



A LEGAL INQUIRY INTO THE SUSTAINABILITY OF THE WEST AFRICAN GAS PIPELINE PROJECT

Kato Gogo Kingston (PhD)¹
and
Etheldred Ego WOHA (LLM)²

ABSTRACT

The history of cross border and transit oil and gas pipelines suggests a tendency to cause conflict and discrepancy which do result in the interruption of output. It is inviting to link this to poor political relations between neighbour countries. The concern with transit and cross-border pipelines has a significant legal implication. The intricacies of the legal and regulatory frameworks for the regional pipeline project together with the issues of multiple jurisdictions require well-articulated dispute settlement regime. This is necessary in view of the disorganized judicial systems throughout the West African region – disputes in the Nigerian and Ghanaian courts have the tendency to drag on for years without determination. In the face of the disparity in the legal systems of the contracting nations, this study critically examined the legal sustainability of the West African Gas Pipeline Project.

Keywords: Keywords: Gas Pipelines, Regulations, West Africa, Energy.

1. INTRODUCTION

The starting point of this article is to distinguish between transit pipelines and cross border pipelines with regards to the transportation of oil, gas or both. Transit

¹ PhD (Petroleum, Energy & Natural Resources Laws, East London), LLM (Laws, East London), MA (Criminology, Hull), PGDipL (Legal Practice, LondonMet), PGDip (Forensic & Legal Psych, Leicester), GDipL (Law, Westminster), LLB(Laws, Northumbria), B.Ed (Education & Political Science, Ibadan), GCert (Advanced Research, East London), BL (Nigerian Law School), Barrister and Solicitor of the Supreme Court of Nigeria; Also, Associate Professor of Petroleum, Energy & Natural Resources Laws.

² LLM (Laws), LLB (Hons), Lecturer, Faculty of Law, Rivers State University, Nigeria.

pipelines commence from one country and pass through the territory or territories of other countries to get its throughput to the destination country.³ On the other hand, cross border pipelines commence from the supply source country across national frontiers to a final country whereby all the nations crossed by the pipelines are able to offload the throughput along service lines.⁴

Historically, the use of pipelines for the transportation of crude oil is attributed to China, in about 2,500 years ago;⁵

“... the Chinese used bamboo pipe to transmit natural gas from shallow wells: they could burn it under pans to boil seawater to separate the salt, and make the water drinkable. Later records indicate that the Chinese used bamboo pipe, wrapped in wax, to light their capital, Peking, as early as 400 BC. These early pipeline pioneers were restricted by materials, joining technologies, and the ability to ‘pump’ (raise the pressure) of the fluids; but this did not prevent pipeline systems being developed: in England in the mid-18th century the London Bridge Waterworks Company had over 54,000 yards (49km) of wooden pipe and 1,800 yards (1.6km) of cast iron.”⁶

³ See: “Article 7(10)(a) of the Energy Charter Treaty [which] provides the explanation that “a pipeline qualifies as a transit pipeline when it originates in one state, travels through another state and exists in the area of a third state or when it originates and exists in one state and in between travels through the area of another state. A transit pipeline therefore requires involvement of at least two states.” In Energy Charter Secretariat. *Intergovernmental Agreements and Host Government Agreements on Oil and Gas Pipelines: A Comparison* (2015)

⁴ According to the Energy Charter Secretariat, “A cross-border pipeline is any pipeline travelling through at least two different state territories. Therefore a pipeline crossing the border between two sovereign states, one being the exporting state and the other the importing one, is not considered a transit but a cross-border pipeline,” Energy Charter Secretariat. *Intergovernmental Agreements and Host Government Agreements on Oil and Gas Pipelines: A Comparison* (2015)

⁵ T J. Dimitroff. *The Journal of World Energy Law & Business*, Volume 7, Issue 4, 1 August 2014, Pages 287–339, <https://doi.org/10.1093/jwelb/jwu024> retrieved 30 April 2018

⁶ See: P. Hopkins, *Pipelines: Past, Present, and Future*. The 5th Asian Pacific IIW International Congress Sydney, Australia 7th - 9th March 2007. Hopkins further observed that: “The use of wood, iron, lead, and tin pipes were common into the 1800s to transport water, and in 1821 wood pipe transported natural gas in New York State, USA. In 1843 iron pipe was used, and this reduced the obvious hazards of transporting a flammable, explosive gas in a flammable material. The 19th century was a time of scientific and technological advances in many industries; for example: lap-jointed wrought iron pipe, riveted or flanged together, became available; the Bessemer steel making process produced higher quality steel from 1850; and seamless pipe was introduced towards the end of this century. These advances paved the way for the pipeline industry.”

Although pipelines have been in use for centuries, the contemporary pipelines originated from Pennsylvania in the United States in about 1850 AD.⁷ The world energy demands, especially, for crude oil and natural gas has increased since after the second world war.⁸ Hence, there is the need for a safer and more efficient means of conveying the products.

“Each day 87 million barrels of oil and almost 225 billion cubic feet of natural gas are produced, transported, processed and consumed around the world. This daily ration is the lifeblood of modern civilization. These hydrocarbons are produced in over 80 countries on 7 continents from more than 1 million wells. This essential vascular system crosses virtually every national border.”⁹

In 1982, the Economic Community of West African States (herein referred to as “ECOWAS”) conceived the idea of developing a natural gas pipeline to facilitate gas supply across West Africa. In 1991, the World Bank conducted an evaluation on the prospect of the proposed project and concluded that the project has reasonable chances of success in terms of the commercial viability of the undertaking. In 1995, four West African countries, namely, Nigeria, Benin, Togo and Ghana, signed an interim agreement which expressly created an international cooperation with regards to the gas pipeline project. A further feasibility study on the project was conducted in 1999 where a Memorandum of Understanding was signed by the four participating countries.

In February 2000, an intergovernmental Agreement was signed by Nigeria, Benin, Togo and Ghana to give the effect of a progressive development of the project. This was followed by the West African Gas Pipeline (herein referred to as “WAGP”) operation agreement signed in 2003. The core objective of the project is to transport natural gas from the supply sources in Bonny and Escravos in Nigeria to Cotonou in Benin Republic; Lome in Togo; and, to Tema and Takoradi in Ghana for the purpose of providing energy for consumption in power plants of numerous regional companies and energy industries thereby enhancing regional economic growths.

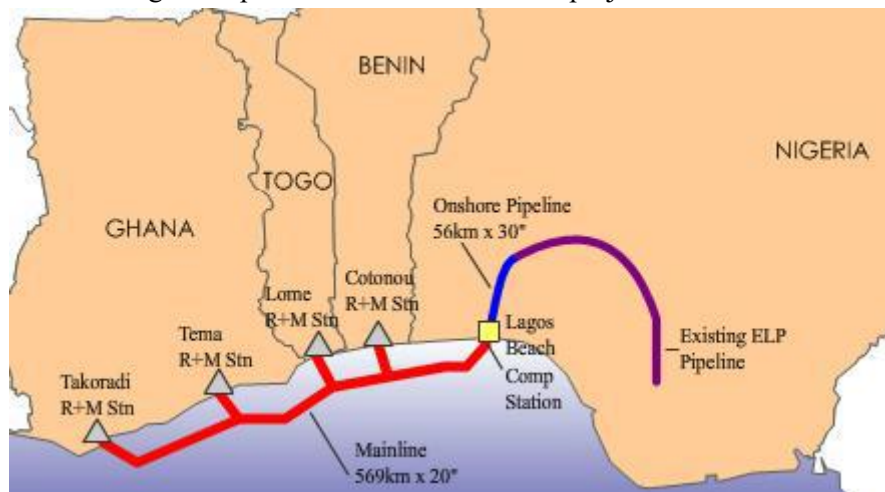
⁷ P. Hopkins, *Pipelines: Past, Present, and Future*. The 5th Asian Pacific IIW International Congress Sydney, Australia 7th - 9th March 2007

⁸ Paul Stevens, *Transit Troubles Pipelines as a Source of Conflict*. A Chatham House Report. The Royal Institute of International Affairs, Chatham House, 2009, www.chathamhouse.org.uk retrieved, 30 December 2018.

⁹ D.R. Langenkamp; "Cross-Border Pipeline Arrangements - What Would a Single Regulatory Framework Look Like?" by Ishrak Ahmed Siddiky - Book review" OGEL 5 (2012), Online at: www.ogel.org/article.asp?key=3332 retrieved 30 April 2018

“In order to mitigate the adverse impact of the energy crisis, access to sustainable and affordable energy supply remains a priority for the Community’s Energy Programme. In addition, different actions have been taken by ECOWAS, including the implementation of priority generation and interconnection projects through the West African Power Pool (WAPP), which is aimed towards meeting the energy needs of ECOWAS Member States by providing reliable and sustainable electricity supply for economic development. The infrastructure programme represents the implementation of approximately 5,500 kilometres of high voltage transmission lines interconnecting all the national power utilities of ECOWAS Member States, coupled with an injection of about 10,000 Megawatts of new capacity to be realised within the period.”¹⁰

Fig 1: Map of the routes of the WAGP project



Source: google images

The commencement of the WAGP project is in compliance with Article 28 of the revised Economic Corporation of ECOWAS Treaty (1993) which state that:

“Member states shall co-ordinate and harmonise their policies and programmes in the field of energy. To this end, they shall (a) ensure the effective development of the energy resources of the region; (b) establish appropriate cooperation mechanisms with a view to ensuring a regular supply of hydrocarbons...”, etc. It is sub-section (f) of article 28 that

¹⁰ ECOWAS, “A Proactive Mechanism For Change: Regional Strategic Plan (2011 – 2015).” *Ecogas Energy Bulletin*, 2018.

talks about the establishment of “an adequate mechanism for the collective solution of the energy development problems within the Community...”

The construction of the transnational gas pipeline started in 2005, connecting the gas natural reservoirs of Nigeria through three sections with a total length of 678 kilometres to Ghana. The first of the three sections measure 569 kilometres long via parallel offshore and originates from the Itoki terminal in the Niger Delta of Nigeria and runs through the coast of Benin Republic, to Togo and Ghana at an underwater depth ranging from 30 metres to 75 metres. The diameter of the onshore pipes are 760 millimetres whilst the diameter of the offshore pipeline is 510 millimetres with a capacity of conveying 5 billion cubic meters of natural gas per year.

The pipeline project is managed by the West African Gas Pipeline Company Limited (WAGPCo), a company jointly owned by the four West African countries. The project is held in joint venture as follows: Chevron (36.7%), Nigerian National Petroleum Corporation (25%), Royal Dutch Shell (18%), Volta River Authority of Ghana (16.3%), Société Togolaise de Gaz (SoToGaz - 2%) and Société Beninoise de Gaz S.A. (SoBeGaz - 2%).

Disputably, the foremost challenge defying the four West African governments and the project success is how to manage the pipeline project around the dissimilar legal systems of the participating sovereign nations to cope with the apprehensions of all stakeholders and beneficiaries. A cross border pipeline project of this nature has the propensity of stirring conflicts of various dimensions, for example, the four countries where the pipelines runs across have different land use laws, hence the access to land and the rights of way require concrete policy on acquisition, revocation and compensation which the present instruments that govern the entire project has failed to provide sustainable¹¹ frameworks.¹²

Currently, Nigeria on her part coercively controls the national segment of the pipelines with the powers embedded in the very contentious Land Use Act 1978. Thus, the allowance of eminent domain prestige for the pipeline project is likely to facilitate resentments therefore, cause disruption of the success of the project.

¹¹ Kim Talus and R J. Heffron. The Evolution of Energy Law and Energy Jurisprudence: Insights for Energy Analysts and Researchers’ *Energy Research & Social Science* 19 (2016), 1-10

¹² Kim Talus. Public-Private Partnerships in Energy – Termination of Public Service Concessions and Administrative Acts in Europe’, *Journal of World Energy Law and Business* 2 (2009) 1, 43-67

Also, there is no uniform assessment procedure for compensation of displaced persons in the four countries.¹³

The issue of displacement and compensation in relation to land use and the pipeline paths have been left unresolved. For example, the UK Financial Times of February 23rd, 1999 observed:

“Nevertheless, the countries are now discussing a regulatory regime, including access to rights of way and deciding issues such as who will have access to the pipeline and under what conditions. The attitude of the World Bank and the African Development towards a regional gas grid could play a big part in any decision to launch the scheme”.

The compensation for land compulsorily acquired for the pipeline is likely to meet future challenges. Secondly, the environmental laws in the four countries are completely different, hence this article explores and suggest the best model of legally harmonizing the environmental laws for the maintenance of a high standard of environmental protection in the construction and operation of the pipeline. It is against these problematic legal concerns that this article is conceived.

1.1 The Fundamental Issues

Currently, there is no generic legal regime that can be used to secure and regulate cross-border pipeline activities and contracts.

“The law governing cross-border energy transport, transit or infrastructures is a complex combination of national, regional and international norms and principles. There are numerous international agreements between States, as well as between host countries and private companies, concluded to facilitate individual cross-border pipeline projects. The terms and conditions of these arrangements vary greatly. As a rule, each pipeline project has its own unique legal regime, based on certain principles and rules of general international law, applicable regional instruments, norms of bilateral pipeline agreements, and

¹³ Kim Talus. ‘Oil and Gas’, in E. Morgera and K. Kulovesi, *Research Handbook in International Law and Natural Resources* (Edvard Elgars 2016)

provisions of commercial contracts between various private parties.”¹⁴

The perspective fashioned by the characteristics of the WAGP project is likely to create conflicts as profits and rents are to be mutually distributed among the parties and the apparatuses exist to inspire one or others to pursue a greater share of such financial gains.¹⁵ Specifically, this article is structured to address the following complex questions:

- a) To what extent has the working legal instruments on the pipeline project devised the framework for adequate pipeline integrity and safety in view of the fact that the consequential disaster of the gas pipeline will pointedly affect the ecology of the disaster locations and, practically definite, transit frugalities?
- b) Is the current structure of the management and control of the project sufficient to eradicate or considerably diminish gas transportation risks that could occur from economic and political disagreements among the contracting parties?
- c) In view of the volatile political atmosphere in the West African region, which often results in wars, coups and civil unrest, how will the project be sustained in the event of such happenings?

2. THE LEGAL AND INSTITUTIONAL FRAMEWORKS

Cross-border pipeline projects require harmonious cooperation among the contracting states. Such common understanding and cooperation cannot be sustained without adequate legal and institutional structures that propel the project. Every aspect of the project must interconnect with the legal instruments and effectively managed by the governing institutions to ensure adequate and uninterrupted,

“... exploration and production; Delivery to connected transmission pipelines or liquefaction, sea transport, import, gasification and input to transmission pipelines; Transmission, storage and bulk supply to large consumers

¹⁴ Sergei Vinogradov and Gokce Mete, *Cross-Border Oil and Gas Pipelines in International Law*. German Yearbook of International Law 56 (2013)

¹⁵ Paul Stevens, *Cross-Border Oil and Gas Pipelines: Problems and Prospects*. Joint UNDP/World Bank Energy Sector Management Assistance Programme (ESMAP)(June 2003).

directly connected to the transmission system and to distribution companies; Distribution, storage and retailing of gas to industrial, commercial and residential consumers.”¹⁶

For this reason, Article VIII (5) of the WAGP treaty stipulates that:

“Each State Party reserves the right, acting in good faith, to restrict by lawful regulation the transit of Natural Gas within its territory or across its territorial boundaries in the event of a national emergency declared in accordance with its Constitution. Any such restriction shall be strictly proportionate to the exigencies of the situation. Each State Party acknowledges, consents and agrees that any such restriction shall be in force only for as long as the national emergency requires it to be in force, and thereafter the State Party in question shall take all necessary or appropriate steps to lift any restrictions imposed and assist the Company to restore its operations.”

This instrument was signed on 31 January 2003 by the Head of States of the four countries and ratified by their respective national legislatures. It created the synchronized structures for legal, financial and business management in the countries of the contracting parties. It sets up the WAGP command and control system for the regulation and administration of cross-border natural gas transmission. Within the administrative framework, the WAGPA is managed by an appointed Board of Governors that works alongside a Committee of Ministers drawn from all four nations. The treaty created the following supplementary institutions, namely: The WAGP Tribunal consisting of five judges, that is, one judge from each nation with the fifth judge (being the presiding judge, appointed from a neutral country). It is important to note that the presiding judge is appointed by the President of the ECOWAS Court of Justice. The monetary aspect of the project is overseen by a Fiscal Review Board consisting of the head of the Tax Authority of each of the four contracting nations.

The institutional frameworks guiding the West African Gas Pipeline project looks impressive on paper, however, it is unclear how the institutions intend to tackle the existing uncommon principles and the divergence in national specificities. The legal instruments propelling the entire project consistently stipulates the need for the parties to ensure effective cooperation, a pledge to fair and uniform system

¹⁶ Jens Bjørnmoose and others, *An Assessment of the Gas and Oil Pipelines in Europe*. The European Parliament's Committee on Industry, Research and Energy, Brussel, 2009.

of pricing, taxation, and the need for parties to agree business terms which favour the monetary benefits of all contracting parties. However, there are no laid down rules for institutional reform within specified timelines.

3. THE COMPLEX VACUUM AND RISKS IN THE PROJECT

The legal instruments of the WAGP lack a precise decommissioning mechanism. Hence, there is a loophole in the establishing laws on the recycling and efficient disposal of waste associated with the production and transit of gas. There is also a very vague structure for remediation of polluted environments; and, the financial liability for the absence of decommissioning plans are unclear. In the oil and gas economic sector, decommissioning involves dismantling the entire facilities such as taking out both onshore and offshore oil rigs and locking the wells. As a part of decommissioning exercise, the production or transit areas are treated to such extent that it is restored to its original state.¹⁷

The United Nations Convention on the Law of the Sea 1982 (UNCLOS) sets the standard for the international best practice for oil and gas facility decommissioning. The failure of the contracting parties to set up a workable mechanism for decommissioning is a serious mistake. This is because; the project will not last for eternity. Where decommissioning is not done, it is foreseeable that the disused onshore and offshore gas pipelines may be abandoned contrary to Article 194 of UNCLOS, which obliges States to take all actions in compliance with the Convention to avert, moderate and control pollution of the marine environment from every source.¹⁸ Also, States are obliged under article 208 of UNCLOS to implement legislation and several other processes to prevent, decrease the pollution of the marine environment with regards to the seabed. Any such laws and measures should be in accordance with the “global and regional rules, standards and recommended practices and procedures.”¹⁹

The legal and institutional instruments of the WAGP project also fail to lay down an effective framework for monitoring the technical life of the pipelines. It is crucial to note that pipelines suffers degradation, wear and tear²⁰ occasioned by corrosion and anode depletion.²¹ Therefore, it is imperative to properly

¹⁷ P. Cameron, *Competition in Energy Markets: Law and Regulation in the European Union* (Oxford: Oxford University Press, 2002).

¹⁸ S. Vinogradov, *Cross-Border Oil and Gas Pipelines International Legal and Regulatory Regimes*, (AIPN Study, 2001).

¹⁹ D. Martyn, *Natural Gas Agreements* (London: Sweet and Maxwell, 2002).

²⁰ P. MacAvoy, *The Natural Gas Market Sixty Years of Regulation and Deregulation* (London: Yale University Press, 2000).

²¹ P. Griffin, *Transnational Gas Projects and their Agreements*, in *Natural Gas Agreements*, 69 (Martyn R. David, ed., London: Sweet and Maxwell, 2002).

decommission pipelines once the service lifespan has ended. This is because Article 60(3) of UNCLOS (1982) states that:

“Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.”

Furthermore, there are social, legal and political risks that usually hamper the sustainability of investment within the developing nations. Amongst other, the WAGP project is susceptible to the following risks, and, the contracting parties are yet to designed action plans to prevent the possible occurrence of the risks.

3.1 Political Instability and “Site fights”²²

The World Bank Political Risk Survey²³ found that 20 percent of investors acknowledged political risk as the core restraint on Foreign Direct Investment in developing countries. The report also found that political risk is the 10th among all the variables of the risks confronting businesses in the developing nations. Political risk is concerned with the coercions to projects owing to happenings arising from the geographical area an investment. It is of crucial standing to cross border pipeline projects due to the divergence in the political and legal configuration of the states. Political risk often involves the regulatory and the legislative deficiencies. West Africa is dotted with social and political insecurity. The possibility of civil unrest and wars springing up is very high. The contracting parties have not laid out any contingency plans on how the gas pipeline project can be protected in the event of such events. This is a very serious deficiency that must be addressed promptly.

²² Daniel Aldrich, *Site Fights: Divisive Facilities and Civil Society in Japan and the West* (Cornell University Press, 2008).

²³ Laura Gómez-Mera and Gonzalo Varela, *Does political risk deter FDI from emerging markets?* (2015). Online at: <https://www.miga.org/> retrieved 20 July 2019

3.2 Environmental Risks

There are several negative environmental effects of gas pipelines in general. Most scholars tend to focus exclusively on the consequences of the destruction of landscapes by way of digging and deforestation damages. However, very little attention has been devoted to the evaluation of the danger posed by “gathering lines”.²⁴ “Gathering line” is the steel pipeline that transports gas directly from a well-pad to larger pipes known as “transmission lines.”²⁵ As the words imply, gathering pipelines involved the configuration of several pipelines in a geographical vicinity forming a sort of pivot of knitted or crowded pipes with each pipeline firmly connected in such manner that it conveys crude oil and or natural gas from the production wellhead to the maze or gathering spot then connected to the processing facilities usually situated kilometres away. For example, the gathering pipelines of the WAGP are mainly situated at Escravos in Nigeria, which is fed by the Chevron- operated Escravos Terminal. Due to the freezing capacity of the gathered gas pipelines, thaw bulb accumulates on the pipes thus, decreasing the long-term pipe lurch, at the ground temperature environment at the Escravos locations. The long term effects of the thaw bulb accumulation and the resultant corrosive effect, including the effects of the frost heave caused by the pipeline gathering spot in Nigeria has not been scientifically ascertained. However, elsewhere, it has been shown that, it is capable of causing the cryogenic displacement of methane. Upon freezing of sediments, methane follows water migration and either dissipates in the soils or concentrates at certain places as it distributes into the soil structure.²⁶

The WAGP instruments also failed to harmonise a legal framework for the regulation of industrial use of water. Gas projects often involve industrial water use and discharge at the gas facilities. Water is often used for gas plant cooling and hydrostatic tests, then discharged into the environment causing storm-water runoffs. The disused waters are known to contain pollutants hence causing a significant increase in sediment load with the severe negative effects on the biodiversity. In British Columbia, Canada, for example, three instruments

²⁴ In oil and gas law, the “gathering lines are those pipelines that are used to transport crude oil or natural gas from the production site (wellhead) to a central collection point. They generally operate at relatively low pressures and flow, and are smaller in diameter than transmission lines”, this explanation is copied from: PHMSA: Stakeholder Communications - Gathering Pipelines, online at: <https://primis.phmsa.dot.gov/comm/factsheets/fsgatheringpipelines.htm> retrieved 20 May 2018.

²⁵ Leach, Stephanie, "Environment, Energy, and Economy: Impacts of Natural Gas Pipelines in 9 Watersheds of North-Central Pennsylvania" (2012). Master of Environmental Studies Capstone Projects. 55 at p.23. http://repository.upenn.edu/mes_capstones/55 retrieved 20 May 2018

²⁶ Gleb Kraev and others, Cryogenic Displacement and Accumulation of Biogenic Methane in Frozen Soils. *Atmosphere* 8(6):105 (June 2017)

regulate the use of water by gas production industries, namely: the Petroleum and Natural Gas Act and associated Drilling and Production Regulation, 2004; the Water Act, 1979, and the Oil and Gas Commission Act, 2008. Therefore, the water approved for such use, including the drilling to advanced simulation systems is closely regulated. Likewise, as soon as the water is used by the industry, the laws obligate the industry to re-injected it back into subsurface formations, to enable it to be recycled “back into operations, or trucked off-site to appropriate disposal facilities. It is important to note there is no surface discharge of produced water from oil and gas activities allowed in British Columbia.”²⁷

4. THE SUSTAINABILITY OF THE DISPUTE SETTLEMENT REGIME UNDER WAGP

The current dispute settlement procedures enshrined in the operating legal instruments of the West African Gas Pipeline project have not been tested. Its current dispute settlement procedure involving the appointment of a judge from each of the contracting states and a ‘neutral’ judge from outside the contracting nations is likely to foster corruption by which the weaker parties may not get a fair share of equitable justice. In essence, the bigger the party the more likely of exerting maximum influence and control with regards to the appointment of the chief judge and, the weight of favourable decisions thereof. Another cause of concern is that, Nigeria may consistently retain upper hands in the entire project in that, she is the producer and supplier of the natural gas which is at the centre of the entire undertaking.

The control of the supply of the throughput is in the hands of the Nigerian authorities; therefore, it is possible for Nigeria to exert the strongest influence in the justice system of the transactions. The WAGP project dispute settlement regime did not borrow from the provisions of the Energy Charter Treaty.²⁸ Without a well-planned procedure for settling disputes, the sustainability of cross border transportation of gas from Nigerian through the contracting regional nations for decades, is uncertain. This is because “the ability of oil and gas producing States and companies to transport energy products unimpeded and without risk of stoppage and siphoning via transit States is perhaps one of the most significant international legal issues for the energy industry in the 21st

²⁷ BC Oil and Gas Commission Oil and Gas Water Use in British. Online at: Columbia <https://www.bcogc.ca/node/5837/download> retrieved 20 May 2018

²⁸ The Energy Charter Treaty (ECT) was signed by 53 countries and the European Community, and was ratified by 47 countries situated along the Central Asian, European and Trans-Caucasian energy transport routes.

century.”²⁹ The types of disputes that could impede the WAGP projects, are likely to arise from taxes and fees; transit, crossing and delivery of gas as well as investment disagreements including disputes over repairs of pipelines, negation of obligation and breach of the investment contract by a party. It is also very likely that disputes may arise concerning environmental remediation.

4.1 *The Needs For The Adoption Of The Energy Charter Treaty (ECT) Framework*

The ECT encompasses a wide-ranging system for determining disputes on transnational energy pipeline matters. The ECT provisions cover various aspects of adjudication of international judicial bodies, with a functioning international arbitration structure that is dedicated for conciliation backed by the Energy Charter conference instrument, further to the relatively efficient diplomatic and political model of negotiation and consultation.³⁰

It is foreseeable that disputes may arise at some point in the course of the current gas pipeline project. For this reason is the need for adequate planning. There are three categories of dispute that usually occur over transnational energy pipelines as follows: (i) Disagreement among all the contracting parties; (ii) Country versus Country dispute; and (iii) Private contractor versus a state party dispute, which is primarily a dispute between an energy company and one or more of the host government. In this regard, Article 26 (1) and Article 26 (2) ECT provides *inter alia*:

“Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably... If such disputes cannot be settled according to the provisions ... within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution: (a) to the courts or administrative tribunals of the Contracting Party party to the dispute; (b) in accordance with any applicable, previously agreed dispute settlement procedure ...”

²⁹ Grace Wandoo Nomhwange, *Transboundary Pipelines: What Is the Role of the Energy Charter Treaty Regarding Disputes Settlement?* (Unpublished PhD Thesis Submitted to the University of Dundee, 2005, p. 5.

³⁰ N. Yahaya, and Others, *New Technique for Studying Soil-Corrosion of Underground Pipeline*, *J. Appl. Sci.* 11(9) pp.1510-1518 (2011).

5. CONCLUSIONS

By conducting a meticulous analysis of the WAGP project, it is very clear that there is the robust commitment by the contracting parties to continue to propel common principles that are the fundamental ingredients for the sustainability of the project. However, for the project to subsists in the long run, the differences in national specificities, including but not limited to geographical, political, legal and social elements should be carefully managed as not to tip the lead to inter-country disagreements that may likely halt or adversely affect the permanence of the transactions.

“The traditional approach of limiting energy planning and service provision to the individual nation states contributes negatively to the energy access issue in Africa.”³¹ It is against this background that the WAGP project was conceived. In essence, the physical incorporation of WAPP’s power systems with the separate national bloc is a crucial precondition for well drawn-out power exchange among the nations. The amalgamation was projected to occur between 2017 and 2018 in accordance with the ECOWAS Energy Masterplan. “Furthermore, countries [were required] to achieve a certain minimum in adoption and implementation of regional standards as a prerequisite for safe operation of the regional network. The challenge however is that most ECOWAS Member States have yet to establish regulatory institutions that will define the mandates, obligations and duties of the regional market operator.”³² This is a major setback for the WAGP project.

The stakeholders of the WAGP should adopt the United Kingdom modelled frameworks for pipeline decommissioning which states: “The potential reuse of the pipeline should be considered before decommissioning, also together with other existing projects (such as hydrocarbon storage). If reuse is considered viable, suitable and sufficient maintenance of the pipeline must be detailed. All feasible decommissioning options should be considered and a comparative assessment made. Any removal or partial removal of a pipeline should be performed in a way that avoids significant adverse effects on the marine environment. Any decision that a pipeline may be left in place should consider the likely deterioration of the material involved and its present and possible future effect on the marine environment. Account should be taken of other uses of the sea.”³³

³¹ World Energy Council (WEC), *Regional Energy Integration In Africa. A Report of the World Energy Council*, 2005. Available at: <http://www.worldenergy.org/documents/integrationii.pdf> [Retrieved 17 May 2018]

³² Ablam Benjamin Akoutou and others, *Understanding Regional Integration in West Africa – A Multi-Thematic and Comparative Analysis*. West Africa Institute, Centre for European Integration, Bonn/Praia, Bulletin No, 17; July 2014

³³ *Decommissioning Of Pipelines In The North Sea Region 2013*, Online at:

All Rights Reserved © Julia Law Journals, England, United Kingdom
www.juliapublishers.com