

INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH AND KNOWLEDGE

ISSN-2213-1356

www.ijirk.com

Political and legal factors influencing the financing BOT projects in Kenya: A Case of the rift Valley Rail Consortium

Dr Stephen Okelo Lucas

Department of Business and Economics, Tom Mboya University College

Abstract

Build-operate-transfer (BOT) is one among the many types of Public Private Partnership (PPP) arrangements, which is an innovative method of financing public sector infrastructure development and service delivery. Under this model, private sector operators or consortia build and operate new infrastructural assets in accordance with performance standards set by the government. Rift Valley Railways Consortium (Consortium) was established to manage the railways infrastructure in Kenya and Uganda for 25 years. By 2011, the Consortium was operating with a cargo of 1.9 million tonnes out of about 12 million tonnes of cargo arriving at the port of Mombasa. This means about 90 percent of cargo destined for Uganda, Southern Sudan, Rwanda Burundi and other parts of Democratic Republic of Congo is transported by road. Despite many studies on Public private Partnerships, there is no study that has explored Political factor influencing BOT projects in Kenya. The purpose of the study was to establish the extent which political and legal influence financing of BOT Kenya. Co-relational research designs, with a target population of 720 workers. Stratified sampling technique was used to arrange the population in stratum and Fisher's formula used to determine sample sizes from each category of participants. The study used questionnaire and interview schedule to collect data. Analysis of data was based on the Wald test. Wald test assesses constraints on statistical parameters based on the political, legal factors between the unrestricted estimate and its hypothesized value under the null hypothesis. The results show The Wald Chi-Square test statistic squared ratio of the Estimate to the Standard Error of the respective predictor as 0.8 implying that there is significant influence of political and legal matters of a country and Financing of Investments. There is a chance of 1.8 (1+75/100) times road transport stake holders influencing financing of BOT projects. That there is a likelihood of 1.7(1+11/100) time of Government terminating the contract irrespective of the circumstances around the operation of the contractual terms. A Chi square test gave a p value of 0.2 confirming that there is significant influence between taxation laws and financing of BOT projects.

The finding shows absence of good tax laws the government may change taxes during the concessional contract, this implies that if Government increased taxes by 1% financing BOT reducing by 1.8 times (1+77/100). The study recommends the partnership between the government, long distance track vehicle, the buses and the van operators in the financing of BOT infrastructure projects.

Keywords: BOT Projects, Concessional contract, political and legal factors

Background of the Study

The importance of politics in the development of a BOT project has been identified to be very important in many cases, when making reference to BOT project. Many government enters into contract to safeguard their infrastructure, they engage the private developer to Build Operate and Transfer the project at the end of the agreed period. The Kenya Government entered into concessional contract with the Rift Valley Concession company to improve its infrastructure. In the revised concession agreement in 2010, RVR said that there were safeguards in place that it was expecting from the Ugandan and Kenyan governments, including offering it the opportunity to operate rolling stock on the railway line, staggered payment of unpaid concession fees and also compensation in case of loss of business to the new standard gauge line. "The legal documents amending the concession agreement signed in August 2010 brought in safeguards for RVR from the government and set up these liaison committees to address any potential areas of conflict between the two lines. This is the mechanism that was to ensure that RVR's ongoing operations are not put at risk. However much as not been achieved and the Government continued to make losses with the contract not paying. With little being achieved the study will look at the political dimension and its influence in the operation of concessional contracts.

Theoretical and Empirical Literature Review

The study Kumaraswamy and Zhang (2001) identified unfavourable policies and political acts that caused failure to award new BOT projects or resulted in early terminations of projects that were in progress (cases in Turkey, Thailand and Lao PDR). Examples of such acts are the lack of government assistance in resolving conflicts of competitive projects and the unwillingness of the government to provide guarantees. Yeo and Tiong (2000) also reviewed some cases of BOT projects that failed due to political reasons, such as the lack of political stability and the change in expectations of the host governments (Kafco Fertilizer Projects, Bangladesh), as well as the lack of political will to share risks (Very Fast Train Project, Australia), and questionable contract evaluation (Skytrain Project, Thailand). The conclusion drawn from these cases is that the political environment in the host country of a BOT project is a critical factor, involving uncertainties and high risks. Wang et al., (2000) define political risk as "the government actions that may endanger a project". According to the same authors, the primary political risks refer to change in law, delays in approvals, expropriation and reliability, and creditworthiness of the entities involved in the BOT project. Bilson et al., (2002) present various definitions of political risk and derive a more expansive definition. In particular, they define political risk as the risk that arises from the potential actions of governments and other influential domestic forces which threaten returns on investment. This definition is very close to the suggestion of Button and Keneth (2002) on the same topic. Finally, in the Legislative Guide on Privately Infrastructure Projects published by the United Nations Commission on International Trade Law (UNCITRAL, 2001), in Bilson et al., (2002), the term "political risks" comprises blocked funds, repatriation constraints in the form of exchange controls, inconvertibility of currency, and discriminatory taxation.

The same authors adopt indices to present varying degrees of political risks, including both a financial risk index and an economic risk index. In Wang et al., (2000), changes in the legal system, which is a government action related to the legislation framework, is considered a main political risk. Based on the above discussion, it is observed that both Bilson et al., (2002) and Wang et al., (2000) consider political risks as standalone entities.

Furthermore, it can be seen that political risks intersect with both financial and legal risks, with potentially stronger propensity towards the legal risks. UNCITRAL (2001) stated that “the law typically embodies a political commitment”. Any administrative act by the government or by any other public authority is a political act implemented by the use of the country’s legal and regulatory system. Xenidis & Angelides, (2005) considerations lead to the conclusion that it is more appropriate to consider political risks as the subset of the legal risks, which is related to political actions or omissions by the government or any other public authority in the administrative structure.

Different political and legal framework in the environment can greatly influence different opportunities and threats faced by industry and the companies operating within (Aisen & Veiga, 2006). A study by Agrawal et al., (2009) on the Effect of Political Instability on Economic Growth and Investment in the Middle East and Central Asia with the purpose of the study being to empirically determine the effects of political instability on economic growth. Using the system-GMM estimator for linear dynamic panel data models on a sample covering up to 169 countries, and 5-year periods from 1960 to 2004, the findings show that higher degrees of political instability are associated with lower growth rates of GDP per capita and hence deter private investment.

The World Bank’s World Development Indicators (WDI) and Global Development Network Growth Database (GDN), and the International Monetary Fund’s International Financial Statistics (IFS). Political and institutional data were obtained from the Cross National Time Series Data Archive (Databanks International, 2007), the Polity IV Database (Chesterton, 2002).all gave a correlated results. The hypothesis that political instability and institutional variables affect economic growth was tested by estimating dynamic panel data models for GDP per capita growth (taken from the PWT) for consecutive, non-overlapping, five-year periods, from 1960 to 2004, the results were positive hence matching the legal and politics but with the introduction of macroeconomics variables. Bougateg and Chichti (2010) used data on 113 countries from 1950 to 1982 and confirmed that GDP growth was significantly lower in countries with a high propensity of government collapse.

Bodnar, Dumas and Marston (2002) points out that higher degree of political instability led to lower economic growth in Taiwan. Barro and Lee (1996) attest that socio-political instability generated an uncertain politico-economic environment, raising risks and reducing investment. In the current study, literature documented the negative effects of political instability on a wide range of macroeconomic variables including, among others, GDP growth, private investment and inflation. The earlier studies relied on secondary data and therefore based their findings on the other findings. In the current study data was primarily source and the study investigate a period of seven years in order to estimate the influence using longevity.

Mohammed (2009) study on politics and governances in Egypt found that distraction of the rail transport comes because of bad politics he uses case study to analyses his findings. Barro and Lee (1996) assert that some fundamental questions behind the negative relationship between political and legal in relation to BOT financing of long-term infrastructure projects were not tackle. Bu and Milner (2008) affirmed that Politics affected Foreign Direct Investment into Developing Countries and that investment through international trade agreements varies greatly across developing countries and over time due to political reasons. Henisz (2000) points out that political factor affect the flows of funding and that they are well understood. He focused on the relationship between trade and investment. He argues that international trade agreements GATT/WTO and preferential trade agreements (PTAs) provide mechanisms for making commitments to foreign investors about the treatment of their assets, thus reassuring investors and increasing investment. Ram& Zhang (2002), support the views.

However, Shapiro (2010) analyzes 122 developing countries from 1970 to 2000 and supported Henisz argument that politics is a factor that affects long term investment. Supporting the findings, other scholars have found no significant effects for regime type. Egert, Kozlu and Sutherland (2009) in their study done in Italy on regime change agreed with the early studies, that politics can change long term investment if not well backed by legal aspect. Political and legal institutions was the focus of the current study studies. In order to elaborate on how

legal framework may contribute to lack of BOT financing as the regime change may lead to change in contract. Frontier Economics (2012) used secondary data in his study and his findings were that contract takes many years to be completed due to regime change which may lead to change of contract or cancellation. Berechman (2005) points out that possible explanation for small and variable impact of urban rail investment is “ubiquitous” accessibility found in urban areas with little impact on overall accessibility and additional infrastructure was where network is already well developed. However, Olaseni (2004) concluded that accessibility increasingly shapes metropolitan location decisions and not infrastructure development. Wegner, Prett and Smith (1995) state that under conditions of ubiquitous accessibility, monumental transport improvements have little effect on location. In general earlier studies have agreed that accessibility has important roles to play in the determination of property values but the studies failed to recognize the part played by rail network that primarily delivers the accessibility. Few of the studies established the relationship that exists between property value and pattern of road network. The study explored the pattern and the impact of the railway. Those studies in addition did not focus on political and legal values in relation to accessibility and instead centred mainly on the legal aspect of transportation and transportation schemes. Therefore neglecting the fact that, it is not only movements of people by rail, sea, inland waterways, air and roads that matter but also how patterns and modes of movements affect demand for activity centres and consequently values of properties including change of culture. Most of the studies in addition did not focus on political and legal parameters in relation to accessibility and instead centred mainly on the legal aspect of transportation and transportation schemes. They neglected the fact that it is not only movements of people by rail, sea, inland waterways, air and roads that matter but also how patterns and modes of movements affect demand for activity centres and consequently values of properties including change of culture.

The current study data was collected from primarily source and used a period of seven years in order to estimate the influence using longevity. Hence, a hypothesis was tested to establish level of how political and legal factors affect the BOT financing. In the current BOT contract some government officials reckoned that the existing concession with Rift Valley Railway (RVR) will become untenable once the new Chinese-built line is commissioned because of the profitability, operations and performance issues bedevilling RVR.

It will be interesting to see how RVR takes this news given that when it signed the concession with Kenya Railways in 2006, it allowed to have a 25-year monopoly of railway services on the Mombasa to Kampala route as well as the Nairobi commuter services. In the revised concession agreement in 2010, RVR said that there were safeguards in place that it was expecting from the Ugandan and Kenyan governments, including offering it the opportunity to operate rolling stock on the railway line, staggered payment of unpaid concession fees and also compensation in case of loss of business to the new standard gauge line. “The legal documents amending the concession agreement signed in August 2010 brought in safeguards for RVR from the government and set up these liaison committees to address any potential areas of conflict between the two lines. This is the mechanism that was to ensure that RVR’s ongoing operations are not put at risk. The report from the Auditor show dark featured for BOT contract. The absence of the tight BOT laws could have been factor to the change of the concessional contract rules. In termination, RVR was served with a concession termination notice by the Kenya government after it failed to remit its fees as stipulated in the agreement. The study investigated the influence of political and legal aspects on financing BOT projects in Kenya and the results are presented below.

Findings of the Study

Political and legal factors on financing BOT projects

The study sought to achieve this objective with a focus on legal framework for realising BOT projects, out of control risk, termination of concessions, taxes and laws and governments experience in managing concessions and influence of other transport sector partners.

Political and legal factors and financing BOT projects

The state represents tax payers (public) who ought to receive a value of what they pay for and infrastructure in this case is particular in enhancing growth and development in terms of production and transport which in turn fuel economic growth of a country and must be decided politically therefore interfere with the distribution of the of infrastructure projects. The respondents were asked to state their opinion on how political and legal factors influencing financing BOT project as measured in the scale of very low, low, moderate, high and very high levels and the results are as presented in table 1.

Table 1: Termination of concessions by the government of Kenya on financing BOT projects

Scale of measurement	Frequency (f)	Percent (%)
Very low	103	30.5
Low	67	19.8
Moderate	53	15.7
High	66	19.5
Very high	49	14.5
Total	338	100.0

Table 1 depicts that 103 (30.5%) responded that concessional contracts termination by the government is very low, 67 (19.8%) responded was low, while 66 (19.5%) responded it was high, 53 (15.7%) responded it was moderate and 49 (14.5%) responded it was very high. Therefore government of Kenya may not terminate the concessional contract before the contract came to an end as shown by 30.5%. This can be attributed to the fact that concessional contracts have affixed duration and cannot be terminated before the end of the contract and if terminated liquidation must be made.

To establish the relationship between two or more survey questions by provide a side-by-side comparison of how different groups of respondents answered the survey conducted, data were across tabulated and the results are shown in table 2.

Table 2: Cross tabulation

BOT projects financing	Rating of the termination of concessions by the government of Kenya					Total
	Very low	Low	Moderate	High	Very high	
Influence	65(25.3%)	44(17.1%)	32(12.5%)	39(15.2%)	77(30%)	258(77%)
Does not influence	20(24.7%)	15(18.5%)	9(11.1%)	19(23.5%)	18(22.2%)	80(33%)
Total	85(25.1%)	59(17.5%)	41(12.1%)	58(17.2%)	95(28.1%)	338(100)

Table 2 reveals that 65 (25.3%) of the respondents responded that there was a very low influence of the government terminating concession contract while 20 (24.7%) responded that there is no influence at very low level, 44 (17.1%) responded that there was a low influence of the government termination concession contract on BOT financing. 15 (18.5%) responded it does not, 32 (12.8%) responded that influence is at moderate level, 9 (11.1%) responded that the influence is at a high level, while 19 (23.5%) responded there was no influence at high level, 258 (77%) responded that there was a very high influence of the government termination concession contract on BOT financing, while 80 (33 %) responded that there was no influence of the

government termination of concession contract on BOT projects financing. This implies that there is a likelihood of 1.7(1+11/100) time of Government may terminate the contract irrespective of the circumstances around the operation of the contract.

Therefore, the study conducted a Chi- square test and it gave a p value of 0.0414 compared with the assumed significance level of 0.05. This therefore confirms that government may decide to terminate the contract if the concession under-perform. This is contrary to the result of a cross-tabulation on table 4.50 but supports the overall relation within the variables which is 77%. These could be attributed to the intention express by the government to enter into a contact with the Chinese government to construct the standard gauge railway line. Therefore, these areas must have been looked by the government of Kenya before signing the contract and that why respondent rated very low influence.

Government's intentions to change taxes and laws during the concession

The permanent recession and losses of jobs caused by the high taxes cause a drop in government revenue, as economic production drops. If government then raises tax rates to recoup the lost revenue, production drops again, and the revenue drops even more. In addition to this, the increase in prices caused by the increased taxation prevents government spending from purchasing as much. The respondents were therefore asked to give their opinion on the influence of change in taxes during concession period as measured in the scale of very low, low, moderate, high and very high levels and the results are as shown in table 3.

Table 3: Government's intentions to change taxes and laws during the concession period

Scale of measurement	Frequency (f)	Percent (%)
Very low	76	22.5
Low	72	21.3
Moderate	72	21.3
High	69	20.4
Very high	49	14.5
Total	338	100.0

Table 3 reveals that 76 (22.5%) of the respondents were of the opinion that government's intentions to change taxes and laws during the concession period was very low, 72 (21%) indicated low level, 72 (21.3%) noted that it was also moderate, 69 (20.4%) responded that it was high and 49 (14.5%) responded it was very high. The results reveal that the government cannot change tax during the concession contract, this implies that there is a likelihood of 1.2 times (1+22/100) chances of financing BOT when taxes are changed compare to, 1.1 times on the higher side when not changed. This prompted further investigation as taxes are known to change with the income generated and as a result of share held.

To show the relationship between two or more survey questions by provides a side-by-side comparison of how different groups of respondents answered the survey questions Data was cross tabulated the data and results are as in table 4.

Table 4: Cross tabulation showing government’s intentions to change taxes and laws during the concession period? Cross tabulation

BOT projects financing	Rating of the governments intentions to change taxes and laws during the concession period					Total
	Very low	Low	Moderate	High	Very high	
Influence	54(21.0%)	44(17.1%)	45(17.5%)	48(18.7%)	66(25.7%)	260(77%)
Does not influence	16(19.8%)	16(19.8%)	14(17.3%)	15(18.5%)	20(24.7%)	78(23%)
Total	70(20.7%)	60(17.8%)	59(17.5%)	63(18.6%)	86(25.4%)	338(100%)

Table 4 Indicates that there is an influence of governments intentions to change taxes and laws during the concession period has an influence on BOT financing with the majority 260 (77%) of the respondents supporting. Out of this 66 (25.7%) responded that the influence was at a very high level, 48 (18.7%) at high level, 45 (17.5%) at moderate level, 44 (17.1%) at low level and 54 (21%) at very low level. For those who responded that there is no influence were 78 (23%), out of which 20 (24.7%) responded that there is no influence at very high level, 15 (18.5%) at moderate level, 14 (17.3%) at low level and 16 (19.8%) at very low level. The difference between the two levels high and low in terms of influence was not wide.

Therefore, a Chi square test was carried out which gave a p value of 0.9 confirming that there is a significant influence between the two variables. Therefore government can change taxes during the concessional contract. This implies that if Government increased taxes by 1% financing BOT reducing by 1.8 times $(1+77/100)$. These results dispute the findings on the 4, therefore this could be attributed to the fact that macroeconomic indices such as inflation and escalation rate are typically determined based on historical records as well as the contractually constrained boundary condition. The eight itemized costs: survey cost, design cost, construction cost, incidental cost, operation equipment cost, taxes and charges, operation reserves, and land expropriation cost must be at estimated at the initial stage of signing the contract.

Government’s experience in management of concessional contracts and financing BOT

When it comes to project management, most organizations put their practices before their people. They place more emphasis on rational factors, the process itself, and less on emotional drivers that could lead to project excellence, like their employees' experience. The respondents were asked to state their opinion on government experience in management of concessions contracts as measured in the scale of very low, low, moderate, high and very high levels and the results are shown in table 5.

Table 5: Distribution of level of response on the government’s experience in management of concessional contracts and financing

Scale of measurement	Frequency (f)	Percent (%)
Very low	80	23.7
Low	97	28.7
Moderate	56	16.6
High	58	17.2
Very high	47	13.9
Total	338	100.0

Table 5 illustrate that 97 (28.7%) of the respondents responded that government experience in management of the concessions was low, followed 80 (23.7%) who responded that government experience was very low, 58 (17.2%) responded the government experience in running concessional contracts was high, 56 (16.6%) of the respondents responded that government experience in management of concessional contract was moderate, and only 47 (13.9%) among the respondents who said that government experience in management of concessional contracts was very high. Using the frequency of each category to compare the likelihood, very low more respondent 97 (28.7%) said that government experience is very low; this means that government of Kenya has no experience in the management of concessional projects. The result implies that the concessional contract could not perform well because the government of Kenya had no experience in management of such contract. This could be attributed to lack of laws and policy on training and management of concessional contracts by the government officials. Also worth noting was employees were absorbed from the former East Africa Rail cooperation which was already underperforming.

To present the relationship between two or more survey questions which provide a side-by-side comparison of how different groups of respondents answered the survey questions cross tabulation data was done and results are shown in table 6.

Table 6: cross tabulation showing government experience in management of concessional contracts

Financing BOT	Rating the government of Kenya’s experience in management of concessional contracts					Total
	Very low	Low	Moderate	High	Very high	
Influence	56(21.8%)	69(26.8%)	44(17.1%)	36(14.0%)	52(20.2%)	257(76)
Not influence	17(21%)	19(23.5%)	9(11.1%)	14(17.3%)	22(27.2%)	81(24%)
Total	73(21.6)	88(26.%)	53(15.7%)	50(14.8%)	74(21.9%)	338(100%)

Table 6 Indicates that majority 257 (76%) of the respondents noted that there is an influence of government of Kenya’s experience in management of concessional contracts on BOT financing. Out of this 52 (20.2%) responded that there is an influence at very high level, 36 (14%) at high level, 44 (17.1%) at moderate level, 69 (26.8%) at low level and 56 (21.8%) at very low level. For those who responded that there is no influence were very 81 (24%), out of which 23 (27.2%) responded that there is no influence at very high level, 9 (11.1%) at moderate level, 19 (23.5%) at low level and 17 (21%) at very low level.

The findings have confirmed that experience mechanisms, by which effects are created, seem to be different. While project failure brings about feelings of loss and shame, a highly successful project creates a standard referent to which next work assignments or roles are compared (Feldman 2000). This happened despite the fact that the respondents had, no average, a long tenure in the organization and had fulfilled many functional and project assignments in the past. The finding also supports a study by Ashforth (2001) who argued that a person takes on a role identity if the temporary role offers valence, salience, and social validation.

Since the project work environment was highly gratifying and satisfying, the ex-role became the standard referent of the work environment to which the person wanted to return which may not have been a measure in this case due to dismal performance of the concession. This indicates how what we know about traditional temporary work assignments may not apply to an agile organizational context. As presented by the findings, a project work environment, by its very own unique characteristics, is very appealing (Turner at al. 2008). It does not carry the stigma, discussed by Ashforth (2001) of the passerby without any form of engagement. The

adaptation of the forma EARC workers could have not contributed to the experience of managing tracts and not concessional contract.

Road transport stakeholders influence on operations of the BOT projects

Stakeholders, such as road transporter and materials suppliers, can use their influence and production to demand greater financial benefit. Contractors can negatively affect the project through time and cost overruns. When a special-interest group causes a delay, it can increase the cost of the project by adding the expense of legal proceedings. Political stakeholders can also use the project to ingratiate themselves to voting blocks and political donors. The respondents were asked to state their opinion on the influence on road transporters as stakes holders on financing BOT projects as measured in the scale of very low, low, moderate, high and very high levels and the result are shown in table.

Table 7: Road transport stakeholders influence on operations of the BOT projects

Scale of measurement	Frequency (f)	Percent (%)
Very low	28	8.3
Low	87	25.7
Moderate	49	14.5
High	71	21.0
Very high	103	30.5
Total	338	100.0

Table 7 reveals that 103 (30.5%) of the respondents responded that road transport stakeholders influence on financing of BOT project was very high, followed by 87 (25.7%) who responded that the influence was low, 71 (21.0%) responded that the influence was high 49 (14.5%) responded it was moderate, and 28 (8.3%) among the respondents responded it was very low. This implies that there is 1.2 time stakeholders within the road transport sector influence the operation of the consortium hence influencing financing of BOT projects. This could be attributed to the matatus; long distance tract and the buses owners who have never appreciated the performances of the rift valley railway, because its success to them means out of business. To establish the relationship between two or more survey questions by provides a side-by-side comparison of how different groups of respondents answered the survey questions Data was cross tabulated the data and results shown in the table 8.

Table 8: Cross tabulation showing the influence of road transport stakeholders on the operations of the concession of the rift valley consortium

Financing of BOT	Rating of the influence of road transport stakeholders on the operations of the concession of the rift valley consortium					Total
	Very low	Low	Moderate	High	Very high	
Influence	21(8.2%)	57(22.3%)	32(12.5%)	50(19.5%)	96(37.5%)	256(75%)
Does not influence	3(3.7%)	13(15.9%)	6(7.3%)	7(8.5%)	53(64.6%)	82(25%)
Total	24(7.1%)	70(20.7%)	38(11.2%)	57(16.9%)	149(44.1%)	338(100%)

Table 8 Indicates that 96 (37.5%) responded that there is an influence at very high level, 50 (19.5%) high level, 32 (12.5%) at moderate level, 57 (22.3%) at low level and 21 (8.2%) at very low level. For those who responded that there is no influence were 82 (25%), out of which 53 (64.6%) responded that there is no influence at very high level, 7 (8.5%) at moderate level, 6 (7.3%) at low level and 13 (15.9%) at very low level and 3 (3.7%) at very low level. Therefore, road transport stakeholders influence operations of the concession of the rift valley rail consortium hence financing BOT projects. Majority 75% of the respondents noted the influence, while 25% did not.

This implies that there is a chance of 1.8 (1+75/100) times road transport stakeholders influencing financing of BOT projects. To confirm the two results of frequency percentage and cross tabulation a Chi-square test was carried out and gave a p value of 0.2 confirming the influence of road transport stakeholders on operations of the railway transport.

In establishing the comparative power function of each variable within environmental factors, the study conducted a Wald test and the results presented as in table 11.

Table 11: variables in the equation – political and legal factors

Variables in the equation		B	S.E.	Wald	Df	Sig.	Exp(B)
Step 1(a)	GTERMINA	.091	.126	.516	1	.773	1.095
	GOVTAX	.105	.125	.702	1	.602	1.111
	GOVMGTC	-.148	.133	1.228	1	.268	.863
	GOVLIABL	-.010	.110	.008	1	.929	.990
	RTS	.101	.086	1.352	1	.245	1.106
	Constant	-.995	.373	7.109	1	.008	.370

Variable(s) entered on step 1: Gtermina, Govtax, Govmgtc, Govliabl, Rts.

Table 11, depicts the results of a Wald test that political and legal factors power of influence on financing BOT projects. Government termination has a Wald result of 0.516 and a significance of 0.773, government intention to increase tax has a Wald test result of 0.702 and a significance of 0.602. Government management in concessions contracts has a Wald test 1.228 and a significance of 0.268, government liabilities on concessional contract has a Wald test of 0.008 and a significance of 0.929 and finally Road transport sector has a Wald test of 1.352 and a significance of 0.245. Therefore among the indicators of political and legal factors all the variables are influencing financing of BOT projects. The result also indicates that the predictor indicator with the most power is the government liabilities which is 0.08 and 0.929 respectively this can be attributed to the answers received when the respondents stating that assets conceded during the contract reflects a huge responsibility, which if the project fails the government may lose a lot of money.

This is followed by the Government intention to terminate the contract with a Wald figure of 0.0702 and a significance of 0.402, this could be attributed to commencement the standard gauge construction, however considering the views during the interview standard gauge will not affect the operation of the rift valley railway because they are operating metric gauge which carries more load compared to standard gauge. Therefore the

metric gauge line will still be required considering the tonnage it can transport. This is followed by government intention to change taxes which is 0.0516 and 0.473 respectively, then closely followed by the power of road transport sector which is 1.352 and 0.245, lastly government management of concessional contract with a Wald of 1.228 and 0.268 significance.

In comparison to the other indicators of political and legal factors, the result shows that the significance decreases to zero as the distance between the parameters estimate and the null value increases. These results confirm the fear of Public Forum on Kenya's Railways Transportation Policy (2014). The viability of the concession is affected by other policy decisions that the government of Kenya and its counterpart in Uganda make while the concession subsists. Through the budget speech for 2013/14, Kenya's cabinet secretary for finance introduced the Railways Development Levy (RDL). The purpose of this tax was to acquire funds to supplement the construction of the impended Standard Gauge Railway (SGR) from Mombasa to Nairobi and later right through Uganda to be terminated in Kigali and also to rehabilitate the roads.

While the policy idea here is understandable, the quick imposition of the tax raises several policy questions related to the design and the incidence of that tax. The primary issue here is that while the tax is simple to administer, it is not well designed because it is applied on all importers and is borne by the competing transporters such as the existing railway concessionaire. The fiscal effect of the existing railways operators is subsidizing a competitor. According to research (for the Growth Plan) Infrastructure significant has changes in an economy over the past twenty years: This economic shift influences the distribution of goods throughout the regional; transportation network must be able to accommodate shifting patterns in goods movements. The movements of goods are mostly done by long distance truck, based on value of goods moved. Other modes of travel (marine and/or air) support international goods transport.

Goods movement continues to rely on the road network for at least a portion of the journey, with truck transport either collecting or distributing goods to transportation terminals, manufacturing facilities, warehouses or retail outlets, therefore by having an efficient rail system will mean that some of the road transports will miss market and therefore driven out of business. These could be the contributing factor as to why the stakeholders in the road transport sector continue to sabotage the operation of the rail transport. Despite, policies developed by various levels of government being consistent with respect to the direction on land-use planning and transportation to promote strong communities, a clean and healthy environment, and a strong economy.

The policies recognize the complex inter-relationships among economic, environmental and social factors in planning. Railway which is the mode of transport could deliver this lags behind in terms of service, based on value of goods moved. The Wald test of the two indicators, government termination, and government liabilities showing a Wald of 0.516 and 0.008 and a significance of 0.473 and 0.929 respectively. The result of the two tend to decrease to zero as the distance between the parameter estimate and the null value increases, Therefore there is significance influence among the two indicator s of political and legal factors in influencing rail operation hence Financing BOT projects.

A study done Bogetoft and Olesen (2000) confirm that in order to secure cooperation, the project must be beneficial for all groups of members to cooperate. In other words, no group members should be able to benefit individually. The study recommends the partnership members of long distance track vehicle, the buses and the van operators in the financing of BOT project.

REFERENCE

- Agrawal, P. (2009). Interest Rates and Investment in Asia: an Empirical Evaluation of Various Financial Liberalization Hypotheses. Pp1-31
- Aisen, A. and Veiga, F.J. (2006). “Does Political Instability Lead to Higher Inflation? A Panel Data Analysis.” *Journal of Money, Credit and Banking* 38 (5), 1379–1389
- Barro, R.J. and J.W. LEE (1996), “International measures of schooling years and schooling quality”, *American Economic Review, Papers and Proceedings*, 32(3), pp. 363-394
- Berechman J. (2005). *Transport Investment and Economic Development*. London: UCL Press
- Bilson, CM, Brailsford, TJ and Hooper, VC (2002). The explanatory power of political risk in emerging markets. *International Review of Financial Analysis*, 11, 1–27.
- Bodnar, G.M., Dumas, B. & Marston, R.C. (2002). “Pass-Through and Exposure.” *Journal of Finance*, 57, 199-231
- Bougatef K. & Chichti J. (2010). Equity Market Timing and Capital Structure: Evidence from Tunisia and France. *International Journal of Business and Management*, Vol. 5(10), 167-177
- Bu , T .and Milner V. (2008). Foreign Direct Investment and Economic Growth: Evidence from Sri Lanka *International Journal of Business and Management*; Vol. 9, No. 1; 2014 ISSN 1833-3850 E-ISSN 1833-8119
- Button, Kenneth. (2002). “Effective Infrastructure Policies to Foster Integrated Economic Development.” *Third African Development Forum*, Addis Ababa.
- Egert B., Kozluk, T. and Sutherland, D., (2009), *Infrastructure and growth: empirical evidence*, OECD Economics Department Working Paper No. 685.
- Frontier Economics (2012). *Systemic risks and opportunities in UK infrastructure*, report to HM Treasury and Infrastructure UK
- Henisz, T. (2000). The institutional environment for multinational investment. *Journal of Law, Economics, and Organization* 16, 334–364.
- Kumaraswamy, M.M., Zhang X.Q., (2001). “Governmental Role in BOT-Led Infrastructure Development”, *International Journal of Project Management*, 19, 195-205
- Muhammad, S. (2009). Factors Affecting Investment in Developing Countries: A Panel Data Study. *Journal of Developing Areas*, Vol. 42 (1), 21-37
- Olaseni, A.M. (2004) *Rural Development Planning in Nigeria*: Concept Publications Ltd. Branch
- Shapiro M, (2010). The Globalisation of Law. *Global Legal Studies Journal*, Vol 1.
- United Nations Commission on international trade law (2001). *A Guidebook on development Public-Private Partnership in Infrastructure*.

- Wang, J. Ye Ye, K., Jing, G. and (2000) Interactions between subdomains in the partially folded state of staphylococcal nuclease. *Biochim. Biophys. Acta.* 1479:123-134.
- Wegener, D. T., Petty, R. E., & Smith, S. M. (1995). Positive mood can increase or decrease message scrutiny: The hedonic contingency view of mood and message processing. *Journal of Personality and Social Psychology*, 69, 5–15
- Xenidis, Y. and Angelides, D., “The Financial risks in build-operate-transfer projects”, *Construction Management and Economics*, (2005) 23, pp. 431-44
- Yeo, K.T., Tiong, R.L.K. (2000), "Positive management of differences for risk reduction in BOT projects", *International Journal of Project Management*, Vol. 18 pp.257-265.