

# ADEQUACY OF LEGAL PROVISIONS ON VALUATION OF WETLAND FOR COMPENSATION IN THE NIGER DELTA, NIGERIA

AJIBOLA, M. O.

Department of Estate Management,  
School of Environmental Sciences,  
College of Science and Technology,  
Covenant University, Ota  
Nigeria

[solaajibola2000@yahoo.com](mailto:solaajibola2000@yahoo.com); [sola.ajibola@covenantuniversity.edu.ng](mailto:sola.ajibola@covenantuniversity.edu.ng)

## ***Abstract***

*Compensation assessment is legal issue based on the provisions of the enabling laws and this has taken valuation for compensation out of the purview of the general basis for valuation. Series of arguments as regard the adequacy of the figure of compensation had been put forward, however this study examined the adequacy of the provisions for compensation contained in the various laws in Nigeria with respect to wetland valuation for compensation. Exploratory approach was employed in carrying out the study, that is, compensation provisions of the various laws were reviewed. The study established that wetland ecosystems are composed of both use and non-use goods/services. While compensation provisions were made for use goods (the Nigerian Constitution, Oil Pipeline Acts and the Land Use Act variously made provision for assessment and payment of compensation on land, buildings and crops), no provision was made for non-use goods which constitute a large proportion of wetland resources. To achieve the principle of justice and equity that constitute the fulcrum for compensation, the study recommends an overhaul of the laws relating to assessment of compensation payable to take account of the fact that a claimant loses more than goods that are traded in open market. In other words, the non-use components of wetland resources should be adequately provided for in the laws relating to compensation assessment.*

**Keywords:** Claimant, Compensation Laws, Nigeria, Valuation Basis, Wetland Components

## **Introduction**

Assessing compensation for oil spill/pollution, which is a common occurrence in the Niger Delta, is founded on the provisions of the laws, especially the Nigeria Constitution (Sec. 44) 1999 and other relevant laws such as Oil Pipelines Act Cap 338 of 1990; Petroleum Act 1969; Mining Act No. 24 of 1999 and the Land Use Act Cap 202 of 1990. Though these laws prescribed the process for assessing damage from oil pollution, they do not make comprehensive provision for compensation in respect of oil pollution in the petroleum industry in Nigeria. For

example, Section 29 of the Land Use Act provides compensation for only land; buildings, installations and improvement thereon; and crops while Oil Pipelines Act in Section 11 (5a) considers compensation for buildings, crops and profitable trees. The aftermath of this is dissatisfaction among victims of oil pollution and conflicts within the oil producing communities (Egbenta, 2010).

Oil production activities in the Niger Delta affect not just the use goods, but to a larger extent, the non-use goods such as wetland, clean air, water, wildlife, natural heritage sites, recreation sites, natural scenic views and a host of other goods that have direct positive impact on the life of the people. According to Obot, Antonio, Braide, Dore, Wicks, and Steiner (2006) oil spills/pollution has been a major source of damage to wetlands in the Niger Delta Region over the years. In their study, a total of 220 hectares were damaged by oil pollution in Bayelsa State, 105 hectares in Delta State and 202 hectares in Rivers State.

The bone of contention among oil companies and the claimants, from inception till now, is the adequacy of compensation paid or payable for oil spills/pollution, in particular, and general damages to people's interest in land and other ecosystems. Compensation principle is to ensure equity, i.e. the affected persons are neither worse off nor better off than before the occurrence of the damage. There is the general feeling and expression that compensation paid in respect of land acquired compulsorily and compensation paid for damage caused by oil spillage are inadequate. The issue of inadequate compensation is one of the reasons for the current socio-political situation in the Niger Delta Region. In a paper titled "Compulsory Acquisition of Land and Compensation", Food and Agricultural Organization (FAO, 2008), states that "compensation is to repay the claimants for their losses, and should be based on principles of equity and equivalence".

The principle of equivalence is crucial to determining compensation: affected owners and occupants should neither be enriched nor impoverished as a result of the compulsory acquisition. Also, Olusegun (2003) states that the basic principle of compensation for acquisition is that it should be fair and adequate. It should restore the individual to a state where he is neither better nor worse off at the end of the revocation exercise. The author states further that compensation is a recompense for loss and must be approximate, as far as possible, to the money value unto which the owner might have converted his property, had the law not deprived him of it. Commenting on the method of assessing compensation, Olusegun (2003) opines that any method of assessment used by the acquiring authority to determine compensation must sustain the principle of equity under which the property owner is to be left whole in terms of naira and that the requirements for the payment of compensation on acquired lands include the right to compensation and social equity. Nuhu (2006) also argues that when land is compulsorily acquired for a just purpose, there should be prompt payment of/and adequate compensation. FAO (2008) adds that financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim

of putting those affected in the same position as they were before the acquisition since in most cases, the money paid may not fully replace what is lost. Commenting on adequacy of compensation in Malaysia, Alias and Daud (2006) state that there is nothing in any compulsory acquisition laws that prescribes the measure or yardstick to apply in assessing the adequacy of compensation. In the same vein, Ambaye (2009) states that despite the fact that the Ethiopian Constitution, under Article 40(8), provides that just and adequate compensation should be paid to the expropriated; the compensation paid is found to be inadequate. This suggests that compensation should not just be for use goods it should take account of non-use goods. It is against this background that this examines the adequacy of legal provisions on valuation of wetland for compensation in the Niger Delta, Nigeria.

## **Wetland Functions**

The benefits that rural people derive from wetlands are supported by the variety of environmental functions performed by these complex and sensitive environments. Woodward and Wui (2001) identify two major wetland functions: habitat for aquatic species and habitat for terrestrial and avian species. On their part, McCartney, Masiyandima and Houghton-Carr (2004) identify eight wetland functions: storage of precipitation and runoff, groundwater discharge, groundwater recharge, sediment retention, nutrient transformation, biomass production, maintenance of biodiversity and chemical cycling. These functions benefit not only people living within or nearby wetlands but have also effects on users downstream.

A number of goods and services provided specifically by wetlands have been identified and are now widely recognized. Wetlands provide habitat and food for diverse range of species, aid in groundwater recharge and water retention, provide erosion and sedimentation controls between adjacent ecosystems, improve water quality through filtering sediment and metals from groundwater, and cycle nutrients to terrestrial and aqueous environments within the wetlands and between ecosystems. Wetlands are also important global sources, sinks, and transformers of various elements in the earth's various biogeochemical cycles (Mitsch and Gosselink, 2000; Greb and DiMichele, 2006).

Specifically wetlands, as transitional zones between land and water, provide a natural protection against extreme floods and storm surges. It is estimated that every kilometer of wetlands can reduce or lower storm surge by 5 – 7 centimeters (Stokstad, 2005). There is no gainsaying that wetland resources are abundant and diverse. From marshes to wooded swamps and bogs, from sedge meadows to peatlands and vernal pools, wetlands benefit the people in countless ways. They help prevent flooding by slowing down and absorbing water, which might otherwise end up on properties, or in basements. Wetlands gradually release stored water to rivers and streams to maintain flow throughout the dry season, and recharge ground water aquifers so that wells do not go dry. They

protect shorelines from erosion by absorbing the shock of wave action, and preserve water quality by retaining sediment, nutrients and other pollutants. But wetlands do not exist only to serve man's needs. They provide critical habitat for a myriad of species that form a delicate and complex web of life. Frogs, salamanders, turtles, fish, insects, songbirds, waterfowl, deer and moose are just some of the creatures that depend on wetlands for food, shelter and/or breeding habitat. Adamus, Stockwell, Clairain, Morrow, Rozas, and Smith (1991) identify the functional values of natural wetlands that are important to society to include: groundwater recharge, groundwater discharge, floodwater alteration, sediment stabilization, sediment toxicant retention, nutrient removal transformation, production export, aquatic and wildlife diversity abundance, storm buffering, recreation, and uniqueness heritage. They went further to put the function into four major categories: life support; hydrologic buffering; water quality improvements; and historical cultural significance.

Woodward and Wui (2001) identify the various functions performed by wetlands, though not exhaustive, to include: reservoirs of biodiversity; climate change mitigation; cultural value; flood control; groundwater replenishment; wetland products; including fish and shellfish, blueberries, cranberries, timber, and wild rice, as well as medicines that are derived from wetland soils and plants; recreation/tourism; sediment and nutrient retention and export; shoreline stabilisation and storm protection and water purification.

On his own part, Williams (1990) identified four categories of function; physical/hydrological, chemical, biological, and socio-economic.

## **The Need for Valuation**

Wetlands are recognised as being valuable ecosystems which provide water, food and raw materials, services such as flood attenuation and water purification, and intangible values such as cultural and religious value. In some areas, they can be particularly important for peoples' livelihoods. Despite this, and legislation to protect them, they are increasingly threatened, with more than half of the world's wetlands being lost already. Wetlands are degraded beyond the socially optimal extent due to market failure; since markets do not reflect true values or costs and government failure; perverse incentives, lack of well-defined property rights leading to open access and ignorance of decision makers as to the value of wetlands.

Given the complex structure and functioning of aquatic and related terrestrial ecosystems, these systems often yield a vast array of continually changing goods and services. The quality and quantity of these services are in turn affected by changes to ecosystem structure and functioning. Thus, alternative policy and management options can

have major implications on the supply of aquatic ecosystem services, and it is the task of economic valuation to provide estimates to decision-makers of the aggregate value of gains or losses arising from each policy alternative.

Barbier, Acreman and Knowler (1997) were of the view that a major reason for excessive depletion and conversion of wetland resources is often the failure to account adequately for their non-market environmental values in development decisions. They posit that by providing a means for measuring and comparing the various benefits of wetlands, economic valuation can be a powerful tool to aid and improve wise use and management of global wetland resources. They stated further that valuation attempts to assign quantitative values to the goods and services provided by environmental (wetland) resources, whether or not market prices are available to assist in the assessment of the value.

Valuation is important because services provided by aquatic ecosystems have attributes of public goods. Public goods are non-rival and non-excludable in consumption, thus preventing markets from efficiently operating to allocate the services e.g. wetland filtration of groundwater. As long as the quantity of groundwater is not limited, everyone who has a well in the area can enjoy the benefits of unlimited potable groundwater. However, in the absence of any market for the provision of water through wetland filtration, then there would be no observed price to reveal how much each household or individual may be willing to pay for the benefits of such a service. Although everyone is free to use the aquifer, yet no one is responsible for protecting it from contamination. This is not an action that could be undertaken by a company and provided for a fee (price) because no individual has ownership of the wetland filtration process or the aquifer. However, non-market values can be estimated to assess whether the benefits of collective action—perhaps through a state environmental agency or the Federal Environmental Protection Agency (FEPA), exceed the cost of the proposed actions to protect the wetland, and consequently the wetland filtration process and the quality of the water in the aquifer for drinking purposes.

Some aquatic ecosystem services indirectly contribute to other services that are provided through a market but the value of this ecological service itself is not traded or exchanged in a market. For example, an estuarine marshland may provide an important “input” into a commercial coastal fishery by serving as the breeding ground and nursery habitat for fry (juvenile fish). Although disruption or conversion of marshland may affect the biological productivity of the marsh and thus, its commercial fishery, a market does not exist for the commercial fishery to pay to maintain the habitat service of the marshland. The problem is also one of transaction costs. It is costly for participants in the commercial fishery to come together and negotiate with marshland owners and there may be many owners from whom protection agreements must be sought. Estimation of the implicit (non-market) value of the fishery of marsh habitat can be used to understand whether there are laws and rules that protect the breeding and nursery functions of the marsh.

Aquatic ecosystem services that do not have market prices are excluded from explicit consideration in cost-benefit analyses and other economic assessments, and are therefore likely not to get full consideration in policy decisions. Valuation helps to compare the real costs and benefits of ecosystem use and degradation, and allows more balanced decision-making regarding the protection and restoration versus degradation of wetlands. This facilitates optimal decision-making which maximises societal well-being. If monetary values of ecosystem services are not estimated, many of the major benefits of aquatic ecosystems will be excluded in benefit-cost computations. The likely outcome of such an omission would be too little protection for aquatic ecosystems and as a consequence, the services that people directly and indirectly enjoy would be undersupplied. Valuation, therefore, can help to ensure that ecosystem services that are not traded in markets and do not have market prices receive explicit treatment in economic assessments. The goal is not to create values for aquatic ecosystems; rather, the purpose of valuation is to formally estimate the “non-market” values that people already hold with respect to aquatic ecosystems. Such information on non-market values will in turn assist in assessing whether or not to protect certain types of aquatic ecosystems enhance the provision of selected ecosystem services and/or restore damaged ecosystems. Finally, economic values are often used in litigation involving damage to aquatic ecosystems from pollution or other human actions. According to Barbier, Acreman and Knowler, (1997) wetland valuation is used to build local and political support for its conservation and sustainable use, help diagnose the causes of environmental degradation and biodiversity loss, allow more balanced planning and decision-making, and/or develop incentive and financing mechanisms for achieving conservation goals.

### **Regulations Governing Compensation in Nigeria**

The concept of compensation simply means recompense for loss (Babatunde, 2003). It is to place in the hands of the owner expropriated, the full money equivalent of the thing of which he has been deprived. Compensation valuation has only been treated as one of the statutory valuations with basis and valuation techniques stipulated by law. The principle of compensation rests upon justice and equity, and this cannot be achieved without legal backing. Under Article 42(1), the 1989 Constitution of the Federal Republic of Nigeria has it that a right to compensation in the instance of compulsory acquisition is a fundamental human right hence claimants must be put in positions which are not different from their states before the occurrence of a possible disaster. Emphasis is placed more on prompt payment of compensation rather than on fair and adequate compensation. Other legal bases for assessing compensation in Nigeria, among others, include: State Lands Act No. 38 of 1968; Public Lands Acquisition (Miscellaneous Provision) Act 33 of 1976; Oil Pipelines Act (Cap. 338 LFN 1990); the Land Use Act, 1978 (Cap 202 of 1990), Petroleum Act, 1969 (Cap 350 of 1990), and the Mineral Act (Cap 226 of 1990).

A cursory look at the compensation provisions of the above laws show that compensation is basically for the use of goods. For example, Sec. 44 (2m) of the 1999 Constitution provides

*“subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities”.*

On the other hand, Oil Pipelines Act provides for compensation in Sec 6(3), 11(5a) and 20(1, 2).

*“The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, shall make compensation to the owners or occupiers for any damage done under such authority and not made good. Sec 6(3)”*

*“The holder of a licence shall pay compensation – “to any person whose land or interest in land (whether or not it is land respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good Sec 11 (5a)”*

*“If a claim is made under subsection (3) of section 6 of this Act, the court shall award such compensation as it considers just in respect of any damage done to any buildings, crops or profitable trees by the holder of the permit in the exercise of his rights thereunder and in addition may award such sum in respect of disturbance (if any) as it may consider Just Sec 20 (1)”*

*If a claim is made under subsection (5) of section 11 the court shall award such compensation as it considers just having regard to – “any damage done to any buildings, crops or profitable trees by the holder of the licence in the exercise of the rights conferred by the licence Sec 20 (2a)”*

The current legislation on compensation in Nigeria is the Land Use Act of 1978. Provisions for compensation under the Act are contained in Sec 29. The Act provides that the holder/occupier of the right of occupancy revoked for overriding public interest shall be entitled to compensation under the following heads of claims;

- i. **Land:** for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked Sec 29 (4a);
- ii. **Buildings, Installations, and Improvements thereon:** the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed

method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer Sec 29 (4b);

- iii. **Crop:** crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer Sec 29 (4c).

Compensation for oil spills goes beyond the general term of compensation due as a result of compulsory acquisition due to socio – economic components of the effects of such an environmental pollution. The natural environment of wetland ecosystems includes both use and non-use goods. Therefore, any compensation paid/payable to the expropriated person should include the assessment of values for both groups. Otegbulu (2005) argues that the provision of these laws does not capture the full value of the natural resources as they do not place accurate value on them. Also, Otegbulu (2009) argues that there is an absence of a policy and legal framework for assessing full economic value to individual species based on economic functions and for assessing the value of damage to natural resources. In the same vein, Onugu, Iwu, Schopp, Czebiniak and Otegbulu (2003), opine that imbalances in the law and practice of environmental valuation are central to the problem faced by communities and ecosystem in the Niger Delta. The researchers are of the opinion that an effective valuation practice could minimize conflict and civil strife arising from inadequate compensation for damage wrought to the sources of food, water and livelihoods of communities throughout the Niger Delta, as well as elsewhere in Nigeria.

According to Egbenta (2010) compensation due as a result of oil spills has therefore evoked so much problems and controversy in Nigeria in the past to an extent that Valuers have continued to question the relevance and ability of regulatory laws and methods hitherto adopted for its determination. The aim of any compensation is to place the property owner in a position that will make him not to be worse off than before the damage. According to Ajibola (2012) any compensation computed on the basis of inadequate legal provisions will result in inadequate figure thereby impairing the principle of justice and equity, the bedrock of any compensation.

## **Conclusion and Recommendations**

A review of the various laws on compensation showed that provisions were made only for use goods. The Nigerian constitution, Oil Pipeline Acts and the LUA variously made provision for assessment and payment of compensation on land, buildings and crops. None of these laws made provision for compensation on non-use goods which constitute a large proportion of wetland resources.



The principle of compensation rests upon justice and equity. To achieve these, the study recommends an overhaul of the laws relating to assessment of compensation payable to take account of the fact that a claimant loses more than goods that are traded in open market. The non-use components of wetland resources should be adequately provided for in the laws relating to compensation assessment.

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