Proposals for Implementing the BOT Contract within the Transformations of the 2030 Sustainable Development Plan to Activate the Economic Role of Local Authorities in Algeria

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Abstract

Achieving local development falls on local authorities, who start with developing a plan. Still, its application depends just on their material power. Given their policies and the notable budget gaps, among other issues, one could take consideration of depending on the BOT (Build-Operate-Transfer) contract. This strategy would guarantee the realization of local development by using the private sector to finance infrastructure and public utilities among other development projects. To control such agreements, a thorough legal framework must thus be established.

Adopting the BOT contract will also help to reflect the World Bank's policy for local authorities, which is based on the ideas of economic vitality, social equality, environmental quality, and sustainable urban financial capacities — so representing integrated objectives that achieve sustainable development for these authorities.

Keywords

BOT Contract;
Sustainable Development;
Economic Role;
Local Authoritie ;
Algeria.

مقترحات تطبيق عقد البوت في إطار التحولات لخطة التنمية المستدامة لسنة 2030 لتفعيل الدور الاقتصادي للجماعات الإقليمية في الجزائر

ملخص

الجماعات الإقليمية هي المسؤولة عن تحقيق التنمية المحلية، والتي تبدأ ببلورة استراتيجية لها، لكن تجسيدها مرتبط وجودا وعدما بإمكانياتها المادية، وأمام العجز الذي تعانيه موازناتها بشكل أساسي والسياسات المنتهجة... الخ، يمكن التوجه للاعتماد على عقد البوت الذي سيضمن تحقيق التنمية المحلية فيها، لاعتماده على القطاع الخاص في تمويل المشاريع التنموية من مرافق عامة وبنية تحتية وهذا يتطلب توفير نظام قانوني متكامل يحكم هذا العقد.

بالتوجه للاعتماد على عقد البوت كذلك يمكن تجسيد سياسة البنك الدولي للجماعات الإقليمية، المبنية على: مبدأ الحيوية الاقتصادية، والمساواة الاجتماعية، والجودة البيئية، وكذا قدرات مالية مستديمة حضرية، تمثل أهدافا متكاملة وتحقق تنمية مستدامة لها.

الكلمات المفتاحية

عقد البوت؛
التنمية المستدامة؛
دور اقتصادي؛
الجماعات الإقليمية؛
الجزائر.

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I- Introduction :

It is impossible to talk of thorough national development in our day without also striving for local development. Actually, the success of the latter is necessary for almost perfect realization of national development. Driving the wheel of development inside any nation, however, mostly depends on the availability of resources and material capabilities, which differ between countries. This directly influences a nation's capacity to fulfill changing needs of its people in both quantity and quality as well as its degree of development program progress.

Although Algeria's national development faces many obstacles—especially with the fall in oil prices and the consequent problems—local authorities also have similar problems in trying to forward local development. This is especially clear since most municipalities in the nation rely on state subsidies because of budget deficits resulting from a lack of attention to diversifying their income sources on one hand, and the neglect of other maybe important sources of funding for their development programs on the other.

The 2030 Sustainable Development Plan currently lists seventeen objectives. The Secretary-General of the United Nations urged all society sectors to mobilize for a Decade of Action on three tiers: global action to secure enhanced leadership, increased resources, and innovative solutions for the attainment of the Sustainable Development Goals; local action necessitating essential reforms in policies, budgets, institutions, and regulatory frameworks of governments, municipalities, and local authorities; and people action, encompassing initiatives by youth, civil society, media, the private sector, trade unions, academia, and other stakeholders fostering an unyielding movement propelling the necessary transformations. (The 2030 Agenda for Sustainable Development, 2025)

Notwithstanding this, a UN assessment showed that with worldwide efforts off course by the end of 2019 (United Nations, 2025), the COVID-19 virus reversed decades of progress in poverty reduction, healthcare, and education. It directly affected also the execution of local and national development initiatives.

Though diversifying sources, revitalizing neglected ones, and guiding them to become profitable in financing local development independently of state subsidies—all countries, including developed ones, no longer independently finance their national or local development solely from their own resources. Rather, they depend on the private sector using contractual arrangements—one of which Algeria has embraced in its national agreements—the BOT (Build-Operate-Transfer) contract. Under this arrangement, the private sector starts and finances the project; ownership returns to the host state free of any obligations following a designated contract period.

Even in fields like endowments (waqf), some nations have used this approach to their local contracts. This implies that, given the right legal environment first established, the BOT model could be a useful practical solution to the financing difficulty for local development. Given Algeria has already started using this kind of contract in national agreements, the realization of this vision could be feasible in the future particularly.

Given the budget constraints of local authorities and the declining state subsidies among the volatility of oil prices, we hope to investigate in this research paper the required conditions for implementing the BOT contract at the local level to guarantee the involvement of the private sector in achieving local development.

Our study is split into three main parts in order to handle this issue:

In the first part, we will define the BOT contract, which we think can be a tool to finance local development projects independently from the financial constraints faced by local authorities and without depending on state subsidies. Under the Municipal and Provincial Laws, we shall go over the several forms of contracts for involving the private sector in local public services in the second section. In the last part, we will review the legal rules that have to be taken into account to adopt this contract at the local level, especially with an eye toward the current legal environment and the required changes to produce a fit legal framework. This will be presented as forward-looking research that might provide a workable answer to the financing issue and help to stimulate local development all around the nation.

II– Definition of the BOT Contract:

The term "BOT contract" is derived from the initials of the stages involved in the execution of a public facility or infrastructure project in English, as will be explained below. This acronym has become the common name by which the contract is known. Due to its significance and widespread use, the BOT contract has been the subject of extensive academic studies. In this paper, we will highlight the definitions given to it, as it represents the central focus of our study, as follows:

The term BOT is an English acronym standing for three words: Build, Operate, and Transfer (Jihan Hassan Sayed Ahmad, 2002, p. 14)—or alternatively, Build, Own, and Transfer. (Samir Abdel Aziz, Ismail Hussein Ismail, Shukri Ragab Al-Ashmawi,, 2007, pp. 1,2) However, there is a jurisprudential view that translating BOT as "Build, Operate, and Transfer" is not accurate. According to this perspective, a more precise expression of the essence of these contracts is

"Construction, Operation, and Handover Contracts," based on the idea that "construction" (rather than merely "building") encompasses the comprehensive process undertaken by the project company. This includes prior essential steps such as feasibility studies, risk assessments related to execution, environmental studies, site planning, and engineering designs, among others.

Additionally, this view argues that "operation" is an imprecise term, as the project company not only operates the public facility but also invests in it. Therefore, the term "management" is preferred instead. Regarding "transfer of ownership," it is considered technically incorrect since the ownership of the project, from the outset, belongs to the state, municipality, or province, depending on the contracting authority. Hence, the more accurate term is "handover of ownership rights" rather than "transfer of ownership." (Mohammad Adeeb Al-Husseini, 2009, pp. 108,109)

The BOT contract was initially difficult to define due to the complexity of finding a precise and comprehensive definition. (Nassif, Elias, p. 82) This is because executing such a contract requires the conclusion of multiple sub-contracts at each stage. However, the significance and widespread use of this contract led to the emergence of several definitions, some of which are presented below:

The United Nations Industrial Development Organization (UNIDO) defined it as: a contract under which a private sector entity builds a basic facility in the state including design, financing, operation, and maintenance of the facility. Under a designated period, this private party runs and manages the facility; during this time it is permitted to collect suitable fees from users of the facility, and any other charges, subject they do not surpass those suggested in the bid and specified in the core project agreement. This will help the party to recoup its investment expenses, running and maintenance costs, as well as a decent return on investment. The party is required at the end of the designated period to either return the facility to the government or another private party chosen via a public bidding process.

It has also been defined as: an endeavor by the government or one of its departments or affiliated entities to a private institution—local, foreign, or a joint venture—using particular means to establish a public facility to meet a general need, such as roads, airports, ports, power plants, and others, at the expense of that institution. Under the direction and control of the contracting authority, the institution then runs the facility and offers public services for a set period under defined conditions. Later on, it moves the facility's or project's assets—good condition and fit for continuous operation—to the state or the contracted authority. (El-Beshbeishi, Amal Najah, 2004, p. 4)

It is noted in this definition that it emphasizes the fact that ownership of the project remains with the public legal entity. The investor’s authority over the project during the construction and operation phases is temporary and does not equate to legal ownership, which encompasses the rights of use, exploitation, and disposition. Since the investor does not have the right to dispose of the project during this period, the situation does not meet the legal definition of ownership.

The BOT contract has also been defined as: Aiming at large-scale projects, a new and creative type of administrative contract whereby the government assigns a national or foreign company to establish and run a public facility for its own account under obligation to transfer ownership to the state, its public administrations, or public institutions after the agreed period has elapsed. (Nassif, Elias, p. 81)

Another definition states: a model or framework under which private sector investments support the infrastructure of a nation, a task traditionally under the purview of the government. The foundations of the BOT system are project financing. (Samir Abdel Aziz, Ismail Hussein Ismail, Shukri Ragab Al-Ashmawi,, 2007, p. 1)

It has also been defined as: Projects approved by the state through a concession to the private sector with the intention of building and running infrastructure projects on behalf of the public sector and managing them within a designated period, subsequently ownership of the project is passed to a public legal entity.

The United Nations Commission on International Trade Law (UNCITRAL) defines the BOT contract as: A type of project financing whereby the government grants a group of investors—referred to as the project financial consortium—a concession to build, operate, manage, and commercially exploit a specific project for a number of years sufficient to recover construction costs, while also obtaining reasonable profits from operations and commercial exploitation, or from other advantages granted to them under the concession contract. Ownership of the project passes to the government at no cost or for a pre-agreed reasonable amount negotiated at the end of the concession agreement. (Issam Ahmed Al-Bahji, 2008, p. 13)

It should be noted in this regard that BOT contracts are not limited to infrastructure projects alone. They have also been utilized in entertainment projects, and the British government, for example, has even proposed prison construction projects to be financed by the private sector under this model. (Maher Mohamed Hamed, 2005, p. 22)

The BOT contract has also been defined as: Projects funded by the private sector have ownership still vested in the government or one of its agencies. Design, construction, and management of the project under a designated period—

during which the project sponsor is connected to the government via a concession contract entitizing them to the revenues of the project—are responsibility of the private sector. The project has to be returned at the end in good condition free from charge.

After reviewing all the aforementioned definitions, we can define the BOT contract as follows: A contract under which the state or a public legal entity grants a concession to a private party (natural or legal person) by which the latter undertakes the construction of a necessary public facility to meet public needs or provide public services, and runs it under the supervision and oversight of the public authority. The private party pays the facility's income during that period in return; at the end of the agreed term, the public facility is returned to the state in good condition free of any financial obligations and without monetary compensation. BOT contracts, then, support and finance public utilities and infrastructure projects without burdening the state's budget financially.

It is worth mentioning that while the definition provided here can apply internationally—since BOT contracts are often international in nature—this does not exclude the possibility of them being domestic. The essential condition is that the project company must be capable of financing the project. For this reason, the international nature of the contract was not included in our definition.

II– Forms of Contracts for Involving the Private Sector in Local Public Services under the Municipal and Provincial Laws:

In this section of our study, we will highlight the various types of contracts through which the private sector is involved in managing municipal public services, as regulated by the Municipal and Provincial Codes. This is intended to lay the groundwork for our examination of the requirements for adopting the BOT contract as a means of involving the private sector in financing local development.

As will become evident, the forms presented below relate to the management of public facilities established by local authorities to promote development. In contrast, the BOT contract not only includes the management aspect but also serves as a financing contract, making it a potential solution for funding local development—given that the private sector assumes responsibility for financing all stages of project execution and operation.

The Algerian legislator, in Municipal Law No. 11/10, explicitly stipulated that contracts related to the management of delegated local public services must take the form of either purchase order contracts or a program contract. (Article 156 of Law No. 11/10 , 2011) In this context, it is necessary to refer to the Public Procurement Law to understand the content of these two contract types and assess their suitability for the BOT model and the requirements for adopting it to involve the private sector in financing local development. We elaborate on this as follows:

II. 1. Types of Contracts for Delegating the Management of Local Public Services:

The Algerian legislator allows municipalities to delegate the management of public services, as listed in Article 149 of the law, through a program contract or a purchase order contract, referring us to the applicable legislative and regulatory provisions. To explain this further, we refer to the Public Procurement Law, as follows:

II. 1.1 Program Contract:

As for the program contract, it takes the form of an annual or multi-year agreement that serves as a reference, and it may span two or more fiscal years. It is implemented through application contracts concluded in accordance with what is specified in the Public Procurement Law. In all cases, the duration of the program contract may not exceed five years. The nature of the services to be performed, their importance, location, the amount of the program contract, and the execution schedule must be specified. Commitment to this contract is made by notifying the application public procurement contracts to the contracted operator within the limits of the accounting commitment, taking into account the annual nature of the budget when necessary. The contract is subject to the same procedures for concluding procurement contracts. However, regardless of the provisions of Article 195/5, the availability of appropriations is monitored at the time of the accounting commitment for the contract. (Articles 33(1), (2), (3), (4), (5) of Presidential Decree No. 15/247, 2015)

II. 1.2 Purchase Order Contracts:

Purchase order contracts include the execution of works, the acquisition of supplies, or the provision of services of a standard and recurring nature. The duration of these contracts is one year, renewable, and they may span two or more fiscal years. In all cases, the contract may not exceed five years. Renewal is made by a decision from the contracting

authority and is communicated to the contracted operator. It is subject to prior expenditure commitment in order to be taken into account.

The contract must specify the quantity and/or the minimum and maximum value of the works, supplies and/or services and/or studies that are the subject of the contract. The purchase order contract determines either the price, or its mechanisms, or the methods of determining it applicable to the successive delivery operations.

II. 2. Concession Contract for Local Public Utilities:

The concession (or commitment) contract for public utilities is defined as: Under which the concessionaire undertakes, at their own expense and under their responsibility, to provide a public service to the public in accordance with specified conditions, in return for being authorized to operate the project for a defined period and retain its profits, an administrative contract concluded between a legal person governed by public law and a private legal person (an individual or a company). The operation essentially lets the concessionaire charge a fee or charge from the beneficiaries. (Mahmoud Atef Al-Banna, 2007, p. 51)

It is also defined as: An administrative contract whereby an individual or company undertakings, at their own expense, financial responsibility, and using their own personnel, on behalf of the state or one of its local units, and according to the conditions set for them, to provide a public service to the public by managing an economic public utility for a limited period of time in return for fees collected from the beneficiaries of the utility. (Mohamed Fouad Abdel Baset, 2006, p. 471)

From the above definitions, it becomes clear that the concession contract is based on two main principles:

- The public utility managed under a concession remains a public utility; its nature does not change simply because it is operated by a private party. Naturally, the private party will only accept to operate it if they see a benefit in doing so. (Al-Jamil, Ziad Ayyoub, Albert Sarhan, Youssef , , 2010, p. 99)
- The concession contract aims to assign the operation of the public utility to a company, which is then granted the rights of use in exchange for collecting service fees. (Gérard Marcou, 1995, pp. 472,474)

The Algerian legislator adopted the concession contract as an exception for operating the provincial public services listed in Article 146, with authorization from the Provincial People's Assembly. The general rule is that these services are operated either by direct management or through a public institution. (Article 149 of Law No. 12/07, 2012)The contract is regulated through a model terms and conditions document, approved according to applicable rules and procedures. Contracts concluded under this framework are subject to ratification in accordance with Article 54 of the Provincial Law. Contrary to the Provincial Law, the Municipal Law treats the concession contract as one of the standard methods for operating municipal public services, alongside direct management, public institutions, and delegation of public services. The law refers regulation of this matter to a model terms and conditions document, determined through regulatory means.

III- Requirements for Adopting the BOT Contract to Involve the Private Sector in Financing Local Development :

The Algerian legislator, in the provisions of the Public Procurement and Public Service Delegation Law, stated that a public legal entity responsible for a public utility may delegate its management to a delegatee, unless there is a legislative provision to the contrary. In this case, the delegatee is primarily compensated from the revenues generated by operating the public utility, and the delegating authority, acting on behalf of the public legal entity, formalizes the delegation through an agreement. Article 207 of Presidential Decree No. 15/247 Since the BOT contract highlights the effectiveness of the private sector in the establishment and management of public utilities, we outline the requirements for its adoption to ensure private sector involvement in financing local development as follows:

III. 1. The BOT Contract Must Be Legally Recognized as a Mechanism for Creating and Managing Local Public Utilities Alongside the Concession Contract:

It is important to stress that the BOT contract is fundamentally different from the concession contract and should not be considered a modern form of it, as claimed by some scholars. Key distinctions include:

- Risk and Financial Burden: In a BOT contract, the project company bears all the financial burdens and risks of the project. Hence, the principle of financial balance of the project is not a key concern, unlike in concession contracts, where financial equilibrium is preserved. It is essential that this distinction is taken into account when drafting legal texts governing BOT contracts at both the local and national levels, unlike the approach taken in many Arab countries, which mistakenly impose the financial equilibrium concept on BOT models.
- Public Authority's Intervention: In a BOT contract, the public legal entity cannot intervene in the operation of the public utility once the contract is signed. Any intervention that affects project outcomes entitles the project company to claim compensation. In contrast, in concession contracts, the public entity may monitor operations, provide guidance, and impose sanctions if needed, without infringing on the financial balance principle. (Walid Haidar Jaber, 2009, pp. 497-498)

– Project Scope: In concession contracts, the concessionaire operates an existing public service for a fixed period. In BOT contracts, the project company builds and equips the public facility at its own expense, then operates it for a defined period, after which ownership is transferred to the state. (Mohamed Fouad Abdel Baset, 2006, p. 471)
– Financing Responsibility: The project company alone bears financial responsibility and risk in BOT contracts. Even if public support exists, it remains secondary. However, in practice, many Arab countries deviate from this principle.
– Core Elements: The BOT contract consists of three essential elements: construction, operation, and transfer of ownership. These are often absent in concession contracts, especially where no new facility is built, and existing infrastructure is already owned by the public legal entity. (Waddah Mahmoud Al-Hamoud, 2010, pp. 57,58)
– Ownership During Contract: Under a BOT arrangement, the project assets are owned by the project company for the duration of the contract. In concession contracts, assets remain the property of the public legal entity, which retains supervisory and strategic control to ensure optimal utility performance. (Ahmed Rashad Mahmoud Salam, 2004, pp. 56,58)
– Private Sector Involvement on Both Sides: BOT contracts can be concluded between two private entities. In practice, many private companies adopt BOT models to address liquidity issues. Conversely, in concession contracts, the concessionaire is always from the private sector, while the contracting authority is from the public sector. (Maher Mohamed Hamed, 2005, p. 25)
– Authority and Resources: In concession contracts, the concessionaire holds exclusive authority and resources—financial, administrative, and technical—for managing the utility. In contrast, BOT contracts are based on a chain of contracts, meaning authority and resources are distributed among all parties according to their specific roles. (Walid Haidar Jaber, 2009, pp. 497,499)

III. 2. Careful Distinction Must Be Made Between the BOT Contract and the Concession Contract During Legal Drafting:

It is crucial to pay attention, during the drafting of legal texts, to clearly distinguish between the BOT contract and the concession contract. The legislator often uses the term "concession" to refer to both types of contracts. However, a close examination of the content of the legal texts reveals that they actually describe a BOT contract, as they mention both the construction phase of the public facility and the transfer of ownership—two components not found in traditional concession contracts. This conclusion can be drawn from the content of the legal provisions governing concession contracts, as well as from the Public Procurement Law and Public Utility Delegation Law. This is evident in the legislator's definition of a concession as follows:

Either with the building of infrastructure or the purchase of property required for the establishment and running of a public utility, or just with the running of the public utility, the delegating authority assigns to the delegatee either Under the direction of the delegating authority, the delegatee runs the public utility under their own name and under responsibility and gathers fees from the public utility users. The delegatee independently finances public utility operations, property acquisition, and construction.

This description, which combines financing, construction, and operation—and in some cases ownership transfer—aligns more closely with the BOT model than a typical concession contract. Thus, clear legal differentiation is required to avoid confusion in both interpretation and implementation. Article 210 of Presidential Decree No. 15/247

III. 3. The Use of Purchase Order Contracts or Program Contracts as Delegation Mechanisms for Local Public Utilities is Unsuitable for BOT Contracts:

The forms of purchase order contracts or program contracts, which the legislator relied upon as methods for delegating the management of local public utilities, are not suitable for BOT contracts. BOT can serve as an effective tool for establishing local public facilities while sparing regional authorities from financial burdens—especially given their current budget deficits. The BOT contract consists of a three-phase sequence (construction, operation, transfer), with each phase transitioning into the next. The legal framework governing purchase orders or program contracts is incompatible with this structure.

This contrasts with the general rule that requires public legal entities, in their contractual engagements and in choosing contractors, to follow the procedures stipulated in the Public Procurement Law, which primarily emphasizes price as the key criterion for awarding a contract. As an exception, public utility concession contracts are not subject to the rules of the Public Procurement Law, and the same should apply to BOT contracts.

This approach is well established in legal doctrine and jurisprudence since the early 20th century, which clearly differentiated between public procurement contracts and concession contracts. French legal scholar De Laubadère stated that the authority's power to choose its contracting partner stems from delegation tied to the administrative authority's regulatory power. (Walid Haidar Jaber, 2009, pp. 261,262) Thus, the authority may negotiate directly with the candidate and conclude the contract without specific formalities or constraints, (Ali Khattar Shatnawi, 2003, p. 697) provided the principle of competition—which ensures freedom of access—is respected.

Consequently, in concession contracts (and by analogy, BOT contracts), the public legal entity has the discretion to select its contracting partner based on personal criteria (Marceau Long, 2000, p. 578), which requires trust in the

partner's financial and technical capability (Jean-Marie Auby, Robert Ducos Ader, 1969, p. 205) to fulfill the obligations defined in the contract. (Georges Vedel, 1976, p. 838) This level of discretion also implies that the private partner cannot transfer the public utility to another party without prior approval from the administrative authority that granted the concession. This flexibility is justified by the importance of these contracts in delivering essential public services to citizens and their typically long duration.

III. 4. The BOT Contract is Not Equivalent to Traditional Construction Contracts:

The BOT contract is fundamentally different from standard construction contracts, as it does not end with the completion of the construction phase. Rather, it is a sequence of interconnected stages, where the completion of one phase immediately leads to the next, with each stage being inseparably linked to the previous one. Therefore, the legal framework governing BOT contracts cannot be fragmented as it might be for conventional contracts. Additionally, the obligations of the project company remain in effect until the ownership is transferred to the public legal entity—in the context of this study, to regional authorities. Even the first phase (construction) may require more than five years, which renders the application of rigid public procurement rules, including duration limits, inappropriate. In light of this, relying on a terms of reference framework (cahier des charges) through negotiated procedures (by mutual agreement) is far more suitable than applying the Public Procurement Law. It is therefore advisable for the legislator to revise the relevant article in the Municipal Code and explicitly provide for the adoption of BOT contracts for the construction of local public facilities. The legislator should also issue the necessary regulations to clarify the procedures for implementing such contracts.

III. 5. Legal Provisions Must Account for the Differences Between BOT and Concession Contracts Regarding Emergency Situations During Execution:

When drafting the legal texts governing BOT contracts, it is essential to consider the difference between BOT and concession contracts in terms of how emergency situations affect contractual obligations. In BOT contracts, emergencies do not result in modifications to the contract terms. Even if costs rise unexpectedly, the project company alone bears the financial burden of such increases. This contrasts with concession contracts, where the state or public entity may share the increased costs with the concessionaire by allowing modifications to the execution conditions.

III. 6. Securing and Facilitating Access to Land for BOT Projects is a Priority:

Ensuring the protection and availability of land designated for private sector investment projects under the BOT model to finance local development is a critical priority. Regional authorities must work to simplify legal procedures that enable project companies to obtain permits, certificates, and licenses necessary to begin the first phase of construction without delay. BOT contracts are time-sensitive, and time equates to money. Delays at any stage will extend the duration of the contract, which in turn delays the transfer of ownership of the public facility intended to contribute to local development.

III. 7. Establishment of a Specialized Supervisory Body is Essential:

It is crucial to establish a dedicated entity responsible from the outset for selecting the project companies contracted under BOT arrangements and for monitoring the implementation of development projects. This body must have legal, technical, financial, and economic expertise, as BOT contracts demand such multidisciplinary competencies. Additionally, it should be ensured that continuous training is provided for this team, to guarantee that the completed development project is returned at the end of the agreed period to the local authority in good condition and free from any financial liabilities.

III. 8. Key Considerations in Drafting the Legal Framework Governing BOT Contracts at the Local Level:

The legal system regulating BOT contracts for local development must be carefully structured, with attention to the following critical elements:

Feasibility Study Provisions: The legal text must include clear provisions requiring regional authorities to conduct feasibility studies. These studies should identify potential risks, develop strategies to mitigate them, and reduce them to acceptable levels. This ensures that the main objective of adopting the BOT model—financing local development—is achieved.

Environmental and Technological Standards: Emphasis must be placed on selecting proposals that ensure the acquisition of environmentally friendly technologies. This guarantees that the implemented development project is environmentally responsible and contributes to sustainable local development.

Contract Duration Regulation: The contract's length must be determined based on the nature of the intended development project, its economic viability, and the time needed for the project company to recover its investment and earn its pre-agreed profit.

Transparency and Integrity in Selection Processes: A legal system must be in place to ensure transparency and fairness in evaluating the financial and technical aspects of applications submitted by candidates. If financial or administrative corruption exists, the failure of the BOT model in local development will not stem from the contract itself, but rather from systemic corruption.

Legal Provisions Defining the Role of Oversight Bodies: The law should clarify the role of the National Observatory for Public Utilities in relation to BOT contracts. Additionally, an independent administrative authority should be established with regulatory and enforcement powers to ensure transparency, competition, and the efficiency of BOT contracts.

Dispute Resolution Mechanisms: The governing legal texts must clearly outline the mechanisms for resolving disputes that may arise during the execution of the BOT contract.

IV- Conclusion:

At the end of our study on the requirements for adopting the BOT contract at the local level to involve the private sector in financing local development, we reached a set of findings and recommendations summarized as follows:

Findings

The BOT contract has seen widespread adoption across various countries regardless of their level of development. It has become a key mechanism for the construction and management of public utilities, whether national or local, without burdening the budgets of the state or regional authorities. It is an effective tool for involving the private sector in development financing, reflecting an economic shift in governance.

The successful implementation of the BOT contract at the local level for financing development by the private sector requires a suitable legal environment, while also taking into account the differences between BOT and concession contracts, which makes the application of concession rules to BOT either inapplicable or only partially suitable.

Existing laws that incorporate transparent and efficient competitive procedures, such as public procurement laws, can serve as a reference when drafting BOT contract regulations. However, necessary adaptations must be made to suit the specific nature of infrastructure and public service projects funded by the private sector, as also emphasized by the United Nations Commission on International Trade Law (UNCITRAL).

Recommendations

Legal provisions governing the BOT contract should be drafted in a way that subjects it to procedures different from those of public procurement, as is the case with concession contracts. This ensures that regional authorities retain the freedom to select the party responsible for constructing and operating the public facility before transferring its ownership at the end of the agreed term.

The BOT contract must not be subjected to public procurement law, as done in some countries, even with exceptions (e.g., exempting price-based selection). This approach is flawed, as legal frameworks cannot be partially applied. Moreover, BOT contracts are pursued to secure the best technology, technical solutions, and financial offers—which do not necessarily equate to the lowest price, rendering public procurement and concession law provisions unsuitable.

Algeria should examine comparative international experiences in using the private sector to finance local development through BOT contracts. This would help identify best practices, avoid the shortcomings and obstacles faced by other countries, and guide the precise formulation of a legal framework suitable for Algeria. It is also important to evaluate the legal framework after implementation to address potential shortcomings, in line with the principle that law must evolve with society.

The legal framework for the BOT contract must comprehensively cover all three phases of the contract: construction, operation, and transfer of ownership to the public entity (i.e., regional authorities) in good condition. The success of the contract, and consequently the achievement of local development, depends on the coherence and completeness of the rules governing these interdependent phases.

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