



# BUILDING BLOCKS: LEGAL AND COMMERCIAL ISSUES IN BRIDGING THE HOUSING DEFICIT GAP IN NIGERIA

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Nigeria's Real Estate (RE) sector is reckoned to be the sixth largest in the economy. However, as at November 2018, Nigeria still had an unimpressive low home ownership rate of 25%, compared to some other countries: Indonesia (84%), Kenya (73%) and South Africa (56%) respectively.<sup>1</sup> Evidently, Nigeria's housing deficit has its deep rooted legal and commercial issues, stemming from sub-optimal regulatory framework worsened by paucity of funds.



Research has shown that 75% of Nigeria's housing deficit is concentrated on families earning less than one third of the minimum wage;<sup>2</sup> because their incomes are limited, they are unable to afford proper housing. Thus, some have argued that Nigeria does not have a housing deficit problem, but a housing affordability problem.<sup>3</sup> And the distinction is more significant than a mere play on words.

The government exploited variety of options to halt this decline, including but not limited to: crafting the **National Housing Policy** (NHP, in 1991), and establishing the

RESEARCH HAS SHOWN THAT 75% OF NIGERIA'S HOUSING DEFICIT IS CONCENTRATED ON FAMILIES EARNING LESS THAN ONE THIRD OF THE MINIMUM WAGE

<sup>1</sup> Maduka Nweke, 'Housing Deficit Worsens as Nigeria's Population Hits 197.4m', *The Sun*, 23.11.2018: <https://www.sunnewsonline.com/housing-deficit-worsens-as-nigerias-population-hits-197-4m/> (accessed 13.02.2019).  
<sup>2</sup> Bertram Nwannekanma, 'Discordant Tunes Over ₦30.94b Housing Budget Proposal', *The Guardian*, 04.02.2019, p.30.  
<sup>3</sup> Maureen Ihua-Maduenyi, 'Affordability Key to Addressing Nigeria's Housing Deficit - NMRC', *The Punch*, 12.02.2018: <https://punchng.com/affordability-key-to-addressing-nigerias-housing-deficit-nmrc/> (accessed 13.02.2019).

**Federal Mortgage Bank of Nigeria** (in 1977). However, none of these initiatives have succeeded in substantially ameliorating the housing challenges faced by low income earners. Thus, adequate cum comfortable housing, still remains elusive for the average Nigerian.

Leveraging historical context and projecting into the future, this article discusses how sectoral growth-facilitating-regulatory interventions and approaches, followed by other commercial mechanisms, could be explored to bridge this wide gap. The ensuing discourse is organized under *Legal Issues* and *Commercial Issues* respectively.

## A. LEGAL ISSUES

### **The Promulgation of the Land Use Act and Access to Land Issues**

It is widely agreed that the enactment of the **Land Use Act (LUA)** was a watershed in the history of real property development dynamics in Nigeria. **LUA's** enactment was necessitated essentially by socio-economic issues including land speculations, resulting in instability in land cost

and restricted access to land.

The government also had difficulties in acquiring land, especially in Southern Nigeria, where the tenure system lacked coordination and formalized arrangement. The policy underpinning of **LUA** was that vesting ownership of land in the government would eradicate the difficulties of access: for example, in acquiring land for public purposes.<sup>5</sup>

Mostly in the South, such difficulties also gave rise to endless litigation, thereby stunting economic growth.<sup>6</sup> Thus, the **LUA** aimed at the effective use and enjoyment of land including optimal access to, and utilisation of real estate by the private and public sectors for business and social purposes in furtherance of national development.<sup>7</sup>

Also, its predecessor the land tenure system, was infamous for its overarching insecurity of title issues not limited to alienation, investigation and conferment of valid title to purchasers.<sup>8</sup> Incidentally, the **LUA** has been accorded special status by

Nigerian Constitutions since: **1979, 1989 and 1999 Constitutions.**<sup>9</sup>

Notwithstanding these changes, the **LUA** has failed to eliminate issues of land insecurity as the law only allows a person to own a maximum of half hectare of undeveloped land at any given time: **section 34(5) LUA**.<sup>10</sup> Of course, this is an unrealistic provision, which apparently (and necessarily), has been observed more in breach than compliance. The 'land banking' mischief that it seeks to address is sometimes part of the strategy of developers, who need several hectares for large developments, such as mixed-use estates or mass housing projects.<sup>11</sup>

Some State Governments (SGs) have tried to give effect to making land available to persons with valid large-scale need for land, for example real estate development, agricultural and industrial projects. The **section 22 LUA's** provision for governor's consent to property transactions has clogged the wheel of title registrations, and the drag of high perfection cost is also a debilitating issue.

4 *Cap. L5, Laws of the Federation of Nigeria (LFN) 2004.*

5 Matthew Enya Nwokocha, 'Impact of the Nigerian Land Use Act on Economic Development in the Country', *Acta Universitatis Danubius. Administratio*, Vol 8, No 2 (2016), <http://journals.univ-danubius.ro/index.php/administratio/article/view/3976/3876> (accessed 13.05.2019).

6 *Ibid*, Note 5.

7 Prof. I. O. Smith SAN, 'Practical Approach to Law of Real Property in Nigeria', (1<sup>st</sup> ed, 2013), p. 115.

8 *Ibid*, 115.

9 *Section 274(5) of 1979 Constitution' Section 326 (5) of 1989 Constitution' Section 315(5) of 1999 Constitution.*

10 Maureen Ihau Maduanyi, '40 Years Old Land Use Act Needs Urgent Amendment', *The Punch*, 09.04.2018: <https://punchng.com/40-year-old-land-use-act-needs-urgent-amendment-akomolede/> (accessed 12.03. 2019).

11 The government intended to 'free up' land 'banked' by speculators. However 'genuine' real investors also sometimes need to bank their land. For example, after acquiring same say from a community or land owning family, they will need time to consummate their pre-development plans for the land. 'Returns' from appreciation in land value could be part of their business strategy and the **LUA** provision is 'anti-business' in that regard. Developers should be free to acquire land from any valid source and enjoy benefits of value appreciation before development as much as during development.





**Section 22 LUA** provides that: “it shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the governor first had and obtained.”

In **CCCTCS Ltd. v. Ekpo**<sup>12</sup> the Supreme Court (SC) emphasized the need for governor's consent as a precondition for validity of a right of occupancy under the **LUA**, further affirming the nullity of transactions lacking same. This is an avoidable regulatory process, burdening applicants with costs of time, effort and money.

Also, the basis for compensating land owners whose Certificates of Occupancy (C of O) are revoked is arguably unfair and oppressive.

This is because compensation is restricted to improvements on the land and ground rents paid since the year of acquisition, whilst the purchase price for the land is excluded. It has been noted also that the **1999 Constitution** is silent on the quantum of compensation or factors to be considered when paying compensation following compulsory acquisition.<sup>13</sup>

The lacuna ought to be addressed, so that dispossessed owners can be adequately compensated. A study carried out in 2008 on aspects of property acquisition in Abuja with a descriptive analysis of data obtained from administrative and community members of the FCT revealed that, apart from delayed compensation payments, current provisions of the law cannot adequately compensate dispossessed owners.<sup>14</sup>

However, the justification for inadequate compensation is that since land on which the property is built is owned by the State, there is no basis for compensation at market value.<sup>15</sup> It is respectfully submitted that this is not a morally justifiable excuse to deprive land owners of adequate compensation, who had acquired and developed properties at considerable cost.<sup>16</sup>

In **Ekpo**, the Respondent was forced made to sign a deed of mortgage over his property, in lieu of liability (arising from alleged fraud) of ₦80,000 to his employer. On appeal in answering the question on whether courts can ignore mandatory provisions of statute in order to do justice, the SC held it had no such liberties.<sup>17</sup>

<sup>12</sup> [2008] 6NWLR (Pt. 1083), 362.

<sup>13</sup> See R.A. Onuoha, ‘Compulsory Acquisition Without Compensation Under Nigerian Law’ in A.A. Utuama (ed.), ‘Critical Issues in Nigerian Property Law’, Malthouse, (2016), p. 35.

<sup>14</sup> Victor Olutope Ige and Rasidat Adejoke Oladapo, ‘Variation in Compensation for Compulsory Property Acquisition: Ondo State Nigeria Experience’ *Pacific Rim Property Research Journal*, 18.04.2018: <https://doi.org/10.1080/14445921.2018.1461768> (accessed 19.04.2019). Recent reports about compensation for property owners whose properties were demolished for road expansion and construction of the Agege flyover in Lagos is another case in point. The ₦350,000 is paltry given the replacement or market value of such buildings. See Nkasiobi Oluikpe, ‘Rights of Eminent Domain and Equitable Compensation for Landowners’, *Independent Newspaper Nigeria*, 10.04.2019: (accessed 19.04.2019).

<sup>15</sup> Dr. Dorothy Nelson, ‘An Examination of the Right to Compensation for Compulsory Acquisition of Land in Nigeria’, *The Gravitas Review of Business and Property Law*, September 2015, Vol. 6 No.3, p.38.

<sup>16</sup> Section 25 of the *Nigerian Investment Promotion Commission Act 1995, Cap. N117, LFN 2004*, provides adequate compensation for foreign investors whose properties are expropriated.

<sup>17</sup> See per Tobi JSC in *Ekpo's case (supra)*, at 398E: “... courts of law cannot legitimately brush the provisions aside just because it wants to do justice in the matter. To do so will amount to adulterating the provisions of the statute and that is not the function of the court.” The mortgage was therefore void for want of governor's consent.

Also, in *A.D.H. Ltd v Minister, FCT*,<sup>18</sup> it was held that the power to grant or refuse consent to the mortgage of the subject property rests with the Minister, whose discretion cannot be challenged. Such views exemplify how our laws are not transaction-friendly, causing difficulty in access to land, resulting in exorbitant property prices. Ultimately, these make it almost impossible for average Nigerians to afford to own homes.<sup>19</sup>

Incidentally, despite the generally acknowledged housing deficit, there is significant low occupancy rates of property units in the middle income to luxurious segment in upscale urban areas as exemplified by, say, Victoria Island, and Lekki - Ikoyi axis in Lagos.<sup>20</sup> The vacant occupancies are largely due to the premium amounts charged as rents or purchase prices of these accommodations. Meanwhile, given the high cost of their inputs and the need to charge a margin for their investment, it is difficult to blame these developers.<sup>21</sup>

Moving forward, one of the most efficient ways to counteract this problem is by dealing with its root cause. For this purpose, there has been numerous calls for reform of the *LUA*, specifically with repealing the provision vesting all lands in the State Governor, etc as such have rather made the

process of ownership and administration of lands increasingly incommodious. Nonetheless, all efforts to amend the *LUA* have proved abortive. For example, in July 2017, the Senate rejected the Bill proposing to expunge it from the **1999 Constitution**.<sup>22</sup>

### ***Mortgage and Property Law of Lagos State 2012***

In furtherance of the NHP, the **Lagos State Mortgage and Property Law (MPL)**<sup>23</sup> was enacted, creating the Lagos Mortgage Board (LMB). Amongst other things, the **LMB** is focused on the following, viz to: generate conducive environments for accessible and affordable mortgage or charge for the benefit of citizens of the State to acquire their own homes; advise the

Governor on the funding, administration and structure of the State mortgage finance program or policy for the benefit of the residents of the State; ensure that low income citizens have access to affordable housing; and most importantly, prevent unconscionable conducts in the mortgage industry.<sup>24</sup>

Towards achieving its objectives, **Section 12 MPL** empowers the LMB to compel payment of assessed stamp duties and registration fees payable. **Section 24 MPL** empowers the court to give accelerated hearing to matters coming under the law while **Section 25 MPL** penalizes parties who deliberately delay the expeditious hearing of matters coming for determination under the Law.



<sup>18</sup> [2013] 8 NWLR (Pt. 1357), 493.

<sup>19</sup> 'Why Affordable Housing Can't be Possible in Nigeria', The Sun, 07.12.2016: <https://www.sunnewsonline.com/why-affordable-housing-cant-be-possible-in-nigeria/> (accessed 13.03.2019).

<sup>20</sup> Centre for Affordable Housing in Africa, 'Housing Finance in Nigeria', 2018: <http://housingfinanceafrica.org/countries/nigeria/> (accessed 13.01.2019).

<sup>21</sup> When developers are faced with fixing the infrastructure problem, the consequence always gives rise to premium amount being charged on finished projects. This in itself is tantamount to bearing the cost of the government's neglect over the years.

<sup>22</sup> Frank Okeke, 'Unlocking Real Estate Value in Nigeria', LeLaw Thought Leadership Insights, June 2018: <http://www.llelawlegal.com/pdf/Unlocking%20Real%20Estate%20Value%20in%20Nigeria%20-%20Legal%20and%20Regulatory%20Issues.pdf> (accessed 12.03.2019).

<sup>23</sup> Lagos State Mortgage and Property Law No. 6 of 2012.

<sup>24</sup> See Section 7 MPL.

**Section 60 MPL** seeks to shield mortgagors against unconscionable acts of mortgagees for example by charging excessive interest rates.

In spite of the foregoing, there still remain some lacunas in the provisions. **Section 53 MPL's** requirement that mortgage institutions file a copy of any instrument evidencing mortgage transaction at the office of the Executive Secretary of the Board smacks of excessive bureaucracy and red-tapism in mortgage administration.<sup>25</sup> This may have a dampening effect on lending transactions by mortgage banks, consequently reducing the number of people who could own homes via this route. With that being said, this calls for a reform of the **MPL** by removing the need to file a copy of instruments at the office of the Executive Secretary.

## COMMERCIAL ISSUES

### Federal Mortgage Bank

The **Federal Mortgage Bank of Nigeria** (FMBN) was established in 1977 by the **FMBN Act**.<sup>26</sup> It is the exclusive secondary mortgage market operator whilst also managing the National Housing Fund (NHF), discussed below. The FMBN also provides long term loans at affordable prices to the public with a long period of repayment of up to 30 years.<sup>27</sup> It



also allows the FMBN to lend to the contributors of the NHF.

Nevertheless, FMBN faces the challenge of lack of adequate funds as demand for mortgage loans surpasses the available funds. In reality, funds tend to be only available for a selective few middle classes.<sup>28</sup>

However, in recent times, FMBN has been revamped, following a change in the management team in 2018. This resulted to positive outcomes which includes the disbursing of ₦7.1 billion through which 993 Nigerians achieved their dream of becoming home owners. The FMBN funded housing units rose from 20,435 to 25,850 whilst construction loan portfolio grew by ₦12.3 billion. As part of innovations by FMBN's new management, applicants would no longer need to make down payments, thereby reducing upfront cost of homeownership by 20%. This has lessened the burden on low income workers and opened up new window of opportunity for more persons to partake in FMBN housing schemes.<sup>29</sup>

### National Housing Fund

The NHF was conceived as part of the strategies to address the challenge of mobilising a large pool of loanable funds at single digit interest rate to borrowers. It was legislated into existence by the **NHF Act**<sup>30</sup> (**NHFA**) with its objective of facilitating funds mobilization for provision of affordable homes, promoting of funding programs that involves provision of houses, providing incentives for capital market investment<sup>31</sup> in properties, providing loans to Nigerians and other mortgage institutions and ensuring proper resource allocation for housing development.<sup>31</sup>

**Section 5 NHFA** requires every employee to contribute 2.5 % of their

<sup>25</sup> Mortgages are registrable instruments and thus are required to be filed at the Land registry which makes it an additional compliance burden.

<sup>26</sup> Originally enacted as **Federal Mortgage Bank Nigeria Decree No. 7 of 1977** but now **Federal Mortgage Bank of Nigeria Act, Cap. F16, LFN 2004**.

<sup>27</sup> Federal Mortgage Bank of Nigeria, 'About the Fund': <https://www.fmbn.gov.ng/National%20Housing%20Fund/nhf.htm>; (accessed 05.04.2019).

<sup>28</sup> Prof. Kayinsola Ajayi SAN and Tomi Oluleye, 'An Overview of the Legal Framework for Housing Finance and Securitization in Nigeria', *The Gravitas Review of Business and Property Law*, June 2016, Vol. 7 No.2, p.4.

<sup>29</sup> 'Repositioning FMBN for Affordable Mortgage Financing', *This Day*, 17.04.2018: <https://www.thisdaylive.com/index.php/2018/04/17/repositioning-fmbn-for-affordable-mortgage-financing/> (accessed 26.03.2018).

<sup>30</sup> **National Housing Fund Act 1992**, now **Cap.N45, LFN 2004**.

<sup>31</sup> Adegbe Olubukola, 'Mortgage Finance in Nigeria', *CBN Occasional Paper No 50*, 2013: <https://www.cbn.gov.ng/out/2014/rsd/occasional%20paper%20no.%2050mortgage%20financing%20in%20nigeria%20combined.pdf> (accessed 27.03.2019).

monthly basic salary and remit same to a Primary Mortgage Institution (PMI) for a minimum of six (6) months to qualify for a mortgage loan.

Funds from NHF are accessible as mortgage loans for workers to acquire, build, buy, improve or renovate their own home after 6 (six) months of continuous contributions.<sup>32</sup> The NHF is however perceived to have failed to live up to expectations owing to various challenges, one of which is that the contributions are not sufficient to fund loans for even the small number of eligible applicants.

Others include the stringent procedures for applicants – for example, loans being subject to the prospective borrower's ability to produce evidence of clear title to the land. The unfortunate result is that the Nigerian mortgage industry remains underdeveloped and has since failed to contribute significantly to closing the country's housing deficit gap.

Also, the NHF scheme has long been criticized by Nigerian workers on grounds that they have not benefitted enough therefrom, despite their contributions. At a point, trade

unions like the Nigeria Labor Congress (NLC) advocated that employers stop deductions to NHF given employees' difficulties in accessing the loans, despite their contributions.<sup>33</sup> In 2014, one of the grounds for Nigerian oil workers nationwide strike was NHF deductions from workers' salaries.<sup>34</sup>

However, in November 2018, the National Assembly passed the **NHF Bill 2018 (the Bill)** which sought to repeal the **NHFA** and provide additional sources of funding for housing development in Nigeria.<sup>35</sup> **The Bill** introduced 2.5% deduction of monthly income compared to **NHFA** which requires 2.5% basic monthly salary contributions. Also, **the Bill** imposed 2.5% sustainable development levy on ex-factory price (before transportation cost) for each bag of 50kg or its equivalent in bulk, payable by manufacturers and importers of cement;<sup>36</sup> and a compulsory contribution of 10% of profit before tax (PBT) on banks, pension funds administrators (PFA) and insurance companies.<sup>37</sup>

However (and rightly so), in March 2019, President Buhari declined assent to **the Bill** on grounds that its various levies would be disruptive, punitive and have a negative impact on Nigerian

workers and businesses.<sup>38</sup> For example, the 2.5% levy on manufacturers and importers of cement will lead to increased cement prices. This would in turn further impede the achievement of housing affordability in Nigeria.

### **Nigerian Mortgage Refinance Company (NMRC)**

NMRC was incorporated on February 18<sup>th</sup> 2015 with the aim of facilitating access of Nigerians to affordable housing. In 2018, NMRC partnered with International Finance Corporation (IFC) to launch the 'Enhancing Diversity in Graduate Education Program' aimed at providing solutions for housing deficit one of which is to 'build green'. This includes providing complementary softwares for building professionals to easily determine the most cost-effective way of building green based on occupant behavior, building type and local climate.<sup>39</sup>

As at December 2018, NMRC has refinanced mortgage loans totaling ₦18 billion. This has helped boost the liquidity in the Nigerian housing market, thus enabling long term mortgage loan creation.<sup>40</sup> So far it has offered 23,000 new mortgages and 10,000 new

<sup>32</sup> Ibid, Note 26.

<sup>33</sup> Jude Njoku, 'Odds That Favor a Review of NHF Scheme', The Guardian, 08.09.2012: <https://www.vanguardngr.com/2012/09/odds-that-favour-a-review-of-nhf-scheme/> (accessed 12.03.2019).

<sup>34</sup> Sylvester Ugwuanyi, 'Nigerian Oil Workers Commence Nationwide Strike', Daily Post, 15.12.2014: <http://dailypost.ng/2014/12/15/nigerian-oil-workers-commence-nationwide-strike/> (accessed 05.04.2019).

<sup>35</sup> Wole Obayomi, 'National Housing Fund (Establishment) Bill, 2018; Post Mortem', Kpmg, 04.04.2019: <https://home.kpmg/ng/en/home/insights/2019/04/National-Housing-Fund-Establishment-Bill-2018-Post-mortem.html> (accessed 08.05.2019).

<sup>36</sup> Andersen Tax, 'National Assembly Passes the National Housing Fund Establishment Bill 2018'. Anderson Tax, 20.03.2019: <https://andersentax.ng/national-assembly-passes-the-national-housing-fund-establishment-bill-2018/> (accessed 21.05.2019).

<sup>37</sup> Taiwo Oyedele, 'National Assembly Passes New Housing Law to Impose over 200% of Personal Income Tax on Low Income Earners', PWC, Nigeria Tax Blog, 15.03.2019: [https://pwc-nigeria.typepad.com/tax\\_matters\\_nigeria/2019/03/national-assembly-passes-law-to-impose-biggest-tax-on-the-poor.html](https://pwc-nigeria.typepad.com/tax_matters_nigeria/2019/03/national-assembly-passes-law-to-impose-biggest-tax-on-the-poor.html) (accessed 27.03.2019).

<sup>38</sup> Lolade Akinmurele and Owede Agbajileke, 'Buhari Sides With Private Sector, Declines Assent to Housing Bill', Business Day Newspaper of 3 April, 2019, p38.

<sup>39</sup> Ifeanyi Onuba 'NMRC, IFC Devise Strategies to Reduce Housing Deficit', The Punch, 28.05.2018: <https://punchng.com/nmrc-ifc-devise-strategies-to-reduce-housing-deficit/> (accessed 26.03.2019).

<sup>40</sup> NMRC, 'Mortgage Digest', March 2019: <http://nmrc.com.ng/wp-content/uploads/2019/02/NMRC-Mortgage-Digest-7th-Edition-Jan-2019.pdf> (accessed 26.03.2019).



housing units, these are a drop in the ocean that NMRC would need to scale up.<sup>41</sup>

With all these Government initiatives that have since been put in place to provide affordable housing, growth of the Nigerian mortgage industry has been minimal due to many constraining factors: avoidance of bad debts and high interest rates.

### **Avoidance of Bad Debts**

Banks and insurance firms who were supposed to be major contributors have failed to fully buy into the NHF Scheme. This is due to high default rates, which compelled banks to apply more stringent loan processing procedures. This is where mortgage insurance should come into play as it protects the lenders; in the event a borrower is unable to pay back loans, the lender is protected as they are able to get insurance coverage against bad debts.

However, in Nigeria the mortgage system is still in its infancy. Existing mortgage protection plans like Leadway or Axa Mansard's *Mortgage Protection Plan* are limited to paying outstanding balances on mortgagor's demise. Whereas in the USA, such protection comes into effect when mortgagors are still alive but are unable to be punctual on their repayments.<sup>42</sup> This is a mortgage system that Nigeria should imitate, because lenders would still be protected by the policy when mortgagors lose their jobs or can not pay for any reason apart from death.

Recently, the FG declared through the Central Bank of Nigeria (CBN) a new public private partnership initiative, Nigerian Guarantee Company (NGC) to deepen the housing finance industry.<sup>43</sup> NGC was reportedly designed to improve access to affordable housing finance in Nigeria - by solving the credit aspect of the problem faced by the mortgage

industry, vide sharing the credit risk with commercial and mortgage banks. Thus, upon payment of 3% of the mortgage as guarantee fees, NGC would provide a guarantee equivalent to an insurance coverage.

The performance indicators expected from this initiative, once effective are: access to housing finance, access to higher number of mortgages, better loan terms and conditions, etc.<sup>44</sup> Although slated for inauguration in the second quarter of 2018, the NGC is yet to take off.

### **High Interest Rates**

On January 22, 2019 The CBN cut its benchmark interest rate by 50 bps to 14%; this has been forecasted to increase further to 1% by May 21, 2019.<sup>45</sup> The prevailing high interest rates charged by financial institutions on mortgage loans make them less attractive. Where such loans are taken, servicing them becomes financially burdensome, thereby making mortgage affordability almost impossible for middle and low class citizens.

Consequently, most Nigerians prefer to depend wholly on personal savings than approach a mortgage institution. This is further exacerbated by the cultural stigma attached to forfeiture and repossession upon mortgagee default. It is observant that inflation rates lead to increase in interest rates because banks' interest rates must be greater than inflation rate.<sup>46</sup>

41 Muyiwa Lucas, 'Building Affordable Houses for All', *The Nation*, 09.03.2015: <http://thenationonline.net/building-affordable-houses-for-all/> (accessed 26.03.2019).

42 Consumer Financial Protection Bureau, 'What is Mortgage Insurance', 25.09.2017: <https://www.consumerfinance.gov/ask-cfpb/what-is-mortgage-insurance-and-how-does-it-work-en-1953/> (accessed 27.03.2019).

43 Maureen Ihua-Maduenyi, 'FG to Deepen Mortgage Industry with New Guarantee Company', *The Punch*, 04.04.2019: <https://punchng.com/fg-to-deepen-mortgage-industry-with-new-guarantee-company/> (accessed 23.04.2019).

44 Samod Biobaku, '5 Mortgage Trends to Watch Out For in 2018', *Private Property*, 09.05.2018: <https://www.privateproperty.com.ng/news/mortgage-trends/> (accessed 27.03.2019).

45 'Nigerian Interest Rate 2019', *Trading Economics*, 26.03.2019: <https://tradingeconomics.com/nigeria/interest-rate> (accessed 25.03.2019).

46 'Rationale and Solutions to High Interest Rates in Nigeria', *This Day*, 19.09.2019: <https://www.thisdaylive.com/index.php/2016/09/19/rationale-and-solutions-to-high-interest-rates-in-nigeria/> (accessed 05.04.2019).

# Nigeria's infrastructure investment opportunity

## ECONOMIC OVERVIEW



Nigeria is now Africa's largest economy, having passed South Africa

**170m**

As Africa's most populous nation, Nigeria's demographics are a strong lure for investors

**5%**

The country's economy grew by more than 5% in 2013, and has been one of the continent's fastest growing in the past decade

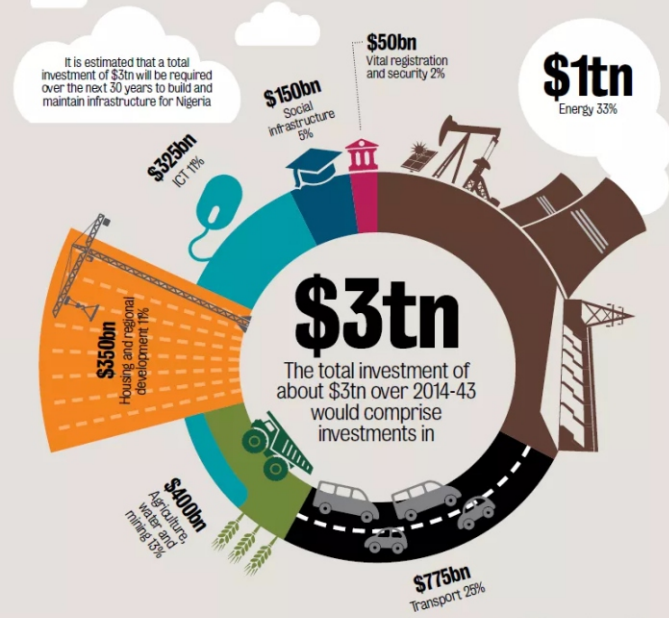


Nigeria is amongst Goldman Sachs' "Next 11" group of countries, identified as having a high potential of becoming some of the world's largest economies in the 21st century



Nigeria aims to be one of the world's top 20 economies by 2020

## THE INFRASTRUCTURE OPPORTUNITY



Source: National Integrated Infrastructure Master Plan

Essentially, it is imperative for the FG to astutely manage the economy in a manner that would keep inflation down, inflation being a contributing factor in increasing an average Nigerian's confidence to borrow and finance their housing needs.

### Low Cost Housing

In reality, current low cost housing projects are delivered at prices that is out of reach for people earning basic salaries. One way to get around this is for the government to promote low cost technologies for mass housing units solutions.<sup>47</sup> Whilst some of

these can be achieved through Public Private Partnership (PPP) arrangements, the issue is that low cost housing is often difficult to achieve, if not managed efficiently. The rise in cost of traditional building materials over the years, is undeniable. To make this possible, they can maximize small spaces and choose the right construction materials in order to make housing at the lowest possible cost.<sup>48</sup>

In summary, efficient planning, project management, economical construction technologies and use of alternate construction method are crucial in building low cost houses.

### Some Solution Options

The tendency for land to appreciate overtime is a major reason behind land speculation. This could otherwise restrict access to land that should otherwise have been readily available for development, whilst the consequences are being borne by the masses through rental prices and house sales.

One way to lower this hurdle, is to discourage land speculation by imposing land use charges and other levies/fees on idle lands. That way, land may be more accessible for productive use including housing, thereby positively impacting housing cost.

Considering the current tariff of building materials in Nigeria (between 15% to 25%),<sup>49</sup> the FG can introduce measures such as 100%

47 See also, Temiloluwa Durojaye, 'What You Need to Know About Low Cost Housing in Nigeria', PropertyProInsider, 27.10.2016: <https://www.propertypro.ng/blog/what-you-need-to-know-about-low-cost-housing-in-nigeria/> (accessed 22.04.2019).

48 For instance, following the recent development in Nigeria, Cargotecture is emerging as a viable low-cost method and a cheaper alternative to the block structure. Given its faster construction time and mobility. However, there is still the problem of how heat and humidity may affect the metal materials that the containers are made of. See Dotun Aderibigbe, 'Cargotecture the Solution to Nigeria's Housing Crisis', Medium, 30.08.2018: <https://medium.com/@adedotunaderibigbe/cargotecture-the-solution-to-nigerias-housing-crisis-659bd3e1bcc5> (accessed 24.04.2019).

49 Customs and Excise Tax Tariff, Chapter 68, Section 13: [https://www.customs.gov.ng/Tariff/chapters/Chapter\\_68.pdf](https://www.customs.gov.ng/Tariff/chapters/Chapter_68.pdf) (accessed 08.05.2019).





waiver or lower tariffs on imported building materials for developers focused on mass affordable housing projects.<sup>50</sup> A laudable policy action was the inclusion of Real Estate Investment Vehicles, construction and operation of residential and non-residential building in the Pioneer List.<sup>51</sup> In June 2018, the Federal Executive Council of Nigeria approved the **Value Added Tax Modification Order 2018**, which amongst other things exempted residential property leases and rentals from VAT.<sup>52</sup>

Also, the withholding tax (WHT)

rate on building and construction contracts that used to be 2.5% before it was increased to 5% in 2016, can revert to 2.5%.<sup>53</sup> This could be a part-mitigant of the housing deficit problem.


### Conclusion

It is clear that government has failed to effectively focus on problematic areas like the deficiency of housing loan system: the lack of social housing, titling problems and documentation.

Some reform recommendations include that the requirement for

Governor's consent in **Section 22 LUA** be removed to facilitate easy property transfers, whether assignments, leases, mortgages and powers of attorney. Special attention should be paid to facilitating the creation of an efficient mortgage market.

There should also be focus on a new land reform that guarantees private ownership of property, without compromising government right of eminent domain to increase land availability and improve accessibility of funds for housing development.

**Section 34 LUA** should also be expunged given its unrealistic nature, that negates adequate and fair compensation for expropriated property. Lastly, in Lagos State, **Section 53 MPL** that requires mortgage institutions to file a copy of instruments evidencing mortgage transactions at the office of the Executive Secretary need to also be expunged. Registration at the Lands Registry should suffice 

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<sup>50</sup> Benjamin Alade, 'Experts Advocate Tax Reduction on Building Materials to Check Housing Deficit', *The Guardian*, 20.07.2018: <https://guardian.ng/business-services/experts-advocate-tax-reduction-on-building-materials-to-check-housing-deficit/> (accessed 09.03.2019). In a recent publication MD of TAF Africa Home, Mustapha Njie advocated for tax reduction on building materials.

<sup>51</sup> *Nigerian Investment Promotion Commission 2017, S.I. No 24, LFN 2004.*

<sup>52</sup> Global Tax Alert, 'Nigerian Government Approves Executive Orders and Amendment Bills for Tax Law Reform', *Global Tax Alert*, 22.05.2018: [https://www.ey.com/Publication/wLUAssets/Nigerian\\_Government\\_approves\\_Executive-Orders\\_andAmendment\\_Bills\\_for\\_tax\\_law\\_reform/\\$FILE/2018G\\_03203-181Gbl\\_Nigeria%20-%20Executive%20Orders%20and%20Amendment%20Bills%20for%20tax%20law%20reform.pdf](https://www.ey.com/Publication/wLUAssets/Nigerian_Government_approves_Executive-Orders_andAmendment_Bills_for_tax_law_reform/$FILE/2018G_03203-181Gbl_Nigeria%20-%20Executive%20Orders%20and%20Amendment%20Bills%20for%20tax%20law%20reform.pdf) (accessed 21.05.2019).

<sup>53</sup> Deloitte, 'Withholding Tax Rate on Building and Construction Contract Reversed from 2.5% to 5%', *Deloitte*, 04.01.2017: <https://blog.deloitte.com/ng/withholding-tax-wht-rate-on-building-and-construction-contracts-reversed-from-2-5-to-5/>