogen production) and their effectiveness in reducing greenhouse gas emissions requires rigorous, independent SEA or ESIA analyses and public review. In particular, policy language and requirements that ensure any co-firing with clean fuels does not extend the lifetime of fossil fuel power plants must contain clear and verifiable criteria to prevent the perpetuation of fossil fuel emissions.
- **Contemplated Carbon, Capture, Utilization and Storage (CCUS) Amendments:** While extending the prohibition of CCUS coupled with enhanced oil recovery to include enhanced gas recovery is a positive step, an amendment to the Energy Policy promoting and allowing ADB investments in the use of depleted oil and gas wells for CO<sub>2</sub> storage in CCUS projects requires extensive SEA or ESIA analysis that examines the environmental criteria and standards ADB will require be met. Such an SEA or ESIA that is vetted through public comment must thoroughly analyze these ADB criteria and standards, along with the long-term safety, permanence, and potential leakage risks of CO<sub>2</sub> storage, as well as the overall energy intensity and effectiveness of CCUS in achieving genuine decarbonization.
- **Contemplated Addition to Stimulate ADB Investments in Critical Minerals and Clean Energy Technology Manufacturing:** Amending the Energy Policy to advance ADB's investments in this area, while seemingly aligned with energy transition, carries significant environmental and social risks related to mining, processing, and manufacturing. These activities can lead to habitat destruction, water pollution, human rights abuses, and labor issues. Without a detailed SEA or ESIA and public review and consultation on the specific safeguards and operational approaches, this could undermine the very sustainability goals the Policy aims to achieve.

For all the above reasons, a full and supported SEA (or equivalent ESIA) is required under for at least these, if not all, of ADB’s contemplated Energy Policy amendments for ADB and its member states to satisfy their procedural and substantive harm prevention obligations under international law, which specifically include the following:

#### **A. Procedural SEA / ESIA Obligations**

The Espoo Convention and its Kyiv Protocol require that ADB and most of its European member states, ensure a full SEA is conducted that provides a full and supported environmental impact and mitigation analysis of the amendments to the Energy Policy, and that this SEA and its supporting studies are released to the public for review and comment before adoption of the Policy amendments. See Protocol on Strategic Environmental Assessment (SEA Protocol), 2003 (hereinafter “Kyiv Protocol”) at Articles 4 (2) and 2(7) (see analysis of these articles, *post*); See also, Espoo Convention Article 2 paragraphs 7 and 6, Article 3 paragraphs 4, 8, Article 4 paragraph 2.<sup>7</sup> These treaties are instruments of international law that are binding on its signatories, which include 35 European States, including those which are ADB shareholders.

While the Kyiv Protocol distinguishes between plans and programs on the one hand and legislation and policies on the other, it is our submission that ADB’s adoption of its Amended Energy Policy with its contemplated amendments constitutes a plan or program within the Kyiv Protocol’s meaning. This is because the Kyiv Protocol describes exactly what ADB’s contemplated amendments to its Energy Policy constitute – **an energy plan which sets the framework for future permission for ADB to invest in specific energy projects, including for nuclear energy projects**. It provides:

A strategic environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, **energy**, industry including mining, ..., **and which set the framework for future development consent for projects** listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.

Kyiv Protocol at Article 4 (2) (emphasis added). The Kyiv Protocol Annex I list, includes but is not limited to, the following projects ADB’s amended Energy Policy would enable consent for ADB to invest in and or guarantee:

Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors;  
Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste; Large-diameter oil and gas pipelines; Major mining, on-site extraction and processing of metal ores or coal; and Major storage facilities for petroleum, petrochemical and chemical products.

and the Kyiv Protocol Annex II list, includes but is not limited to, the following projects ADB’s Amended Energy Policy would enable consent for ADB to invest in and or guarantee:

Nuclear power stations and other nuclear reactors; Industrial installations for the production of electricity, steam and hot water; Industrial installations for carrying gas, steam and hot water; deep drillings; underground storage of combustible gases; Quarries, open cast mining; underground mining; Extraction of minerals by marine or fluvial dredging; Pipelines for transport of gas or oil...

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<sup>7</sup> The member states of the UN Economic Commission for Europe that are party to the Espoo Convention comprise of 56 States located in Europe, Northern America and Central Asia).

Kyiv Protocol, Annex I-II at 16-23. The Kyiv Protocol further provides that after providing public notice to inform the screening of the plan's environmental impacts, if a state determines that a SEA is not required because it deems the plan not likely to have a significant environmental impact, it must timely notify the public and for its reasons. Kyiv Protocol at Article 5 (1)(4). *We note ADB has not provided any such notification.*

And even if the Amended Energy Policy is considered a policy under the Espoo Convention and or Kyiv Protocol, these treaties still require a SEA (or ESIA) to be conducted for, and provided to the public in advance of, the Energy Policy Update approval. This because it is *appropriate* considering (a) the likelihood of significant environmental impacts from the contemplated Energy Policy amendments and (b) the purpose of SEAs and ESIA's to provide the public with an opportunity to inform and help prevent adverse environmental impacts. See Section II, *ante*, detailing likely environmental impacts; See Espoo Agreement Article 2 (7) providing:

Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent *appropriate*, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

(emphasis added). See Kyiv Protocol Article 15 (1)-(3) providing that States, “[c]onsidering the *appropriate* principles and elements of this Protocol”... and “taking into account the need for transparency in decision-making,” “shall endeavor to ensure ... environmental concerns are considered and integrated to the extent appropriate in the preparation of its proposals for policies...that are likely to have significant effects on the environment”... “(emphasis added) combined with the Preamble to the Kyiv Protocol providing:

Recognizing that strategic environmental assessment should have an important role in the preparation and adoption of plans, programmes, and, *to the extent appropriate*, policies and legislation, and that the wider application of the principles of environmental impact assessment to plans, programmes, policies and legislation will further strengthen the systematic analysis of their significant environmental effects

(emphasis added). See also Preamble to Kyiv Protocol “Acknowledging the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998” ...and... “Conscious, therefore, of the importance of providing for public participation in strategic environmental assessment.”

The procedural Espoo Convention and Kyiv Protocol environmental impact assessment obligations also are well established customary international law that applies to all states in their decision making at ADB, and to ADB as an international organization. See “Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), ICJ Rep 253 (2015) (holding when a State activity carries risk of transboundary environmental harm, and ESIA is required); Case Concerning Pulp Mills on the River Uruguay (Arg. v. Uruguay), 2010 I.C.J. 14 (Apr. 20) (underscoring the importance of the procedural obligation to conduct an ESIA for activities that might cause significant transboundary harm, as an integral part of the duty of due diligence to prevent environmental damage); Case Concerning the Gabčíkovo-Nagymaros

Project (Hung. v. Slov.), I.C.J. 7 (Sept. 25, 1997); See Appendix A detailing ADB's obligations, and separately its member states obligations when making policy decisions at ADB.

## 2.) Substantive Due Diligence SEA / ESIA Obligations

Sources of law that apply to the ADB's and its member states' due diligence obligations are customary international law, informed by principles such as harm prevention and the precautionary approach, and human rights treaties.<sup>8</sup> "Customary international principles require that states take all necessary measures to prevent transboundary harm, and exercise precaution when making decisions that pose a risk of harm to the environment."<sup>9</sup> For instance, [u]nder the harm prevention principle, states are required to 'take all appropriate measures to prevent significant transboundary harm or at any event minimize the risk thereof' from activities in its territory or arising under its jurisdiction or control."<sup>10</sup> This principle overlaps with others, including the "responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyond national jurisdiction"—articulated in the Rio Declaration—and the requirement that states take precautionary measures even in the absence of scientific certainty as to significant harm."<sup>11</sup>

Human rights law continues to evolve to encompass protection of the environment,<sup>12</sup> and it is firmly established "[c]limate change is one of the greatest threats to human rights."<sup>13</sup> The UN General Assembly recognized the right to a clean, healthy, and sustainable environment as a human right in 2022.<sup>14</sup> Moreover, "human rights treaties guarantee rights to life and property—rights that international and domestic courts have found implicate a positive obligation to reduce environmental risks, including risks of harm from climate change."<sup>15</sup> "Cases from the International Court of Justice,

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<sup>8</sup> See Appendix A, Sections I-II; Ana Sofia Barros, *Governance as Responsibility: Member States as Human Rights Protectors in International Financial Institutions* (2019) (hereinafter "Barros") at Chapter/Section III; Baine P. Kerr, *All Necessary Measures: Climate Law for International Shipping*, *Virginia Journal of International Law*, 64 Va. J. Int'l L. 523 (2024) (available at: <https://www.vjil.org/all-necessary-measures-climate-law-for-international-shipping>) (hereinafter "Kerr, All Necessary Measures") at 525-527 and note 16 (detailing state's requirements under customary international law); Jose Viñuales, *Due Diligence in International Environmental Law: a Fine-Grained Cartography*, in *Due Diligence in the International Legal Order*, 113 (Heike Krieger et al. eds., 2021) (hereinafter "Viñuales"); Benoit Mayer, *Interpreting States' General Obligations on Climate Change Mitigation: a Methodological Review*, 28 *RECIEL* 107 (2019); Benoit Mayer, *Climate Change Mitigation as an Obligation under Customary International Law*, 48(1) *YALE J. INT'L L.* 105, 130-131 (2023)); Kerr, *All Necessary Measures* at 560-561, and fn. 279.

<sup>9</sup> Kerr, *All Necessary Measures* at 527, and fn. 17; Viñuales at 113; *see also*, Benoit Mayer, *Interpreting States' General Obligations on Climate Change Mitigation: a Methodological Review*, 28 *RECIEL* 107 (2019); Benoit Mayer, *Climate Change Mitigation as an Obligation under Customary International Law*, 48(1) *YALE J. INT'L L.* 105, 130-131 (2023).

<sup>10</sup> Kerr, *All Necessary Measures* at 541, and fn. 120; United Nations, *International Law Commission (ILC), Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities*, A/RES/56/82, (Dec. 12, 2001), at art. 3, commentary to art. 3, ¶ 18; Viñuales at 124.

<sup>11</sup> Kerr, *All Necessary Measures* at 541, and fn. 121; Viñuales at 116-117 (citing Rep. of the UN Conf. on Envir. and Devel., *Rio Declaration on Environment and Development*, A/ CONF.151/ 26 (1992); *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, Case No. 17, 2011 ITLOS Rep. 10, ¶¶ 125-135.

<sup>12</sup> Kerr, *All Necessary Measures* at 550.

<sup>13</sup> The United Nations Environment Programme (UNEP) - "[c]limate change is one of the greatest threats to human rights of our generation posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across the world."

<sup>14</sup> Kerr, *All Necessary Measures* at 550, and fn. 188; G.A. Res. 76/300, *The Human Right to a Clean, Healthy and Sustainable Environment*, at 3 (July 28, 2022).

<sup>15</sup> Kerr, *All Necessary Measures* at 527, and fn. 20; *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20, ¶¶ 573-74 (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng?i=001-233206> (holding that Switzerland is

the International Tribunal for the Law of the Sea, and the European Court of Human Rights indicate that when states make decisions within an international organization, they must adhere to their human rights due diligence obligations and substantive obligations related to the organization's area of competence."<sup>16</sup> As directly related to climate change impacts, "recent opinions from human rights treaty bodies have adopted a risk-based test for when human rights due diligence obligations apply to climate change: if it is reasonably foreseeable that an activity under a state's jurisdiction or control will cause a risk of climate harm, the state must diligently prevent it within the limits of its capacity."<sup>17</sup>

In sum, "[d]ue diligence requires states to 'employ all means reasonably available to them' to prevent a violation 'so far as possible'."<sup>20</sup> The types of conduct that could breach a due diligence obligation include action, inaction, or deficient action.<sup>21</sup> Cases from the International Court of

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required to quantify GHG emissions limitations through a carbon budget and implement reduction measures); *Budayeva v. Russia*, App. No. 15339/02, ¶ 116, 133 (Mar. 20, 2008), <https://hudoc.echr.coe.int/eng?i=001-85436> (holding that states have a positive obligation to protect life and property from environmental risks). The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v *Stichting Urgenda* (Urgenda) [2019] Dutch Supreme Court 19/00135 (Engels); *See also*, Jaqueline Peel & Harri Osofsky A Rights Turn in Climate Change Litigation, 7(1) *TRANSNAT'L ENVTL. L.* 37, 48 (2018) (discussing case law); Siobhan McInerney-Lankford, Climate Change and Human Rights: an Introduction to Legal Issues, 33 *HARVARD ENVTL. L. REV.* 431, 433 (2009). Other courts have recognized the right to a healthy environment as an autonomous right. *See, e.g.*, *The Environment and Human Rights* (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 62–63, 101–03 (Nov. 15, 2017) [hereinafter *Colombia Advisory Opinion*].

<sup>16</sup> Kerr, *All Necessary Measures* at 529, and fn. 32 (citing numerous cases and scholarly articles in support).

<sup>17</sup> Kerr, *All Necessary Measures* at 527, and fn. 21 (citing UN Human Rights Committee, 'Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019,' UN Doc. CCPR/C/135/D/3624/2019 (Sept. 22, 2022), ¶ 8.13; UN Committee on the Rights of the Child, 'Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019,' No. CRC/C/88/D/104/2019 ¶ 10.5-7 (Oct. 8, 2021); *see* Case Comment, Committee on the Rights of the Child Extends Jurisdiction over Transboundary Harms; Enshrines New Test, *Saachi v. Argentina*, 135(7) *HARVARD L. REV.* 1981 (2022); Federica Violi, The Function of the Triad 'Territory,' 'Jurisdiction,' and 'Control' in Due Diligence Obligations, in *Due Diligence in the International Legal Order* 75 (Heike Krieger et al. eds., 2021) at 81-82 (in *Colombia Advisory Opinion*, supra note 20 "court equated jurisdiction with causality and ultimately with imputability, thus altering the vertical understanding of human rights jurisdiction, and eventually risk proximity.")).

<sup>18</sup> *See* European Court of Human Rights case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (judgement available [here](#)), the May 21, 2024 International Tribunal on the Law of the Sea Advisory Opinion in response to the Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (advisory opinion available [here](#)), the May 29, 2025 Inter-American Court of Human Rights, Advisory Opinion on the Climate Emergency and Human Rights, OC-32/2025 (Advisory Opinion Available [here](#)); and the July 23, 2025 Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change (Advisory Opinion Available [here](#)); *See also*, Kerr, *All Necessary Measures* at 550, and fn. 189.

<sup>19</sup> International Obligations Governing the Activities of Export Credit Agencies in Connection with the Continued Financing of Fossil Fuel-Related Projects and Activities, Legal Opinion, Kate Cook and Jorge E. Viñuales, March 24, 2021, available at: <https://priceofoil.org/2021/05/04/eca-legal-opinion/> (hereinafter "Cook and Viñuales") at ¶¶ 47, 132-146, and fn. 182 (citing Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paragraph 50).

<sup>20</sup> Kerr, *All Necessary Measures* at 556-557, and fn. 244; Case Concerning the Application on the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosn. & Herz. v. Serb. & Montenegro*), Judgment, 2007 I.C.J. Rep. 43, ¶ 430 (Feb. 26, 2007); SRFC Advisory Opinion, supra note 203, ¶ 129; John Dugard & Annemarieke Vermeer-Künzli, The Elusive Allocation of Responsibility to Informal Organizations: the Case of the Quartet on the Middle East in *Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie*, 265 (Maurizio Ragazzi ed., 2013); *see also* Barros at 158, n. 916.

<sup>21</sup> Kerr, *All Necessary Measures* at 556, and fn. 245 (citing Barros at 121-122, 124, 195).

Justice, the International Tribunal for the Law of the Sea,<sup>22</sup> and the European Court of Human Rights indicate that when participating in the governing boards of international financial institutions, member states have due diligence obligations to take all measures to ensure that they know about risks to human rights before approving policies governing and directing their investments and to mitigate those risks their policies could pose.<sup>23</sup> The same reasoning applies to states' decision-making within the ADB. Accepting that ADB member states are bound by their human rights obligations when acting as decision-makers within the ADB, they are therefore under an obligation of conduct to do all they can in that role to make sure the ADB's policies decisions, and actions or inactions, uphold human rights.<sup>24</sup> Applying the harm prevention principle and precautionary principle yields the same due diligence obligations.<sup>25</sup>

Accordingly, in light of the environmental and social risks and impacts from ADB's financing activities, customary international principles and human rights law impose an equivalent obligation mandating that the ADB and its member states use best available and practiced methods, and take all measures, to diligently account for, prevent, and mitigate environmental and social harms. **This means that ADB and its member states must ensure ADB diligently assesses and prevents the risk of climate harm from ADB's Energy Policy Update to extent of their capacities prior to approval of ADB's Energy Policy Update in a manner that meets the best reasonably available and practiced standard – and this standard is conducting a full and supported SEA or ESIA for all proposed Energy Policy amendments that may have an adverse effect on the environment.**

“As with other international environmental obligations, the required degree of diligence differs based on states' development and individual circumstances.”<sup>26</sup> Thus, like in the context of transboundary harm from hazardous activities, a highly developed or technologically advanced state has a greater scope of diligent conduct than other states.<sup>27</sup> This further supports that ADB and its Global North Member States must use their best efforts, and best available practiced methods, to ensure that environmental and social impacts from ADB's Energy Policy Update are fully assessed, avoided, and mitigated to the furthest extent feasible prior to ADB's adoption of the Energy Policy Update.

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<sup>22</sup> Recently, the International Tribunal for the Law of the Sea (ITLOS) Advisory Opinion on Climate Change and International Law (2024) reinforced the concept of "stringent due diligence" for states in preventing environmental harm, which implicitly requires robust assessment and public input. Without comprehensive EIA and supporting documentation, the public cannot adequately assess and help inform the potential ramifications of the proposed amendments to ADB's Energy Policy, severely hindering their ability to provide informed comments needed to prevent and mitigate adverse policy impacts.

<sup>23</sup> Kerr, All Necessary Measures at 560-561, and fn. 279; Barros at Chapter/Section III; see also Pasquale De Sena, International Monetary Fund, World Bank and Respect for Human Rights: A Critical Point of View, 20(1) ITALIAN Y.B. INT'L L. 247, 257 (2010).

<sup>24</sup> See fns. 20-23, 25-26; Kerr, All Necessary Measures at 546-550; Cook and Viñuales at ¶¶ 47, 132-146, and fn. 182 (citing Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paragraph 50; Ana Sofia Barros, Member States and the International Legal (Dis)order Accounting for the notion of Responsible Governance, International Organizations and Member State Responsibility, Critical Perspectives, Brill Nijhoff 2017, Chapter 4 at 66-71).

<sup>25</sup> Kerr, All Necessary Measures at 541, 561-562; Cook and Viñuales at ¶¶ 41, 44, 46, 47, 48 (PDF at 29-34).

<sup>26</sup> Kerr, All Necessary Measures at 529, and fn. 29; Viñuales at 125-126; Jaqueline Peel, Climate Change, in Shared Responsibility, 1033, 1041-1044 (Andre Nollkaemper, ed., 2018) (failure to stop, reduce or regulate emitting activities could be basis for finding state did not discharge due diligence obligation of harm prevention).

<sup>27</sup> Kerr, All Necessary Measures at 529, and fn. 30; United Nations, International Law Commission (ILC), Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, A/ RES/ 56/ 82, 12 December 2001, commentary to art. 3, ¶18; Cook and Viñuales at ¶47.

Accordingly, as a central component of satisfying their respective due diligence obligations to prevent harm under international law, ADB and its member states have a duty to conduct a thorough and supported SEA evaluating and supporting harm avoidance measures for all amendments to ADB's Energy Policy Update prior to its adoption. ***And as a central part of this SEA, ADB must allow for public review and comment.*** This is because for quite some time, it has been universally accepted that at the minimum, the opportunity for public review of a policy and its SEA well prior to policy approval is a fundamental element of SEA process for programs, plans, and policies around the world.<sup>28</sup> This is demonstrated by the inclusion of public disclosure, and opportunity for public review of, a policy or plan and its environmental impact analysis well prior to plan, programme, or policy approvals in the vast majority of countries' environmental and social impact assessment laws and within international organizations.<sup>29</sup>

As documented in 2018 United Nations Environment Programme (UNEP) Report with examples from states around the world,

*There is a wide consensus that public participation constitutes a fundamental element of EIAs – or in fact even that EIA is not an EIA without public participation. It is also widely recognized that public participation is not only a goal in itself, but that it is a key to accurate and effective environmental assessments... Due to the fact that public participation is considered an integral part of the EIA process, all countries have enacted some kind of legal measure for public participation in EIAs.... The review stage of the EIA process, i.e. the review of the EIA report prior to the decision on whether a project can go ahead taking environmental considerations into account, is a key element of the EIA process. The objective is to verify whether the information provided is sufficient and adequately presented so as to form a sound basis for decision-making. Public participation, comments from the public on the EIA report are an integral part of the review process in many countries...*

*As in the case of EIAs, public participation is a fundamental element of the SEA process. It serves the same objective, but at a higher level of decision-making, thus defining the parameters for development, for example in a sector or geographical area [citation omitted]. The need to ensure that not only the most relevant environmental information is available and considered in the final decision-making and implementation, but also that divergent interests, aims and perspectives of a range of stakeholders are adequately taken into account, illustrates the key importance of making SEA a collaborative process which should prominently incorporate public participation mechanisms [citation omitted]... Most SEA legislation requires public participation “only” at the assessment and/ or review stage, thus when an SEA is being developed to assess the environmental impact of a draft plan, programme or policy, and prior to final decision-making of the competent authority. Thereby, the most widely used mechanism is the opportunity to submit comments following publication of relevant documents, despite the widely acknowledged limitations of this approach...<sup>30</sup>*

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<sup>28</sup> See e.g., UNEP, *Assessing Environmental Impacts: A Global Review of Legislation* (2018) (hereinafter “UNEP EIA Report”) at Chapter 1 Sections 1.4-1.5 at 3-8, Chapter 3. EIA systems – Legal and institutional frameworks for EIAs, Section 3.2.3 Public participation at 50-66; Chapter 4. SEA systems – Legal and institutional frameworks for SEAs, Section 4.2.3 Public participation at 99-103.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

While the UNEP Report documents that there is no general agreement in laws or the literature on what constitutes good practice in relation to public participation in SEAs, it finds most legislation in Global North and South states around the world make it mandatory to publicly publish information on disclosing new policies or policy amendments that may have a significant impact on the environment when the policy is being considered, to make the draft SEA reports publicly available, and to provide the opportunity to submit comments on the SEA reports and the policy well prior to project approval.<sup>31</sup>

### **III. Failure to Provide a Draft Energy Policy Update for Public Review**

A complete draft of the Energy Policy Update, incorporating all contemplated additions and amendments with precise proposed language, has not been formally released for public review. Further, the ADB Briefing Notes outlining contemplated amendments to the Policy, was only provided to NGO Forum on ADB and select CSOs, and not the public at large.

Meaningful public participation is impossible without access to the specific text under consideration. Moreover, failure to provide a full draft of Energy Policy Update for public review, and separately failure to release to the general public and provide all stakeholders with any information about the contemplated Policy amendments, both violate the Article 7 and 6 Aarhus Convention requirements for public participation in plans and policies relating to the environment.<sup>32</sup> These failures are also inconsistent with Principle 10 of the Rio Declaration on Environment and Development (1992) that provides that the public shall have "appropriate access to information concerning the environment... and the opportunity to participate in decision-making processes." Thus, without the public being given the opportunity to review the Amended Energy Policy that ADB contemplates will be before its member states for adoption, not only will the public will be precluded from a genuine opportunity to participate and comment. ADB and its member states will be violating international law.

### **IV. Failure to Open an Official Period to the Public to Receive Written Comments on the Draft Energy Policy Update, and Insufficient Period to Comment**

While ADB staff has met with CSOs to discuss the Energy Policy Updates, ADB has yet to provide a clearly defined period *to the public* for receiving written comments on the proposed Policy amendments, yet alone the policy language for the amendments to comment on.<sup>33</sup> This absence of a formal comment window is a critical procedural flaw that violates international law. The Aarhus Convention Article 6 (2)(d) and 6 (3) specifically mandate informing the public "when and where the public concerned can submit its comments or questions." See also fns. 4, 5 *ante*, and Aarhus Convention Article 7. The lack of such a defined period deprives stakeholders

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<sup>31</sup> *Id.*

<sup>32</sup> The "Aarhus Convention: An Implementation Guide" clarifies that "appropriate practical provisions" for participation generally include making relevant information available. The more complete the information provided, the more effective the public participation can be. Not providing the full text of a policy would severely limit the public's ability to provide meaningful comments.

<sup>33</sup> After ADB's July 22, 2025 videoconference consultation with CSOs where an overview of the concerns in this letter were raised, an email sent on behalf of Priyantha Wijayatunga provided that the comment deadline for the Energy Policy Update has been extended to August 8, 2025. However, this is the first notification we received about any comment deadline. See Exhibit 3.

of a crucial, formal mechanism to record their views, concerns, and proposed amendments. It also undermines the accountability of the decision-making process.

While on July 23, 2025 ABD informed select CSOs of a two-and-a-half-week comment period closing August 8, 2025, this notification and opportunity for comment falls far short of ADB's and its shareholders' obligations under customary international law and Aarhus Convention to provide a reasonable amount of time for **public** comment. Aarhus Convention Articles 7, 6(2)(d), 6(3). Not only has neither the public nor the communities that will be impacted by ADB's Energy Policy been notified of the comment period, but the comment period itself falls exceptionally short of the requisite reasonable timeframe needed to allow the public to prepare and participate effectively in the decision-making process. Considering the complexity and severe risk of substantial adverse environmental and social impacts, at least 60 days from the date of release of a final draft of the updated Policy with precise proposed amendments and supporting SEA or EIA analysis would be appropriate and good international practice.

### **Conclusion and Demands:**

The collective impact of these procedural deficiencies – the accelerated timeline, the absence of environmental impact analysis documentation, the failure to open a formal public comment period or otherwise adequate comment period, and the lack of a publicly available draft of the contemplated amended Energy Policy – severely compromises the legality and integrity of the ADB's Energy Policy Update process. Should ADB proceed in sending the amended Energy Policy to its board for approval in early October, such an action would violate ADB and its member states' obligation under international law, and result in an updated Policy that fails to adequately address environmental and social risks or leverage opportunities for truly sustainable development.

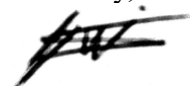
We thus urge the ADB Board of Directors and its Member State Shareholders to immediately:

1. **Revert to the Q4 2025 timeline for release of the final draft Policy amendments and to the Q1 2025 timeline for adoption of the ADB Energy Policy Update**, allowing a reasonable timeframe for public review and comment;
2. **Publicly release a full draft of the Energy Policy Update** for comprehensive public review;
3. **Conduct and publicly release a comprehensive SEA analysis** (or equivalent EIA documentation) for all proposed changes to the Policy, with full supporting documentation for all amendments;
4. **Initiate an official, adequately publicized period for written public comments** on the full draft of the proposed amended Energy Policy and its SEA (or EIA), ensuring sufficient time (a minimum of 60 days, given the policy's complexity and regional significance) for all stakeholders to meaningfully review and comment.

The ADB's credibility as a multilateral development bank committed to sustainable development and good governance hinges on its adherence to principles of transparency, accountability, and genuine public participation. We trust that you will take our concerns seriously and implement immediate steps to rectify these procedural shortcomings that pose substantial risk to the environment and communities ADB is supposed to be benefiting.

Considering the gravity of the matter, we respectfully request that ADB respond in full to our concerns and requests in this letter in writing by August 4. We look forward to your timely response and engagement with us on these issues. Please confirm receipt of this submission, let us know if we can provide any additional information.

Sincerely,



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## **Appendix A: ADB's and its Member States' Climate Change Due Diligence and Harm Prevention Obligations Under International Law**

### **I. ADB's Member States' General Obligations Under International Law**

International law has long provided that if a state breaches an obligation established by a treaty or customary international law it can be held responsible in international tribunals or applicable domestic courts.<sup>34</sup> Courts have found that “when member States participate in [an] international organization’s decision-making processes, they are [ ] carrying out state acts that have to comport with their international obligations.”<sup>35</sup> The International Court of Justice made this finding in *FYROM v. Greece*.<sup>36</sup> In a dictum in *Southern Bluefin Tuna*, the International Tribunal for the Law of the Sea also found it could examine state conduct within an international organization to determine compliance with its legal obligations.<sup>37</sup> “[These courts and] the European Court of Human Rights indicate that when states make decisions within an international organization, they must adhere to their human rights obligations and substantive obligations related to the organization’s area of competence.”<sup>38</sup> Scholars in the field have come to similar conclusions. Barros persuasively applies those cases to the governing boards of international financial institutions, arguing that member states have due diligence obligations to take all measures to ensure that they know about risks to human rights before approving loans, mitigate those risks when making decisions, and ensure that loans already issued conform to their human rights conditions.<sup>39</sup> Kerr and Barros also point out that the Articles on State Responsibility—which were applied by the International Court of Justice in *FYROM v. Greece*—indicate that the conduct of state representatives when decision-making at international organizations can be attributed to a state and independently assessed.<sup>40</sup>

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<sup>34</sup> Kerr, B. P. (2020), Regulating the Environmental Integrity of Carbon Offsets for Aviation: the International Civil Aviation Organization’s Additionality Rule as International Law. *Carbon and Climate Law Review*, 14(4) (hereinafter “Kerr, ICAO”) at 3; Kerr, Legal Accountability Int. Carbon Markets, at 152, 157-159 (Section 3.2); For examples, see fns. 34-39, 45, *post* and 14-27 *ante*; Kerr, All Necessary Measures at 9-10; Kerr, Erga Omnes Obligation; Baine P. Kerr, Binding the International Maritime Organization to the United Nations Convention on the Law of the Sea, 19 INT’L ORG. L. REV. 391 (2022) (hereinafter “Kerr, IMO”).

<sup>35</sup> Baine P. Kerr, All Necessary Measures: Climate Law for International Shipping, Virginia Journal of International Law, 64 Va. J. Int’l L. 523 (2024) at 523-570 (available at: <https://www.vjil.org/all-necessary-measures-climate-law-for-international-shipping>) (hereinafter “Kerr, All Necessary Measures”) at 558-559, and fn. 257; Ana Sofia Barros & Cedric Ryngaert, The Position of Member States in (Autonomous) Institutional Decision-Making, 11 INT’L ORG. L. REV. 53 (2014) (hereinafter “Barros & Ryngaert”) at 53, 55.

<sup>36</sup> Kerr, All Necessary Measures at 558, and fn. 258; Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece), Judgment, 2011 I.C.J. Rep. 644 (Dec. 5) [hereinafter *FYROM*].

<sup>37</sup> Kerr, All Necessary Measures at 558-559, and fn. 264; *Southern Bluefin Tuna* (N.Z. v. Japan; Austl. v. Japan), Cases Nos. 3 and 4, Order of Aug. 27, 1999, ITLOS Reports 1999 [hereinafter *Southern Bluefin Tuna*], ¶ 50; See, Moritaka Hayashi, The Southern Bluefin Tuna Cases: Prescription of Provisional Measures by the International Tribunal for the Law of the Sea, 13 TULANE ENV. L. J. 361 (2000).

<sup>38</sup> Kerr, All Necessary Measures at 529-530, 559-560, and fn. 32; *FYROM*, *Southern Bluefin Tuna* at ¶ 50, *Gasparini v. Italy* and *Belgium*, App. No. 10750/03, (May 19, 2009), <https://hudoc.echr.coe.int/eng?i=001-92899>; *Perez v. Germany*, App. No. 15521/08 (Jan. 6, 2015), <https://hudoc.echr.coe.int/eng?i=001-151049>; *Klausecker v. Germany*, App. No. 415/07 (Jan. 6, 2015), <https://hudoc.echr.coe.int/eng?i=001-151029>.

<sup>39</sup> Kerr, All Necessary Measures at 560-561, and fn. 279; Ana Sofia Barros, Governance as Responsibility: Member States as Human Rights Protectors in International Financial Institutions (2019) (hereinafter “Barros”) at Chapter III; *see also* Pasquale De Sena, International Monetary Fund, World Bank and Respect for Human Rights: A Critical Point of View, 20(1) ITALIAN Y.B. INT’L L. 247, 257 (2010).

<sup>40</sup> Kerr, All Necessary Measures at 560-561, and fn. 282; Barros at 94.

## II. ADB's General Obligations Under International Law

International organizations,<sup>41</sup> including the ADB, can also be held responsible for breaching their obligations, including those established by a treaty or customary international law.<sup>42</sup> This has happened numerous times, in various domestic courts.<sup>43</sup> The ILC DARIO Articles<sup>44</sup> provide a structural roadmap for evaluating an organization's obligation established by a treaty or customary international law. International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries,' Yearbook of the International Law Commission (2011), vol. II, Part Two, UN Doc. A/66/10 (hereinafter "ILC DARIO Articles").<sup>45</sup> ILC DARIO Article 10 provides that there 'is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.'<sup>46</sup> In addition, "the ICJ found long ago that international organizations are bound by 'obligations incumbent upon them under general rules of international law.'" <sup>47</sup> And even in the absence of an express textual indication that an international organization is bound by a treaty's obligations, an international organization is transitively bound to the same treaty obligations as their members, in a way that avoids or resolves treaty conflicts between organizations and their member states.<sup>48</sup> Thus, for example, the ADB itself must adhere to its member states' obligations under Article 4 of the UNFCCC to reduce or limit GHG emissions and their obligation under Articles 2 and 3 of the Paris Agreement to take ambitious efforts to hold global warming to less than 1.5°C.

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<sup>41</sup> An 'international organization' is 'an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality.' Baine P. Kerr, 'Clear skies or turbulence ahead? The international civil aviation organization's obligation to mitigate climate change' (2020) 16(1) Utrecht Law Review (hereinafter "Kerr, Clear Skies") at 104, fn. 25 (citing Chicago Convention, note 11, Art. 64).

<sup>42</sup> Kerr, ICAO at 3, and fn. 23 (citing Jan Klabbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act,' (2017) 28(4) European Journal of International Law, 1137).

<sup>43</sup> Kerr, B. (2022). Mitigating the Risk of Failure: Legal Accountability for International Carbon Markets. Utrecht Law Review, 18(2), 145-161 (hereinafter "Kerr, Legal Accountability Int. Carbon Markets") at 152, fn. 57 and 58 (citing August Reinisch, *International Organizations Before National Courts* (2nd edn, Cambridge 2009) 28, notes 124-130 (listing and discussing cases), and fn. 61 (citing *Jam v International Finance Corp*, 586 US \_\_ (2019) 5-6; Clemens Treichl and August Reinisch, 'Domestic Jurisdiction over International Financial Institutions for Injuries to Project-Affected Individuals: The Case of *Jam v International Finance Corporation*' (2019) 16 International Organizations Law Review 133).

<sup>44</sup> International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries,' Yearbook of the International Law Commission (2011), vol. II, Part Two, UN Doc. A/66/10 (hereinafter "ILC DARIO Articles").

<sup>45</sup> Kerr, ICAO at 3.

<sup>46</sup> Kerr, ICAO at 4; ILC DARIO Articles, Art. 10.

<sup>47</sup> Kerr, Clear Skies at 112, and fn. 134 (citing *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 73, para. 37. *Reparation for Injuries*, note 50, 174).

<sup>48</sup> Kerr, Clear Skies at 112, and fn. 138 (citing K. Daugirdas, 'How and Why International Law Binds International Organizations,' (2016) 57 Harvard International Law Journal, 137, 350, 364; citing F. Megret & F. Hoffman, 'The UN as a Human Rights Violator-some Reflections on the United Nations Changing Human Rights Responsibilities,' (2003) 25 Human Rights Quarterly, 318 (arguing that United Nations should be transitively bound by their member states' treaty obligations), <<https://www.jstor.org/stable/20069667>>; O. De Shutter, 'Human Rights and the Rise of International Organizations: The Logic of Sliding Scales in the Law of International Responsibility,' (2009) (CRIDHO Working Papers Faculte de Droit de L'Universite Catholique de Louvain), 10 (discussing functional succession theory), <https://ssrn.com/abstract=2446913>; see also, Kerr, Clear Skies at 113, and fn. 145 (citing Daugirdas, note 137, 368; Megret, note 138, 318).

# **EXHIBIT I**

**Attachments:** ACEF 2025\_EPR\_NGOF\_Brief Note.pdf, 2021 Energy Policy Review Session.docx

----- Forwarded message -----

From: **Haidy Seang Ear-Dupuy** <[hedupuy@adb.org](mailto:hedupuy@adb.org)>

Date: Fri, May 30, 2025 at 12:52 PM

Subject: Energy Policy Review Meeting 4June--agenda and background info

To: Jen Derillo <[jen@forum-adb.org](mailto:jen@forum-adb.org)>, Rayyan Hassan <[rayyan@forum-adb.org](mailto:rayyan@forum-adb.org)>, [ticia@ceedphilippines.com](mailto:ticia@ceedphilippines.com) <[ticia@ceedphilippines.com](mailto:ticia@ceedphilippines.com)>, [ipsoresca.ceedph@gmail.com](mailto:ipsoresca.ceedph@gmail.com) <[ipsoresca.ceedph@gmail.com](mailto:ipsoresca.ceedph@gmail.com)>, [j.gargandera@protonmail.com](mailto:j.gargandera@protonmail.com) <[j.gargandera@protonmail.com](mailto:j.gargandera@protonmail.com)>, [mquirino.lrc@gmail.com](mailto:mquirino.lrc@gmail.com) <[mquirino.lrc@gmail.com](mailto:mquirino.lrc@gmail.com)>, [aaronpedrosa02@gmail.com](mailto:aaronpedrosa02@gmail.com) <[aaronpedrosa02@gmail.com](mailto:aaronpedrosa02@gmail.com)>, [seo@climatejustice.ph](mailto:seo@climatejustice.ph) <[seo@climatejustice.ph](mailto:seo@climatejustice.ph)>, [claudette.arboleda@gmail.com](mailto:claudette.arboleda@gmail.com) <[claudette.arboleda@gmail.com](mailto:claudette.arboleda@gmail.com)>, [paolo@apmdd.org](mailto:paolo@apmdd.org) <[paolo@apmdd.org](mailto:paolo@apmdd.org)>, [miriam@no-burn.org](mailto:miriam@no-burn.org) <[miriam@no-burn.org](mailto:miriam@no-burn.org)>, [albrecht@no-burn.org](mailto:albrecht@no-burn.org) <[albrecht@no-burn.org](mailto:albrecht@no-burn.org)>, [marjorie@re-course.org](mailto:marjorie@re-course.org) <[marjorie@re-course.org](mailto:marjorie@re-course.org)>, [tanya@internationalrivers.org](mailto:tanya@internationalrivers.org) <[tanya@internationalrivers.org](mailto:tanya@internationalrivers.org)>, [tbatangan@rightsinddevelopment.org](mailto:tbatangan@rightsinddevelopment.org) <[tbatangan@rightsinddevelopment.org](mailto:tbatangan@rightsinddevelopment.org)>, [nazareth@forum-adb.org](mailto:nazareth@forum-adb.org) <[nazareth@forum-adb.org](mailto:nazareth@forum-adb.org)>, [dennis@forum-adb.org](mailto:dennis@forum-adb.org) <[dennis@forum-adb.org](mailto:dennis@forum-adb.org)>, [lcantillo@forum-adb.org](mailto:lcantillo@forum-adb.org) <[lcantillo@forum-adb.org](mailto:lcantillo@forum-adb.org)>, [ajc.apmdd@gmail.com](mailto:ajc.apmdd@gmail.com) <[ajc.apmdd@gmail.com](mailto:ajc.apmdd@gmail.com)>, [gymata@gmail.com](mailto:gymata@gmail.com) <[gymata@gmail.com](mailto:gymata@gmail.com)>, [marie.bangabang@oxfam.org.ph](mailto:marie.bangabang@oxfam.org.ph) <[marie.bangabang@oxfam.org.ph](mailto:marie.bangabang@oxfam.org.ph)>, [joel.pagulayan@oxfam.org.ph](mailto:joel.pagulayan@oxfam.org.ph) <[joel.pagulayan@oxfam.org.ph](mailto:joel.pagulayan@oxfam.org.ph)>

Cc: Roselle S. Rasay <[rrasay@adb.org](mailto:rrasay@adb.org)>, David J. Morgado <[dmorgado@adb.org](mailto:dmorgado@adb.org)>

Dear CSOs colleagues,

The ADB is looking forward to meeting with you next week around the ACEF 2025. On behalf of our Energy Team colleagues, I am sharing the agenda and the background information with you in this message.

I am looking to join the session and to see all of you there.

Best,

Haidy

# Brief Note on Asian Development Bank's Energy Policy Review

May 2025

## A. Background

As mandated under paragraph 118 of ADB's 2021 Energy Policy, a review of the policy needs to be conducted in 2025 to assess the progress on the objectives of this policy to accelerate the development of sustainable and resilient energy systems that provide reliable and affordable access to all, foster inclusive economic growth and social development, and support the low-carbon transition in Asia and the Pacific. However, considering that the policy has been in operation only less than 4 years, ADB is limiting the review to be only to those amendments and additions to provide necessary clarity to further support and accelerate the policy objectives.

## B. Introduction

Overall, ADB's 2021 Energy Policy remains well-suited to current global challenges. Key measures to enhance energy security—such as energy source diversification, improved energy efficiency, accelerated deployment of domestic renewable energy, and regional cooperation—are effectively integrated into the policy.

ADB is considering **two new additions** to the policy, one on critical minerals and another on methane leakage reduction. Also some **amendments to the wording of five current provisions** to provide clarity to the project teams and developing member countries, are proposed.

## C. Proposed New Additions to the Energy Policy

The current policy does not make reference to methane reduction and possible engagement in critical minerals and clean technology manufacturing. These are two important areas where ADB is in a position to support and add value.

- **Critical Minerals and Clean Energy Technology Manufacturing:** Reflect the increasing importance of critical minerals and clean energy technology manufacturing for energy transition in the region and recognize ADB's potential role in this area.
- **Methane Leakages and Routine Gas Flaring Reduction:** Support investments in methane leakage and routine gas flaring reduction in existing upstream oil and gas fields to align with commitments made in COP26 as part of the Global Methane Pledge.

## D. Proposed Amendments to Current Provisions

There are five provisions where amendments are proposed to enhance the objectives of the policy and to improve clarity.

- **Oil Trading:** Reflect ADB's current Trade and Supply Chain Finance Program commitment to cease support for oil trading from July 2025.
- **Accelerated Decommissioning of Oil and Gas-fired Power Plants and Oil-fired Heating Plants:** In addition to ADB's support for early closure of existing coal power plants, expand the provision to recognize support for early closure of oil and natural gas-fired power plants and oil-fired heating plants as part of the ADB's Energy Transition Mechanism.
- **Co-Firing in Coal and Gas Power Plants:** Considering the technology advancements and the current policy allowing other forms of support for emission reduction in current fossil-fuel fired power plants, enhance the provision to capture co-firing with clean fuels such as biofuels, green ammonia and green hydrogen in existing coal and gas power plants subject to substantially reducing greenhouse gas emissions while not extending the lifetime of the power plants.
- **Carbon, Capture, Utilization and Storage (CCUS):** ADB to extend the non-financing of CCUS projects coupled with enhanced oil recovery to include those coupled with enhanced gas recovery. Also, ADB to allow use of depleted oil and gas wells for carbon dioxide storage in CCUS projects.
- **Nuclear Power:** Elaborate the existing provision on ADB's technical support for long-term capacity development needs in nuclear power if DMCs choose to opt for nuclear power as part of their generation mix. The current provision has already recognized the role of nuclear power as an important technology option to replace conventional fossil fuel fired baseload power plants, in emissions reduction. An amendment is proposed to capture this position more clearly.

## Proposed Timeline for Energy Policy Review

- **Q1-Q3 2025:** Board and External Consultation
- **Q3/Q4 2025:** First Draft of Policy Review
- **Q4 2025/Q1 2026:** Final Draft of Policy Review and Board consideration.

# **EXHIBIT 2**

## Proposed Timeline for Energy Policy Review

Tasks	Q4 2024	Q1 2025	Q2 2025	Q3 2025	Q4 2025	Q1 2026
Internal Consultation						
Board and External Consultation						
1 <sup>st</sup> Draft of Policy Review						
Presentation to the Board						
Final Draft of Policy Review						
Approval/ Presentation Policy Review						

# **EXHIBIT 3**

**Attachments:** Brief Note for NGOs - 7 July 2025.docx, ATT00001.txt

----- Forwarded message -----

From: **Rhoe O. Polloso** <[rpolloso@adb.org](mailto:rpolloso@adb.org)>

Date: Tue, Jul 8, 2025 at 6:22 AM

Subject: ADB Energy Policy Review – Virtual Briefing for CSOs/NGOs – 22 July 2025

To:

Cc: Priyantha Wijayatunga <[pwijayatunga@adb.org](mailto:pwijayatunga@adb.org)>

**Sent on behalf of Priyantha Wijayatunga, Senior Director, Energy Sector Office, Sectors Department 1 (SD1-ENE), Asian Development Bank**

Dear NGOs/CSOs,

The Asian Development Bank (ADB) is undertaking a review of the [2021 Energy Policy](#), and we will be organizing a virtual briefing on the proposed changes for CSOs/NGOs **at 8pm Manila time on 22 July 2025**.

The briefing will include a 15-minute presentation on the proposed changes and remaining 45-60 minutes will be for questions and answers. Please register your participation via this [registration link](#) before **21 July 2025**.

A brief note on the proposed changes to the 2021 Energy Policy are shared in the attached document for your reference. We also welcome any written feedback by email to Rhoe Polloso ([rpolloso@adb.org](mailto:rpolloso@adb.org)) before 1st August 2025.

We look forward to meeting you and thank you in advance for your collaboration.

Regards,  
Priyantha

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# Brief Note on Asian Development Bank's Energy Policy Review

07 July 2025

## A. Background

As mandated under paragraph 118 of ADB's 2021 Energy Policy, a review of the policy needs to be conducted in 2025 to assess the progress on the **objectives of this policy to accelerate the development of sustainable and resilient energy systems that provide reliable and affordable access to all, foster inclusive economic growth and social development, and support the low-carbon transition in Asia and the Pacific**. Considering that the policy has been in operation for less than 4 years, the review is limited only to those amendments and additions to further support and accelerate the policy objectives drawing from ADB's specific engagements with its developing member countries (DMCs) and broader global trends that have been shaping the energy sector over the past four years. The Energy Policy review will be subject to approval by the ADB Board.

## B. Introduction

Overall, ADB's 2021 Energy Policy remains well-suited to current global challenges. Key measures to enhance energy security—such as energy source diversification, improved energy efficiency, accelerated deployment of renewable energy, and regional cooperation—are effectively integrated into the policy.

The review is proposing **two additional provisions** to the policy- one on critical minerals and another on methane leakage reduction. Also, **amendments to the wording of five current provisions** are proposed to improve clarity on the content. The proposed amendments cover activities that are within the overall objectives of the 2021 Energy Policy.

## C. Proposed Additions to the Energy Policy

The current policy does not make reference to ADB's possible future engagements in methane reduction efforts and in critical minerals and clean technology manufacturing, which are two important areas where ADB is in a position to support and add value.

- i. **Critical Minerals and Clean Energy Technology Manufacturing:** Reflect the increasing importance of critical minerals and clean energy technology manufacturing for energy transition in the region. Recognize ADB's potential role in this area in line with proposed board direction and operational approach papers on critical minerals and manufacturing value chains.
- ii. **Methane Leakages and Routine Gas Flaring Reduction:** Support investments in methane leakage and routine gas flaring reduction in existing upstream oil and gas

fields to align with commitments made in COP26 as part of the Global Methane Pledge.

#### **D. Proposed Amendments to Current Provisions**

There are five provisions where amendments are proposed to enhance the objectives of the policy and to improve clarity.

- I. **Oil Trading:** Update paragraph 74 to reflect ADB's current Trade and Supply Chain Finance Program commitment to cease support for oil trading from July 2025.
- II. **Accelerated Decommissioning of Oil and Gas-fired Power Plants and Oil-fired Heating Plants:** In addition to ADB's support for early closure of existing coal power plants, expand support for early closure of oil and natural gas-fired power plants and coal and oil-fired heating plants as part of the ADB's Energy Transition Mechanism in paragraph 75.
- III. **Co-Firing in Coal and Gas Power Plants:** Update paragraph 75 to reflect the technology advancements and the current policy provisions which allow for other forms of support for emission reduction in current fossil-fuel fired power plants, to capture co-firing with clean fuels such as biofuels, green ammonia and green hydrogen in existing coal and gas power plants subject to substantially reducing greenhouse gas emissions and not extending the lifetime of the existing power plants.
- IV. **Carbon, Capture, Utilization and Storage (CCUS):** Under paragraph 77, it is proposed to extend prohibition of CCUS projects coupled with enhanced oil recovery to include also those coupled with enhanced gas recovery. It is also proposed to allow the use of depleted oil and gas wells for carbon dioxide storage in CCUS projects.
- V. **Nuclear Power:** Under paragraph 79, elaborate on the existing provision on ADB's technical support for long-term capacity development needs in nuclear power if DMCs choose to opt for nuclear power as part of their generation mix. The current provision has already recognized the role of nuclear power as an important technology option to replace conventional fossil fuel fired baseload power plants, in emissions reduction. An amendment is proposed to capture this position more clearly. Further, it is proposed to remove prohibition on financing investments in nuclear.

#### **Proposed Timeline for Energy Policy Review**

- i. **Q1-Q3 2025:** Board and External Consultation.
- ii. **September 2025:** Final Draft of Energy Policy Review and Board approval.

# **EXHIBIT 4**

**Subject:** Re: ADB Energy Policy Review – Virtual Briefing for CSOs/NGOs – 22 July 2025  
**Date:** Wednesday, July 23, 2025 at 10:36:13 AM Central European Summer Time  
**From:** Jason Weiner  
**To:** Rhoe O. Polloso  
**CC:** Priyantha Wijayatunga, David J. Morgado, Kee-Yung Nam, Haidy Seang Ear-Dupuy, Rayyan Hassan, Nazareth Del Pilar  
**Attachments:** image001.png

Dear Priyantha,

Could you kindly share the email correspondence, and also any public announcement by ADB with the date of the public announcement, that there was a comment period? Your email below notes that the comment period has been extended to August 8, 2025, but Bank Climate Advocates was not aware or notified of a comment period in the first place. If there was only an email correspondence, and not a public announcement, can you indicate that as well?

Thank you.

My Very Best,

Jason

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Jason Weiner (he/him/his)  
Executive Director & Legal Director  
Bank Climate Advocates  
303 Sacramento Street, Floor 2  
San Francisco, CA 94111  
Phone: (310) 439-8702  
[jason@bankclimateadvocates.org](mailto:jason@bankclimateadvocates.org)



*Fighting to Reform the Climate Change Policies & Practices of Financial Institutions*  
[www.bankclimateadvocates.org](http://www.bankclimateadvocates.org)

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**From:** Rhoe O. Polloso <[rpolloso@adb.org](mailto:rpolloso@adb.org)>

**Date:** Wednesday, July 23, 2025 at 3:06 AM

**To:**

**Cc:** Priyantha Wijayatunga <pwijayatunga@adb.org>, David J. Morgado <dmorgado@adb.org>, Kee-Yung Nam <kynam@adb.org>, Haidy Seang Ear-Dupuy <hedupuy@adb.org>

**Subject:** Re: ADB Energy Policy Review – Virtual Briefing for CSOs/NGOs – 22 July 2025

**Sent on behalf of Priyantha Wijayatunga, Senior Director, Energy Sector Office, Sectors Department 1, Asian Development Bank**

Dear NGOs/CSOs,

Thank you for joining us to discuss the ADB Energy Policy review process and proposed changes.

We have taken note of your questions and expectations. We will keep you informed of the next steps.

We sincerely apologize for the technical challenge in the Zoom platform where other participants were not visible to you. Please find attached the list of participants for your reference. Hope this helps.

Following our email below and brief note shared on the 8<sup>th</sup> July 2025, we would be be grateful if you could send your written comments by the extended deadline of **8th August 2025**.

We look forward to hearing from you.

Regards,  
Priyantha

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