



ENHANCING CLIMATE ACTION THROUGH PUBLIC-PRIVATE PARTNERSHIPS

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UNCITRAL MODEL LEGISLATIVE PROVISIONS AND RECOMMENDATIONS FOR BRIDGING THE GAP

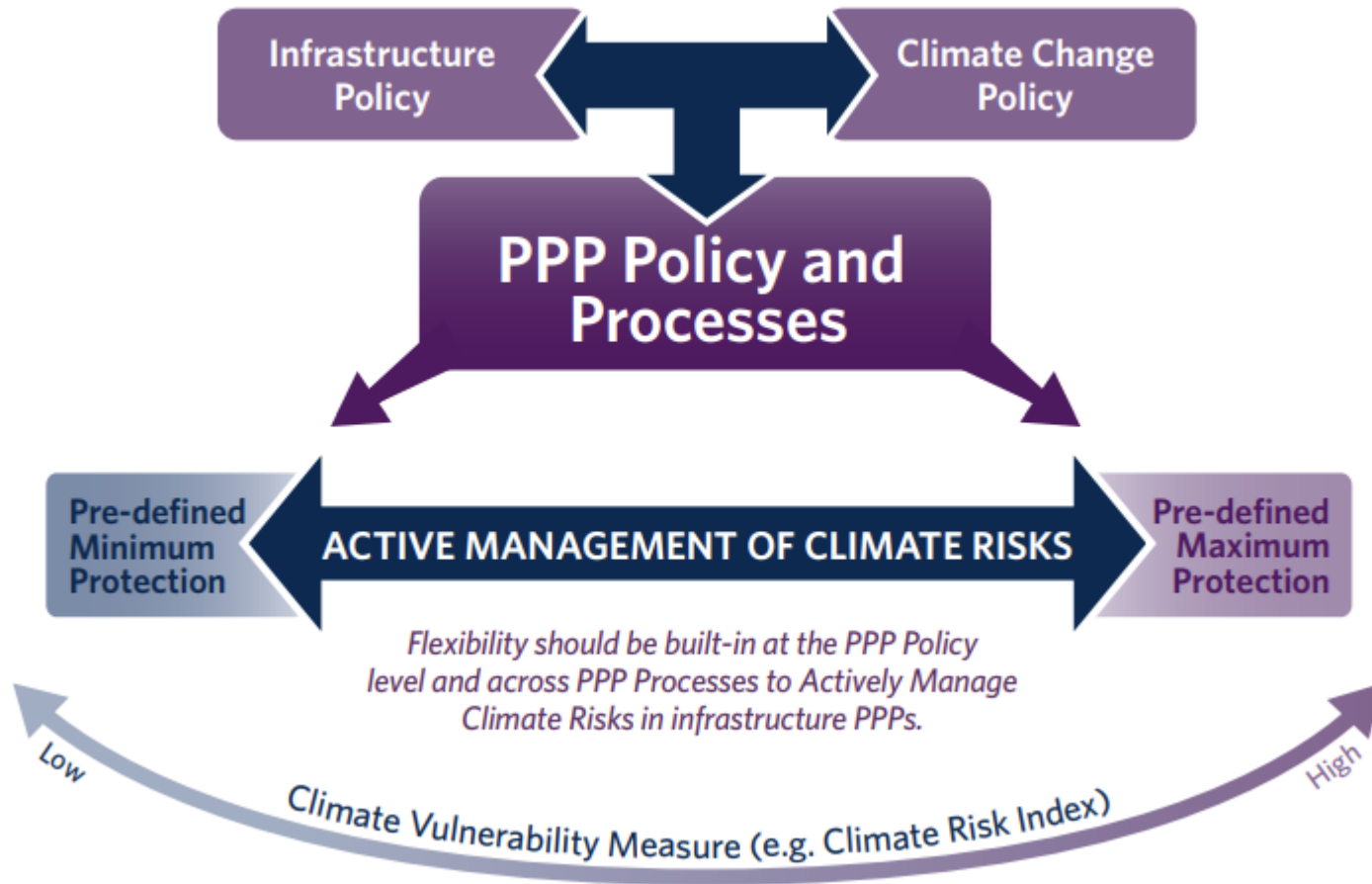


Climate change creates uncertainty and it's hard to play with uncertain moving pieces within the framework of **public-private partnerships**, which **require** a certain degree to **predictability to attract investment and finance**.

PPPs **can increase climate resilience** offering innovative solutions to **address both mitigation and adaptation** challenges.

- ⇒ Enabling legal frameworks are needed and the real challenge is how to get the model provisions to be reflected in the PPP contracts / arrangements that will be negotiated.
- ⇒ Multitude of PPP legal frameworks and sustainable infra standard don't make things easier for PPP Units!

FRAMEWORK FOR ACTIVE MANAGEMENT OF CLIMATE RISKS IN PPPs



Source:
 ⇒ PPIAF climate risks and resilience in infrastructure PPPs: Issues to be considered, p.10

THE IMPORTANT ROLE OF PPPs FOR CLIMATE ACTION



Socio-economic dimension

- Only 5% of global public infrastructure finance flows into Public-Private Partnerships
- **LDCs** cannot cover public infra needs through own fiscal means and **need concessional finance**
- Growing **infrastructure gap** and need for PPPs
- **Ambivalent perception** of PPPs because of complexity and corruption
- Mostly large PPP projects for energy, industrialization but transport and social sector underdeveloped ⇒ Urgent need to look into #SSPPP

WAPPP stands for #NextLevelPPPs, a new generation of public-private partnerships that are aligned with the UN 2030 Agenda for Sustainable Development to de risk the projects.

The need for Climate Resilience commands we build forward better.

POSSIBLE SOLUTIONS

Enabling legal frameworks and capacity building are crucial to build forward better

- Better planning and execution are key
- Today it is estimated that **around 80% of PPP bids are aborted**
⇒ Economic inefficiency and staggering cost (disillusioned industry players and owners who cannot find bidders)
- Management of contract change in climate-related circumstances
- More sophisticated Dispute Avoidance and Resolution needed

My Weinstein JAMS Foundation Int. Fellowship project:
⇒ Create a **brain trust to support better Dispute Avoidance** in long-term infrastructure (PPP) contracts **and mixed modes dispute resolution.**
⇒ Open invitation to help me create a survey to identify the right mechanism and provoke change.

Small Scale Public-Private Partnerships #SSPPP (1/4)



Rising significance & huge potential to boost infrastructure resilience to climate change

⇒ In 2022 **only 3 %** of total investments directed towards PPP projects under \$50 million

⇒ WAPPP launched a year-long program dedicated to #SSPPP as there is a persistent demand and urgent need to bridge the investment gap for sub-national and municipal PPPs

Much capacity building needed and WAPPP in the process of setting-up a **Technical Assistance Facility** for PPP Units / Infrastructure Agencies (National and Sub-national public entities)

RATIO OF PREPARATION / TOTAL COST OF LIFE CYCLE #SSPPP (2/4)



Defining feature of #SSPPP hinges on the financial structure, particularly the ratio of project design, preparation, and tendering costs to the overall project financing cost.

Assess the relative scale of upfront costs in relation to the total financial investment

#SSPPP entail project specific issues:

- Intricate stakeholder relationships
- Financial arrangements highlighting the broader complexities that these projects entail

#SSPPP Challenges (3/4)

Myriad of differences to larger PPP initiatives

⇒ Distinct approaches necessary to cope with financial constraints, risk identification and mitigation issues, capacity limitations, unclear legal frameworks, lack of technical preparation, difficulties in assessing the socio-economic impacts

⇒ Protracted, inflexible procurement process

⇒ Vulnerable and complex

These challenges make it difficult to achieve a satisfactory return on investment

#SSPPP necessary evolution (4/4)

Demands creativity and adeptness in structuring, financing and implementation

At WAPPP we have the goal of making #SSPPP more effective tools in achieving the Sustainable Development Goals

More on this #SSPPP initiative :

https://wappp.net/our_publications/unravelling-small-scale-ppps/ and

WAPPP's discussion series on YouTube

<https://www.youtube.com/@SecretariatWAPPP>

GENERAL ADEQUACY FOR CLIMATE ACTION

Strength: The UNCITRAL Model Legislative Provisions on PPPs provide a sound legal foundation for transparency, fairness, and long-term management of PPPs.

Critique: While the provisions emphasize traditional aspects of PPP governance (e.g., financial soundness, technical capacity, and risk allocation), they are not specifically designed to address the unique and growing challenges posed by climate change. The provisions fall short of integrating comprehensive climate resilience and sustainability standards across the PPP lifecycle.

Recommendation: UNCITRAL should update its provisions to reflect the urgent need for climate mitigation and adaptation strategies in infrastructure projects. This can include explicit requirements for climate risk assessments, sustainable project design, and climate performance targets.

GAPS IN SCREENING FOR CLIMATE RISKS (PROVISION 5)



Strength: Provision 5 on project proposals emphasizes transparency, ensuring public interest is protected in PPP projects.

Critique: However, it lacks a mandatory requirement for climate risk screening. While it enables States to add specific criteria, it leaves climate considerations at the discretion of individual governments, many of which may lack the political will or expertise to properly integrate climate risks.

Recommendation: A global standard should be introduced within Provision 5 mandating climate risk assessments as part of the initial feasibility study for all infrastructure projects. This will ensure that projects vulnerable to climate change are either adapted or deemed unviable from the outset.

LIMITED FOCUS ON PRE-SELECTION CLIMATE CRITERIA (PROVISIONS 9 AND 10)



Strength: These provisions ensure the technical and financial capacity of private partners in PPPs, which is crucial for project success.

Critique: They do not sufficiently emphasize the importance of pre-selecting private partners based on their ability to deliver climate-smart solutions. Given the growing need for green technology and climate expertise, it is essential that private partners possess proven experience in delivering sustainable projects.

Recommendation: Provisions 9 and 10 should explicitly include environmental and climate-related experience as a mandatory pre-selection criterion. This would ensure that only private entities capable of implementing climate-resilient solutions are considered for PPPs.

INSUFFICIENT CLIMATE EVALUATION CRITERIA (PROVISION 19)



Strength: Provision 19 sets out evaluation criteria for selecting proposals, covering financial and technical aspects.

Critique: This provision lacks emphasis on environmental performance metrics, such as reducing carbon footprints, energy efficiency, or resilience to climate impacts. Without these criteria, climate-smart projects might not receive the attention they deserve in the selection process.

Recommendation: The provision should mandate the inclusion of climate performance indicators as part of the evaluation process. Specific criteria for evaluating environmental impacts and long-term sustainability must be clearly defined and weighted heavily in the decision-making process. Governments should assess proposals not only on financial feasibility but also on their ability to mitigate and adapt to climate change.

CHALLENGES IN CONTRACT DRAFTING AND LONG-TERM CLIMATE RESILIENCE (PROVISIONS 33, 44 AND 45)



Strength: These provisions emphasize the importance of performance-based contracts and long-term management of PPP projects.

Critique: Despite focusing on project outcomes, the provisions do not account for the evolving nature of climate risks, which could affect long-term infrastructure performance. The traditional risk allocation frameworks typically used in PPPs fail to consider climate adaptation and resilience, leading to potential disputes or financial burdens if projects are severely impacted by climate change.

Recommendation: The model provisions should be updated to include explicit requirements for climate resilience in PPP contracts. Contracts should require performance targets related to emissions reductions, energy efficiency, and adaptation measures. Additionally, risk-sharing mechanisms should be adapted to account for climate-related risks, encouraging flexible and adaptive management of long-term projects.

LACK OF FLEXIBILITY TO ADDRESS UNCERTAINTY IN CLIMATE RISKS



Strength: UNCITRAL's model framework is designed to provide certainty and predictability, which are critical for attracting private sector investments.

Critique: However, climate change introduces uncertainty, which can challenge the predictability required for PPPs. Traditional PPP frameworks, as outlined in the provisions, are not well equipped to handle these uncertainties, leaving both public and private parties exposed to significant risks.

Recommendation: The UNCITRAL provisions should encourage the adoption of flexible, adaptive management approaches that allow for adjustments in project design and operation as climate risks evolve. This could include mechanisms for renegotiating terms, adjusting risk allocation, or incorporating new technologies to enhance resilience over time.

LIMITED CONSIDERATION FOR KNOWLEDGE GAPS AND CAPACITY BUILDING



Strength: The model provisions aim to create fair and transparent processes for PPPs.

Critique: The provisions do not address the capacity gaps that many governments and private sector actors face in dealing with climate change. Many jurisdictions lack the expertise to assess climate risks or integrate sustainable solutions effectively into PPP projects.

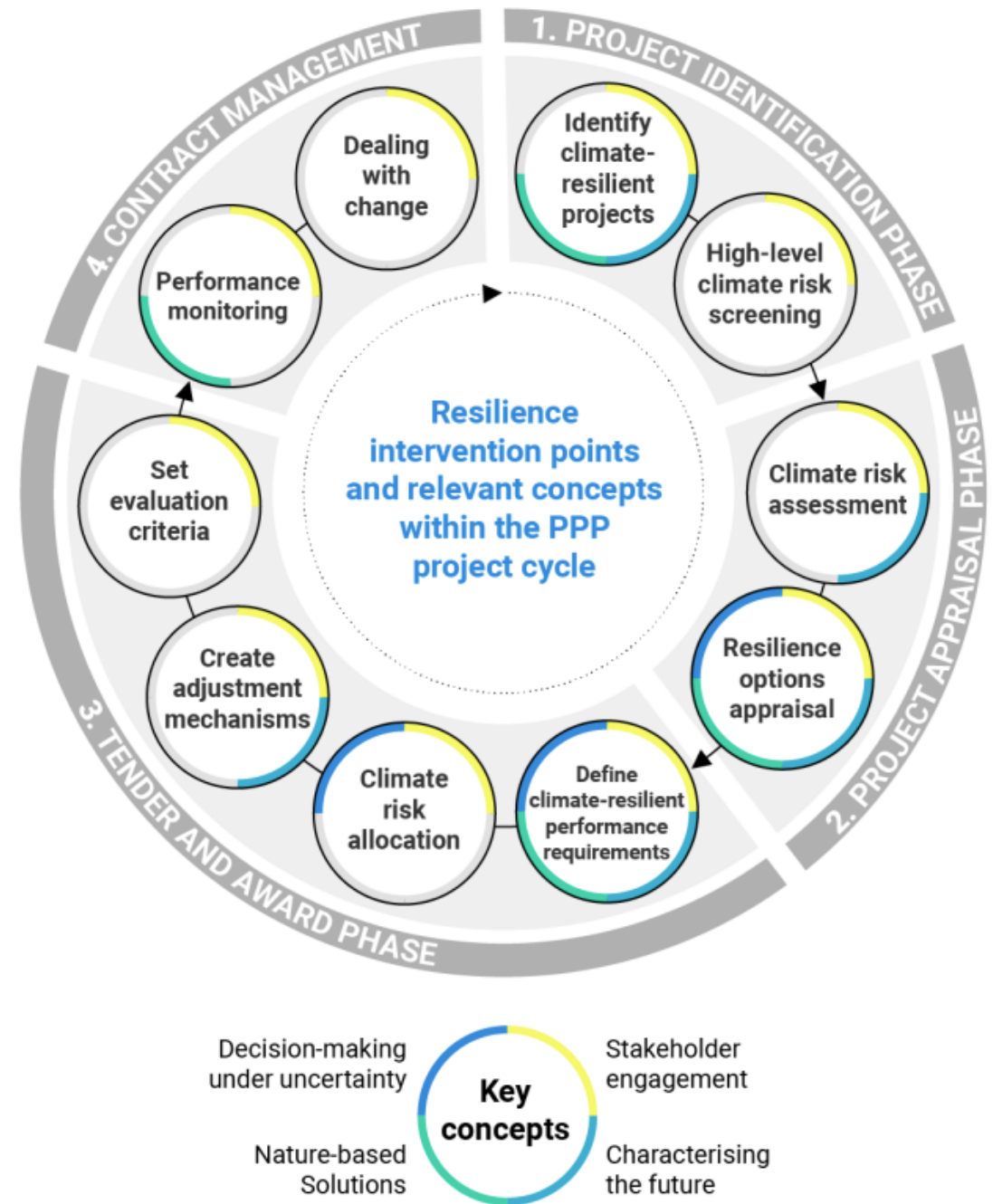
Recommendation: UNCITRAL should advocate for capacity-building initiatives that help governments and private partners understand and integrate climate risks into PPP projects. This could involve training programs, the creation of climate risk assessment tools, and partnerships with international organizations to promote knowledge sharing.

BRIDGING THE GAP: BROADER RECOMMENDATION FOR ENHANCING CLIMATE-RESILIENT PPPs



- 1. Mandating Climate Risk Assessments:** Make climate risk assessments mandatory across all PPP project stages—planning, pre-selection, evaluation, and implementation.
 - 2. Strengthening Environmental Criteria:** Introduce robust environmental performance criteria in the evaluation process, making it essential to select projects that contribute to both mitigation and adaptation.
 - 3. Adaptive Contract Management:** Revise contract management provisions to account for long-term climate risks, ensuring that PPP contracts remain flexible and responsive to the evolving impacts of climate change.
 - 4. Climate-Specific Capacity Building:** Develop specific tools, guidelines, and training programs for government agencies and private partners to assess and mitigate climate risks effectively.
- Global Knowledge Sharing:** Encourage international cooperation and knowledge sharing on best practices for integrating climate resilience into PPPs.

PPP PROJECT CYCLE AND KEY INTERVENTION POINTS FOR CLIMATE-RESILIENCE



Source:
Climate-Resilient
Infrastructure Officer
Handbook (CRIO)
Handbook, p. 128

EXAMPLES FROM COUNTRIES

Ghana and Kenya

Ghana (*Public Private Partnership Act of 2020*) and Kenya (*Public Private Partnership Act, 2021*) are some examples of countries that have adopted the Model provisions with little to no tweaking of the general and broad provisions. Other Countries such as the Philippines have supplementary Guidelines on the Integration of Climate Risks in PPPs. (*Public-Private Partnership (PPP) Governing Board Resolution of December 2018*)

Canada - As part of the Investing in Canada plan, applicants seeking federal funding for new major public infrastructure projects are being asked to undertake an assessment of how their projects will contribute to or reduce carbon pollution, and to consider climate change risks in the location, design, and planned operation of projects.

At the planning and design stage, project applicants will now need to assess whether their projects will increase or decrease greenhouse gas emissions.

As a second component, they will need to consider ways to incorporate structural or system changes that will help their new infrastructure withstand the potential impacts of climate change and continue to perform reliably. Over time, the goal is to have climate change considerations become a core part of Canada's infrastructure planning.

Discussion & details



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