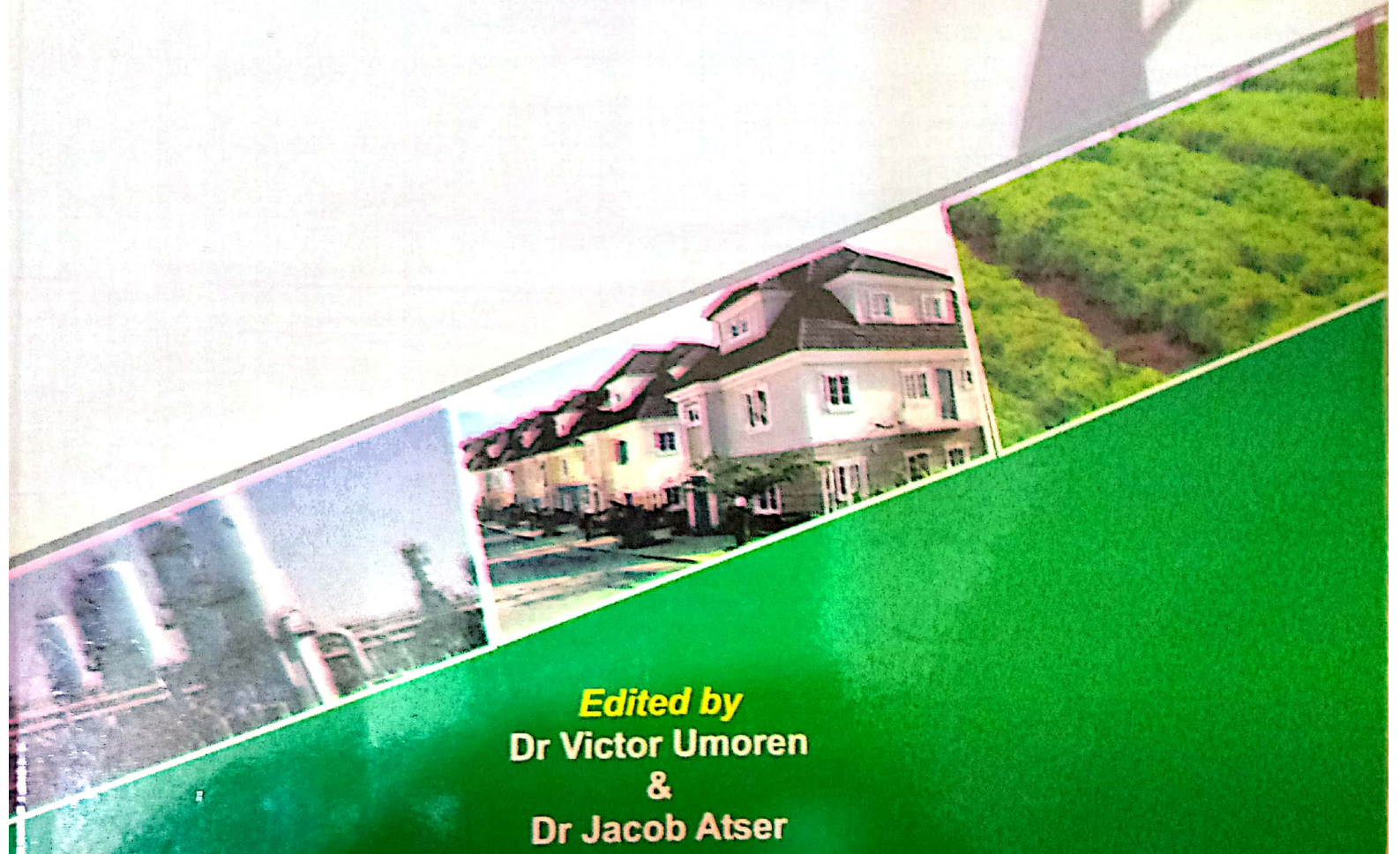




# **LAND USE MANAGEMENT & ENVIRONMENTAL SUSTAINABILITY IN NIGERIA**



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**A BOOK OF READINGS**  
***In Memory of Late Professor Joseph Uyanga***  
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# TABLE OF CONTENTS

Acknowledgements	iii
Preface	iv
Foreword	v
List of Authors	vi
Prof. Joseph Uyanga's Profile	vii
Table of Contents	x

## Section One: Dynamics of Landuse

1. Deficiency of Street Trees in Benin City: A Survey of Residents' Perceptions	1
2. Sustainable Urban Form and Public Space Utilization in Makurdi, Nigeria	12
3. Travel Issues of Households in Minna, Nigeria	27
4. Impact of Landuse/Landcover Change on Land Surface Temperature in Central Akwa Ibom State	39
5. Effects of Rapid Urban Landuse/Landcover Change on Environmental Resource Sustainability in Warri Metropolitan Region	67
6. Urban Landuse/Landcover Change and Flood Vulnerability in Lokoja, Nigeria	84
7. Intra Urban Trip Generation and Distribution Pattern in Makurdi, Nigeria	102

## Section Two: Urban Infrastructure

8. Public Infrastructure Facilities in Nigeria: The Management Question	124
9. Determinants of Good Urban Governance and Infrastructure Service Delivery in Akwa Ibom State	137
10. Appraisal of Vision 20:2020 Infrastructure Development Strategies in Nigeria	153
11. Energy Infrastructure and Urban Development: A Review	170

## Section Three: Sustainable Design & Construction

12. A Framework for Defining and Implementing Sustainable Urban Design	202
13. Integration of Sustainable Design and Construction Principles into Organisational Structure of Firms	220
14. Mitigating Buildings' Flood Hazards through Environmental Sustainable Road Design and Construction	236
15. Application of Colours in Urban Design	251
16. Application of Input-Process-Output Logic Model in Master Plan Design Process: A Case of Institutional Design	257
17. Spatial Relationship and Integration of Functions in Institutional Buildings: A Case Study of University of Uyo, Nigeria	267
18. Mitigating Flood Hazards through Landscape Design: Case of Lagos-Ogun Development Pressured Areas	276

#### **Section Four: Housing**

19	Housing and Environmental Quality in Rural Akwa Ibom State	296
20	Conceptual and Methodical approach to Evaluation of Housing Adequacy	305
21	Population Dynamics and Housing Deficit in Nigeria	219
22	Landscaping and Housing Performance in Uyo Metropolis, Nigeria	331
23	Institutional Barriers to Sustainable Urban Housing Development in Lagos	349
24	A Review of Building Envelopes: Emerging Lessons from Nigerian Context	357
25	Administrative Performance of Enugu State Housing Development Corporation (ESHDC) in Public Housing Provision in Enugu Urban (1995-2020)	365

#### **Section Five: Urban Development**

26	Economic Instruments for Sustainable Urban Waste and Environmental Improvement in Nigeria	382
27	Sustainable Cities and Economy	395
28	New Urban Agenda and its Domestication for Urban Development in Nigeria	407
29	Propellers of Urban Slum and Implications on Residential Environment in Mpape, Abuja	417
30	Domestic Water Demand Management Strategies in Urban Cross River State	429
31	Perceived Quality of Life in Informal Settlements in Yenagoa, Nigeria	439

#### **Section Six: Environmental Ethics**

32	Environmental Justice and Land Acquisition in Lagos: A Review	453
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#### **Section Seven: Spatial Planning & Food Security**

33	Effects of Human Activities on Food Security in Ika South, Delta State	465
34	Morphological Transformation of Urban Agriculture: A Panacea to the Inevitable Trinity of Poverty, Hunger and Food Insecurity	495

#### **Section Eight: Planning, Security & Environment**

35	An Overview of Crime Prevention through Environmental Design	514
36	Emerging Issues in Security, Drug Abuse and Technology towards National Development	529

#### **Section Nine: Corporate Social Responsibility & Environmental Sustainability**

37	Corporate Social Responsibility and Community Development in Uyo	538
38	Corporate Social Responsibility and Environmental Sustainability	560
39	Corporate Social Responsibility and Sustainable Development	572

#### **Section Ten: Population Growth, Quality of Life & Environmental Quality**

40	Evaluation of Community Participation in Rural Water Supply in Oron LGA, Akwa Ibom State	583
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41	A Review of Conceptual and Character of Informal Settlements in Developing Countries	594
42	Impact of Informal Development on the Quality of Residential Environment in GRA, Benin City, Nig.	613
43	Conceptual and Methodological Perspectives on Rural Water Supply	626
44	Solid Waste Management Problems in Ikot Abasi LGA, Nigeria	658
	<b>Section Eleven: Real Estate &amp; Investments</b>	
45	Disproportionate Returns on Residential Property Investment in Ilorin	672
46	Real Estate Investment and Urban Growth	684
47	Online Marketing and Real Estate Business in Uyo, Akwa Ibom State	695
	<b>Section Twelve: Environmental Education &amp; Management</b>	
48	Communicating Climate Change in Africa through the Theatre for Development Process	706
	<b>Authors' Profile</b>	715
	<b>Index</b>	734



# CHAPTER TWENTY THREE

## INSTITUTIONAL BARRIERS TO SUSTAINABLE URBAN HOUSING DEVELOPMENT IN LAGOS

Wahab Muktar Babatunde, Ola Olumide Samson & Durosinmi Wasiru Ayobami

### Introduction

The twenty-first century has been defined as the urban century characterized by more than half of the world's population living in towns and cities. The demographic movement to Africa not before 2030. The trend, however, is clear with 'the urban' continuously outgrowing 'the rural' in term housing infrastructure and amenities. In the next two decades, cities in the developing world will absorb 95% of urban growth (UN-Habitat, 2006). Moreover, the rapid rates of urbanization have led to the growth of megacities of over 10 million in developing countries. In 1975, there were three megacities in the world: Tokyo, New York and Mexico City. In 2005, there were 20 of such cities, 16 of which were located in the developing world (WUP 2005). Nigeria is the most urbanized and largest population of black in sub-Saharan Africa. In its last official census in 1963, Nigeria's population was 55.6 million. In 1973, it was estimated to be 79.7 million; in 1983, 90 million and in 1986 close to 106 Million. in 2006 it was 160 million and currently Nigeria population is estimated be more than 180 million. All of this population resides in a land area roughly equal to California and Arizona combined. Urban areas represent less than 10% of the land area of the country, yet accommodate 28% of the total population. The urban growth rate is 3 to 5 times greater than the rural growth rate (Okoye, 2009). Throughout the country of Nigeria, the annual urban growth rate is estimated to be between 6 and 10% (Olotuah & Bobadoye, 2000; Oladunjoye, 2005).

However, Nigeria has a large and ever-increasing housing deficit which stood at approximately 8 million housing units in 1991 and 12-14 million housing units in 2007 and, also a more recent estimate puts the figure even higher at 16-17 million housing units (Akeju, 2007; Sombo, 2007; Aikhorin, 2008). At an average cost of N2.5million per housing unit, Nigeria would require N35trillion to fund a housing deficit of 14million housing units. The situation is worsened by the high incidence of corruption in all other relevant sectors of the Nigerian economy and the lack of adequate political will by the government to deal with the housing problem (Akomoledede, 2007). Consequently, the 21<sup>st</sup> Century Nigeria inherited a serious problem of inadequate housing, resulting from many years of neglect, undeveloped housing finance system, limited supply of long term funds, low household income levels, high unemployment, high inflation rate, high interest rate on mortgages, high cost of land and building materials, poor planning and poor implementation of housing policies and programmes, existence of administrative



bottlenecks that make the processing and securing of approvals for building plans, certificates of occupancy and other necessary government permits very difficult, and the unmitigated corruption in the allocation of government land within the framework of the Land Use Act, cap.202 LFN 1990 (Ogwu, 2006; Onyike, 2007). However, Nigeria at large has an ever-increasing housing deficit which stood at approximately 8 million housing units in 1991 and 12-14 million housing units in 2007. Another estimate puts the figure even higher to be between 16-17 million housing units (Akeju, 2007; Aikhorin, 2008; Sombo, 2007; Uroko & Akintola, 2008). On the basis of an average cost of construction, N2.5million per housing unit, Nigeria would require N42.5trillion to fund a housing deficit of 17million housing units. Therefore, the need to substantiate the effort of government by private housing sector to augment the deficit is therefore bedeviled by institutional barriers and further handicapped the effort of private bodies and individuals to make up the deficit. The aim of this paper is to examine the various institutional barriers confronting private housing development and how they stand as challenges to private housing developers and finally to identify the ways forward toward achieving sustainable urban housing development.

### Literature Review

Housing is one of the three basic needs of mankind and it is the most important for the physical survival of man after the provisions of food. Decent housing is one of the basic needs of every individual, the family and the community in general. As a pre-requisite to the survival of man, it ranks second after food. It is also one of the best indicators of a person's standard of living and his place in the society. The housing an individual lives in is a symbol of his status, a measure of this achievement and social acceptance, an expression of his personality and the barometer that seems to indicate in a large measure, the way the individual perceives himself and how he is perceived by the larger society (Agbola 1995; Oduwaye *et al.* 2010). The importance attached to housing problems by different governments have resulted in the housing policy adopted which can either be institutional which is comprehensive or residual which is social in nature. Ronald (2007) describe institutional or comprehensive housing policy as a situation where provision of housing becomes the responsibility of governments and the residual or social housing policy is when governments supports those that cannot compete in the housing market to acquire one. But this assertion is considered a mirage in Nigeria system of housing policy therefore the need for private housing development is indispensable. Williams (2002) stated that access to shelter produced by public agencies continue to elude the urban poor who simply cannot muster the financial resources required to procure these housing units. Land question constitutes a major problem in home ownership or housing development. The degree of accessibility in terms of availability and cost remain a big challenge. In the work of Oduwaye *et al.* (2010) it is observed that the cost of urban land has become a big discouragement to urban poor. Only marginal land, with little or no title document and infrastructure at the periphery are available for the poor to build on. This has therefore resulted into urban sprawl and housing development that can not be regarded as homes. The study further pointed out that the cost of processing title document is exorbitant and perfecting land documents that takes minimum of two years is like camel passing through the proverbial eye of the needle. This institutional requirement has therefore weakened



private institutional capacity to ameliorate the urban housing deficit. Jaiyeoba and Amole (2002) in the appraisal of appropriateness and socio-economic implications of low-income housing delivery observed that, the process of low-income housing delivery be supportive approach rather than a provider approach. The study recommended for supportive housing scheme approach which determine the degree at which low-income urban dwellers require support rather than provision. Olusola, Aina and Ata (2002) argued that lack of institutional capacity for effective mortgage systems in Nigeria to provide affordable mortgage loan has served as obstacles against urban housing production in Nigeria.

### **Nigerian Land Policies and Sustainable Urban Housing Development**

*Land Policy Clause:* Land use Act considered it its place to drive real estate development, hence section 1 of the Act that proclaims that all land is vested in government to be held "in trust and administered for the use and common benefit of all Nigerians". This has revealed the reasons why government is playing a suffocating role in real estate development and government saw it as its ordained responsibility to provide these housing services and facilities. A common clause in the Certificate of Occupancy of most states and the Federal Capital Territory is a requirement that "within two years from the date of commencement of this right of occupancy to erect and complete on the said land the buildings or other works specified in detailed plans". This is serious set back for private developers who wish to invest in gigantic private housing infrastructure development such as mass housing, hospitals, roads, rail, bridges, tourist and entertainment centres, museums, theaters etc. and some of these structures are truly gigantic. Therefore if Nigeria real estate has refused to thrive then it is traceable to the philosophy of the Land Use Act.

*Material conflict Between Land Use Act and the Nigerian Urban and Regional Planning (Decree) Law:* Under S. 75(1) of the town and country planning Decree a right of occupancy can be revoked when it "appears" to the Commission, Board, and Authority (created under the Decree) that it is necessary to obtain land in connection with planned urban or rural development. From the above, it is not in doubt that the Commission has the power to revoke land. In so doing, the threshold for compulsory land acquisition is reduced. As we would see in the next section, under the Act, a right of occupancy can only be revoked for public purposes spelt out in section 51. By stating that if it "appears to the Commission" this bar is reduced, and the private developer is more vulnerable. It is however not clear whether this is to be construed to mean that it is the Governor not the Commission that would revoke the right of occupancy, and that such revocation would be as a result of public purpose. There is also a contradiction in respect of S. 76 (2) of the Decree. Under the Act as we would see, compensation for land revocation is to be made promptly. The Decree on its part states that it should be made within a reasonable time. This clearly defeats the intention of the Act. Like S. 75, S. 76 (1) states that compensation shall be paid in accordance with the Act. Clearly there is some confusion here. Although this Decree was amended in 1999, the amendments do not touch the substance of the Decree. It is striking that 12 years after it came into existence, the impact of the Decree is yet to be felt for good or bad.



*Land and Property Transaction Document:* there is a cumbersome process of obtaining Governor's Consent in Nigeria. The Act makes it a requirement that land transfers and land mortgages require consent otherwise the transaction is void. But the process of obtaining such consent is truly herculean, tortuous and laborious. Unfortunately, under the Act, as we pointed out, absolute ownership has been cancelled, and replaced with a mere right of occupancy. That is not all. It is settled today that the Certificate of Occupancy that is issued in favour of the person holding a right of occupancy does not confer title, does not create a right, but is merely evidence of title and presumes that one exists. The implications of the above are serious for commercial property transactions.

*Contradiction between Acquisition of Lands by Aliens Law Cap 2, laws of Lagos State and Land Use Act:* Conflict under the Acquisition of Lands by Aliens Law Cap 2 and laws of Lagos State 1971 contradict land use act, in that, the transfer of land to Aliens under the cap 2 of law of Lagos state 1971 offered absolute ownership but under the Act such transfer must meet with the written approval of the Governor, aliens are therefore disallowed from holding freehold interest or a right of absolute ownership in land. In practical terms, this restriction has been blurred since, under the Act, Nigerian property holders can also no longer own property absolutely, while such property cannot be transferred without the consent of Government. Nevertheless, since property development is very capital intensive, everything ought to be done to encourage foreign investors who have access to land to invest in our real estate sector.

*Discrepancy in Alienation between the Urban And Regional Planning Act, LFN 2004 Section 21(b) and Land Use Act LFN 2004:* This section under Urban And Regional Planning Act provides that, except where the property is to be sold, alienation of customary right of occupancy or mortgage, transfer of possession, sublease or otherwise howsoever cannot be done without the approval of the local government where the land is located. Note that where the land or property is to be sold, it only requires the consent of the Governor. But Land Use Act (2004) says land transfers and land mortgages require consent of Governor not only sale as it is found in Urban and regional planning act, LFN 2004.

*Discrepancy between Land Use Act and Lagos Land Use Charge of 2001:* Lagos enacted land use charge of 2001 aimed at unifying tenement rate, ground rent and neighborhood improvement charges with a single land use charge. This law is vehemently opposed by many interest groups, and its implementation has generated a lot of court cases against the government. The major grouse of the people is that the provision is unrealistic, unscientific and unacceptable to many professionals. Therefore this lack of adequate consultation and consensus among the major stakeholders. Land use act stated that ground rent should be paid annually and Land use charge unified the ground rent payment with tenement rate and improvement charges, this is contradicting the supremacy of Land Use Act.

*The Urban and Regional Planning Act (LFN 2004) Sections 27(1),(2),(5) & 28 and The Lagos State Urban And Regional Planning And Development Law:* These sections impose an obligation on the Local Planning Authority established by the Local Government to have a department to be known as Development Control Department, vested with the



power over control of development on all land within the local government. The Lagos State Urban and Regional Planning and Development Law section 1 created three (3) agencies and puts them under the direct supervision of the Ministry of Physical Planning and Urban Development. The three (3) agencies are: (a.) Lagos State Physical Planning Permit Authority; (b.) Lagos State Building Control Agencies and (c) Lagos State Urban Renewal Agency. There is duplication of function between development control department established by local government through land use act and Lagos state building control agency created by The Lagos State Urban and Regional Planning and Development Law

### **Towards Sustainable Urban Housing Development**

*Land Reform:* The Act has become an obstacle rather than an enablement to development and therefore needs to be reviewed to improve the availability of land for housing development. If land is accepted to be one of the main pillars of housing delivery, the provisions of the Act that constitute bottlenecks to private developers' easy access should be removed to make the Act relevant. There is no doubt that the Act has increased land cost. Its requirement of certificate of occupancy, which is not easy to obtain, is a major problem to those seeking mortgage loan. This, therefore, rendered bare land an unsafe and unacceptable security for a mortgage loan, thereby reducing the potential for raising funds for additional housing development. A new land reform which guarantees private ownership of property without compromising government's right of eminent domain is hereby proposed, to increase land availability and improve accessibility of funds for housing development.

*Reversal of Land nationalization policy and Consent Clause for Land market development:* The nature Nigeria constitution is rigid, therefore any land reform policy that will encourage private housing development and land market transaction should be part of Nigeria constitution this will make any necessary amendment of the law easier to achieve thereby making the law responsive to the needs of the times. The requirement of governor's consent should be expunged from the Land Use Act to facilitate easy transfer, assignment and foreclosure of mortgages which are essential for the efficiency of the mortgage market. Apart from the problem of corruption and abuse of trust which has bedeviled the application of the Act, there is the ownership issue which rendered the use of bare land as security for loans very unattractive and risky to the financial institutions. The Act provides for compensation for unexhausted improvements. Revocation of the right of occupancy over undeveloped land, technically, does not attract any compensation except for the ground rent paid in the year of the revocation; the Government which graciously permitted you to occupy her land will not pay compensation when she takes back what was hers in the first place. This, therefore, rendered bare land an unsafe and unacceptable security for a mortgage loan, thereby reducing the potential for raising funds for additional housing development.

*Improving Land Title Documentation:* Land documentation is still a very frustrating experience in most States of Nigeria. It is expensive, inefficient and time-consuming under the Land Use Act. The process is very prone to corruption. The introduction of the



Geographic Information System (GIS) in land registration will solve most of the aforementioned problems. The initial cost of establishing the system is quite high but the enormous benefits make the system very cost-effective. The experiences in both Abuja, Niger and Lagos States where the GIS have been implemented are very encouraging. Other States should quickly follow their example.

*Developing a Viable Secondary Mortgage Market:* The secondary mortgage market is therefore a sine qua non for mass improvement in the availability of housing. Therefore Federal Mortgage Institution of Nigeria (FMBN) has been saddled to expand in order to back the mortgage finance market and to develop a viable secondary mortgage market to be operated by primary mortgage institutions (PMIs). Under this arrangement, primary mortgage institution serve as operators of secondary mortgage market that offer retail housing finance and FMBN is therefore responsible to perform supervisory role. Secondary mortgage market is operated by primary mortgage institutions to mobilize fund into housing finance sub-sector. True and sustainable secondary market development cannot proceed unless and until the primary mortgage institutions are able to produce a sufficient volume of high quality mortgages to meet the servicing and performance requirements of private investors. There should be a large scale securitization of mortgage portfolios to create mortgage-backed securities for the secondary market. The recent floatation of 100 billion mortgage bond for the purchase of Federal Government houses is a step in the right direction. The Federal Mortgage Bank of Nigeria should become a major supervisor of primary mortgage institutions in the secondary mortgage markets to ensure access to adequate funding and create investor confidence in the Nigerian mortgage industry. There is need however to firstly amend all laws critical to housing investment to facilitate the issuance of housing-related instruments such as mortgage-backed securities (MBS) and real estate investment trusts (REIT) which will be traded on the secondary mortgage market. The laws include the Land Use Act (Decree 6, 1978), the National Housing Fund Act 1992, the Federal Mortgage Bank Act (Decree 82, 1993) and the Mortgage Institutions Act (Decree 53, 1989).

## Conclusion

Concerning institutional land policy framework prerequisite to landed property market development, it is clearly shown that Nigerian land policies is characterized by monopolistic economic system. The barriers created by the land policies in Nigeria have formed the cog in the wheel of landed property development by private developers. The policies have placed over government an over-burden and a suffocating role in real estate development and made government an ordained responsibility to provide these housing services and facilities, this has resulted in fruitless effort, therefore the need for reform that will provide platform for the private sector to engaged in the development of structures that are truly gigantic nature such as stadia, airports, hospitals, roads, rail, bridges, tourist and entertainment centres, museums, theaters without hindrance of any clause as observed in the land Use Act. The legal framework for our land system remains unchanged and most the identified barriers are still lingering and pose an embargo on sustainable urban housing development in Nigeria, not until messiah (Sustainable land reform) comes, urban housing market development would still remain a mirage.



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