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**Improving Land Policy for Private Sector Development in  
Nigeria: Lessons and Challenges Ahead<sup>1</sup>**

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The International Finance Corporation's Foreign Investment Advisory Service has been implementing an ongoing project in Nigeria dealing with business access to land. The project is working with sub-national governments, in particular the states of Lagos, Kano, and Kaduna, to assess their land markets and land administration procedures and devise approaches to land administration that could increase the supply of business land as well as reduce the direct and indirect costs of land transactions. The project entailed detailed study of land markets and mapping of land administration procedures. This paper discusses some of the findings of that ongoing project.

**I. OVERVIEW OF THE NIGERIAN LAND MARKET(S)**

**1. Overview of the Land Market(s)**

Unlike many other markets that emerged in developing and transitional countries in recent years, Nigeria has a long history of private land markets. The basic laws of property rights and transactions were until 1978 recognizable in any common law country, and private land ownership was widespread. In 1978 the military government adopted the Land Use Decree of 1978 (herein the "Land Law") which changed all this by nationalizing land ownership in the hands of the governors of the Nigerian states, who now hold land in trust for the benefit of all the Nigerian people. The Land Law resulted in 3 major changes. First, it ended private ownership *per se* and established statutory rights of use which may be alienated in market transactions (including sale and mortgage of rights) only with the consent of the governor, necessitating elaborate land bureaucracies and administrative procedures.

Second, though the Land Law essentially nationalized all land, persons in occupancy at that time, and whose land has not since been subjected to a specific government acquisition action, remain in possession. They are entitled to convert their rights to a statutory certificate of occupancy, and their rights to do so are frequently traded as it is possible for any current holder to convert the right by establishing the chain of title. Such rights are actively traded despite the lack of a statutory certificate of occupancy. Arguably, the Land Law created a vibrant informal land market that did not theretofore exist.

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<sup>1</sup> This paper is one of the products of an ongoing project of the Foreign Investment Advisory Service of the International Finance Corporation on business access to land in Nigeria. The author would like to thank the other members of the project team for their advice and assistance in gathering and analyzing the information presented in this paper, in particular Xiaofang Shen and Nouma Dionne of FIAS and Messrs. Ali Magashi and Sani Ali of Kano and Ms. Seri Solebo of Lagos. Any mistakes of fact or interpretation are the author's.

Finally, the Land Law created the primary market for state land grants, as it induced significant state land acquisition and re-distribution activity, which continues today to a somewhat lesser extent. The size of the primary state market may differ significantly among the Nigerian states, depending on many factors, including the amount of unused or unallocated land controlled by the state and the local willingness to engage in further land acquisition.

Despite these significant changes, the spirit of a private land market persists, land and real property is enthusiastically traded throughout Nigeria and is viewed as an important store of value and component of financial security. As a result of the 1978 land nationalization there are today 3 distinct land markets in Nigeria: the primary market for direct state allocations; the secondary market for statutory land rights which are documented by official certificates of occupancy; and the market for pre-1978 land rights which have not yet been converted to statutory rights and for which no statutory certificate of occupancy exists.<sup>2</sup>

The formal market as defined here has two primary characteristics - the existence of a statutory certificate of occupancy and compliance with the formal consent procedures for market transactions with land. Apparently there are quite a few transactions in which existing statutory certificates of occupancy are transferred by standard contractual documents and which follow the rules of common law legal transactions, but are considered to be in the informal market as they are not registered and more or less illegal under the terms of the Land Law because they lack official consent. Similarly, the trade in equitable or customary pre-1978 rights may be done with full contractual formalities, but are also not formal transactions under law as they also are prohibited without official gubernatorial consent.

Estimates of the shares of each of these markets in total land turnover are difficult to find, but investigation in two of the larger states, Lagos and Kano, suggest that direct government land allocations presently account for fewer than 1% of transactions in those places; registered transactions with statutory certificates of occupancy for which official consent has been obtained account for fewer than 25%; and the remainder of transactions - probably more than 70% - are in the informal market - that is, they consist of trade in equitable pre-1978 land rights or trade in statutory land rights without consent or registration.

The Land Allocation Department of the Lagos Lands Bureau advised that in 2007 there were only about 300 applications for direct grants of state land, and only about 30 of those were for non-residential land. In Kano, in recent years there were about 20 applications for direct state allocation of industrial or commercial land, only 6 or 7 of which were actually granted.

To further illustrate the relative sizes of these market segments, in 2007 in Lagos state, an urban agglomeration of over 15 million people, the Ministry of Lands recorded only 2,714 applications for consent to transfer of statutory rights of occupancy. Similarly in Kano, an urban area of almost 4 million people, there were fewer than 400 applications for the governor's consent to assignment of a statutory right of occupancy in 2007. Typical rules of thumb suggest that anywhere from 3% to 5% of all real properties would turn over annually in an urban area, and even

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<sup>2</sup> Thanks to the attorneys of Babalakin & Co., Lagos, in particular Mr. Tola Ashobi, Mr. Olawale Akoni, and Ms. Maryam Abudu for this insightful typology of the Nigerian land market.

accounting for many apartment properties for which land transfer is not necessary, it is reasonable to assume that in urban areas of this size tens of thousands of properties would turn over in any year. It is not known how many land parcels there are in Lagos and Kano, but conservatively estimating the number at 15% of the population size would mean that less than 0.01% of the properties turn over in the formal land market in a year.

A key point to note is that land is available to businesses in all of the market segments. Various degrees of scarcity may exist, and it may be relatively expensive, but it is available. A casual perusal of the pages of the Castles Weekly, the real estate periodical of Lagos, and discussions with land market professionals makes that clear. It is not only available, but is widely considered to be an alternative to investment in financial paper, and land speculation is widespread. In Lagos, annual gains in land prices are estimated to be over 30% for 2007 and 2008.

A second point is that each market segment has its own issues and the key to addressing land issues in Nigeria is to address the issues in each of these markets, as each has spill over affects on the other. For example, in the primary state market the issues may be scarcity and long delays in the allocation process and issuance of title documents. In the organized market the issue of obtaining governor's consent to subsequent transactions may be the paramount issue. In the market for undocumented pre-1978 rights the main problems are the unreliability of title, prevalence of fraud and disputes, and disincentives to formality. Table 1 outlines the main problems affecting each of the Nigerian land markets.

Finally, access to land is not the fundamental problem of the Nigerian land markets, though some might argue that high prices are an access issue. Rather, the fundamental problems arguably are delivery of adequate infrastructure, power in particular, widespread informality, and insufficient creation of good titles. The infrastructure issue prevents efficient delivery of more land in the primary state market, which might help to alleviate scarcity and price increases, and the titles issue hinders liquidity and turnover in the market. The related problem of cumbersome transaction procedures and high official transaction costs may be disincentives to turnover and investment to some extent, but it is more likely that their main affects are to encourage informality and discourage creation of formal titles.

The negative effects of widespread market informality can be debated. In the Nigerian land market all of the following are raised as possibilities, all with some justification: fraud and unreliability of transactions, which reduce market liquidity; avoidance of payment of state taxes and duties on real estate transactions; inability to develop modern land cadastre and registration systems; inadequate collection of recurring land charges as a reliable source of state revenues; poor land planning and subdivision practice; further aggravation of title problems over time; and creation of an "uneven playing field" for businesses as some play by the rules, incurring costs, and others don't.

## **2. Market Issues**

At the risk of oversimplification, the current issues in the Nigerian markets for business land are summarized below and in Table 1.

a. *Primary state market*

Despite presently comprising a small part of the market, opening of new state lands could perhaps relieve price pressures in all markets, as most of the serviced state owned land is already allocated. But opening up new lands is a process that places greater burdens on already inadequate infrastructure finance and in which low levels of compensation is engendering protest and obstruction, making government land acquisition more difficult.

A significant amount of allocated state land appears to be under-utilized or not used at all, as was clear in the states that took part in the current project, but there are no readily available tools, and less political will, to recapture such land for re-use. Once allocated, there is only an obligation to develop the land, not to use it continuously, and many large and serviced commercial and industrial land sites allocated by the state may sit unused for years. The initial and recurring costs of owning the land right are probably too low to compel re-use, leading to long term speculation. Once the initial development obligation is met public officials view allocated land sites as being in the secondary market regardless of whether they are used, which is good news and bad news. It is good news because state land rights are truly viewed as privatized and legally protected, facilitating turnover, but it is bad news insofar as in tight land markets the state has not reserved for itself a means of dealing with long term speculation in state land allocations. Accordingly, it is not uncommon to see deteriorating and decrepit industrial properties sitting vacant while remaining under the control of the original grantee.

Prices for state land grants may be significantly lower than market prices, encouraging speculation and under-utilization.<sup>3</sup> Representatives of the Lands Bureau in Lagos State estimated that prices for state grants could be 40% below prices for equivalent parcels in the secondary market. Moreover, no distinctions are made among categories of land recipients, and the subsidy attached to state lands is generously spread over wealthy and poor alike. A luxury housing development may receive land subsidy as would simple lots for low income housing, and these subsidies are essentially hidden. To be fair, lower income people may receive more subsidy under the practice in Lagos State of charging recipients of land in "prime" land schemes for installation of infrastructure, while in the "general" land schemes, which consist of marginal and poorly located lands, infrastructure is financed by the state. Hard data on the amount of subsidy provided in each case is not available, as there is no requirement to account for the subsidies in the state budgets.

Low returns from land programs makes government reluctant to invest directly in infrastructure in new land schemes, some of which are almost entirely dependent on capital contributions from grantees, who avoid payment and against whom there are few if any enforcement actions. Even with respect to new state grants, violation of the mandatory 2 year development period is commonplace and enforcement is lacking.

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<sup>3</sup> Land pricing may differ among the Nigerian states. In Lagos prices are usually a combination of an infrastructure charge and a small price for the land itself, with the infrastructure charge being the main component of the price. In Kano the state only takes an infrastructure charge, and in fact states that it does not "sell" land in state schemes. The infrastructure charge in both states is established by town planning bodies responsible for actual development of the land schemes, and presumably is based in cost recapture.

A growing problem is protest from holders of land confiscated for government land schemes. Since most older government land development schemes are fully allocated or nearly allocated, or are beyond government control at this point because of informal settlements created since the time of state acquisition, in order to provide further direct allocations the government will have to increase public land acquisitions. Compensation for confiscated land is widely considered to be too low, resulting in significant transfers of wealth from farmers and other small holders to investors. Legal objections are mounting and plausible, including in particular the argument that confiscation of land for the purpose of delivery to another private party is not a "public purpose" under the applicable law on state land acquisition. In localities studied in the present project protests and legal actions against confiscation had begun, and in one serious efforts were underway by government to increase levels of compensation.

When a new government land scheme is opened, it can take years for actual delivery of the site to the grantee, in which time squatting may increase in the new area, further compounding site delivery problems. Delivery problems are often due to government failure to complete survey and installation of infrastructure, which is attributed by some officials to failure of grantees to pay their required capital contributions. Grantees fail to pay contributions in the expectation that the site may not be delivered to them for years, creating in effect a circular problem. In localities studied for this project there was a growing movement toward granting concessions to private firms for speculative development of business and industrial parks, which could address government's apparent inability to provide basic infrastructure in a timely manner.

In terms of volume, there was not much land presently available in state schemes in the localities studied, but this can vary widely among the states. The Lagos Land Department estimated that it had a handful of commercial and industrial sites presently available among its approximately 57 existing land schemes, and other than a very large and ambitious "new town" concession granted to a Chinese SOE there were no major new schemes in development. In Kano there were no sites presently available in existing land schemes, and like Lagos there was a major land concession under development by a foreign investor which would provide opportunities for a variety of wholesale, retail, warehousing and transportation businesses.

It is possible that most government attention to land issues focuses on the needs of significant investors, but smaller enterprises are getting some attention in state business parks and land schemes designed for the smaller enterprise. Truly small "cottage" and start-up businesses must fend for themselves and are relegated to the secondary markets and mixed-use of residential property.

b. Organized Secondary Market

The organized secondary market is relatively efficient. It remains relatively small, and by some estimates may account for less than 20%, perhaps far less, of all land transactions in Nigeria. A main problem to be addressed in the organized secondary market today is encroaching informality, as holders of registered rights and statutory certificates of occupancy increasingly devise methods to avoid time consuming transaction procedures and high official transaction fees (see Box 1). This would not be an unusual occurrence, and there are examples elsewhere of

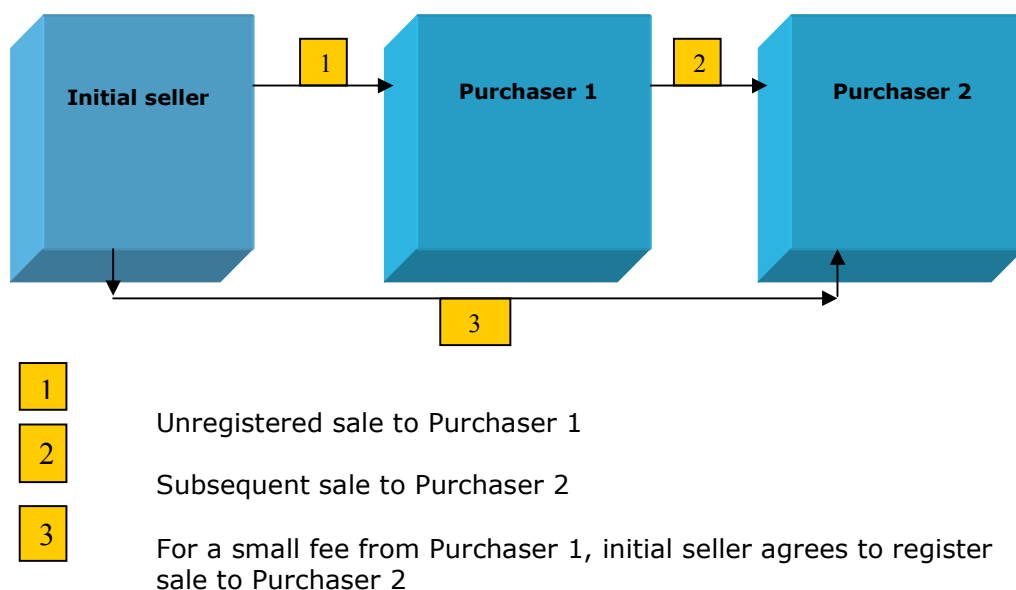
newly developed formal registration systems falling into disuse for various reasons, including high transaction costs but also failure to adequately communicate the benefits of registration.

TABLE 1. NIGERIAN LAND MARKETS AND ISSUES		
MARKET	CHARACTERISTICS	MAIN ISSUES
Primary Market	<ul style="list-style-type: none"> <li>• Direct State Land Grants</li> <li>• Most new lands need to be taken by the state from current occupants, who may hold equitable rights and be entitled to compensation</li> <li>• First-come-first-served</li> <li>• Deep subsidies regardless of wealth or use</li> <li>• Development covenants</li> <li>• Required infrastructure contribution</li> </ul>	<ul style="list-style-type: none"> <li>• Scarcity – opening up new lands</li> <li>• Compensation issues associated with compulsory state land acquisitions</li> <li>• Misdirected subsidies</li> <li>• Speculation - development covenant rarely enforced</li> <li>• Inability to deliver infrastructure</li> <li>• Inadequate generation of state revenue</li> <li>• Long lag times between “paper” allocations and actual delivery of sites</li> <li>• Illegal occupation - squatting</li> </ul>
Organized Secondary Market	<ul style="list-style-type: none"> <li>• Trade in Statutory Rights/Certificates of Occupancy</li> <li>• Mostly Registered Land Rights</li> <li>• Common law conveyancing rules and procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Burdensome land transaction procedures – the “Governor’s Consent”</li> <li>• Burdensome official fees for land transactions</li> <li>• Growing incidence of informality – tax/fee avoidance</li> </ul>
Informal Secondary Market	<ul style="list-style-type: none"> <li>• Pre-1978 Land Rights – “Customary” rights</li> <li>• No statutory certificates of occupancy</li> <li>• Equitable right to obtain a statutory certificate of occupancy</li> <li>• Characterized by unregistered transfers of title documents using common law conveyancing rules and procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Burdensome land transaction procedures and official fees discourage formality</li> <li>• Strict and (arguably) inflexible standards for establishing valid pre-1978 titles and converting to statutory rights</li> <li>• Long delays in conversion of pre-1978 rights to statutory rights of occupancy</li> </ul>

The organized secondary market could be expanded by new state land allocations but also by increased conversion of pre-1978 land rights to statutory certificates of occupancy. But the holders of pre-1978 rights, many of whom are low-income, have little incentive to formalize, given the complex administrative procedures, high fees and difficulties in proving chains of title in the formal system.

**Box 1: Avoiding Registration of Mesne Assignments**

A common approach to avoiding transaction charges even in the organized market is to "skip" registration of intermediary transactions. The initial purchaser will not register his equitable acquisition of the property and upon selling the property in a later transaction will pay the original seller a small fee to represent himself as the seller in the second transaction. Because the initial seller is still the registered or legal owner there is no problem encountered with registering the second sale, but the fees for registering the first sale have been avoided. In theory there could be multiple transactions under this scheme before one is registered, of course at the risk that the initial seller may pass away and the current holder will be left to dealing with an estate and uncooperative heirs if he wants to register.



All things considered, land transaction costs in Nigeria may be high relative to some developed economies and other emerging markets. Regardless of the fact of that matter they are perceived as high by many Nigerians and there are clear indications that the transaction costs contribute to a high level of informality in the land markets, particularly the lower end markets. At the same time, professional land market operators freely admit that the transaction costs are a minor consideration for them in light of annual price appreciation of 30% in the major markets.

c. Informal Secondary Market

Conversion of pre-1978 customary or equitable rights to the organized secondary market by issuance of statutory certificates of occupancy could provide significant amounts of new lands in the organized market, particularly in fringe or peri-urban areas, by giving greater certainty to titles and facilitating transactions. However, holders of such rights have little incentive to formalize, facing the same complex procedures and high costs as the organized market (See Figure 1: Procedure for Conversion of Customary Titles), and the additional hurdle of proving complex chains of title before statutory rights can be issued. Moreover, there is presently little downside to failure to formalize, as there appears to be a good market in customary rights. In some areas most property transactions remain informal and are carried out by local property brokers (*dilli*) in accordance with high legal standards of documentation, but they are neither registered nor approved by the state. It is estimated that a property can change hands up to 10 times before someone seeks registration or consent, usually because they want a legal mortgage or other benefit available only to formal titles, and even mortgages are sometimes granted on an equitable basis by taking possession of customary title documents.

It appears that equitable right holders are most at risk to have their rights confiscated as they occupy lands at the edges of developed areas and beyond. A concern of local authorities regarding informal transactions in equitable rights is that they will lead to poorly documented subdivision of rights, leading to later title problems, and poorly laid out land subdivisions, with little attention to the physical needs of public amenities and services. In Kano, the planning authorities are addressing this issue innovatively by offering to prepare land subdivision plans for equitable right holders for a nominal fee, with no strings attached.

Since the informal market in equitable rights continues, fraud can be a significant problem as rights must be proven based on a chain of title evidenced by a wide range of official and legal documents, making forgery and disputed titles more likely. Moreover, as documents are lost or destroyed it becomes harder to prove title, making conversion of equitable to statutory rights more difficult as time goes by. Nigerian law does not presently have a concept of "possessory" or "conditional" title which might make it easier to address this issue of incomplete chains of title.

### **3. Recent State Initiatives**

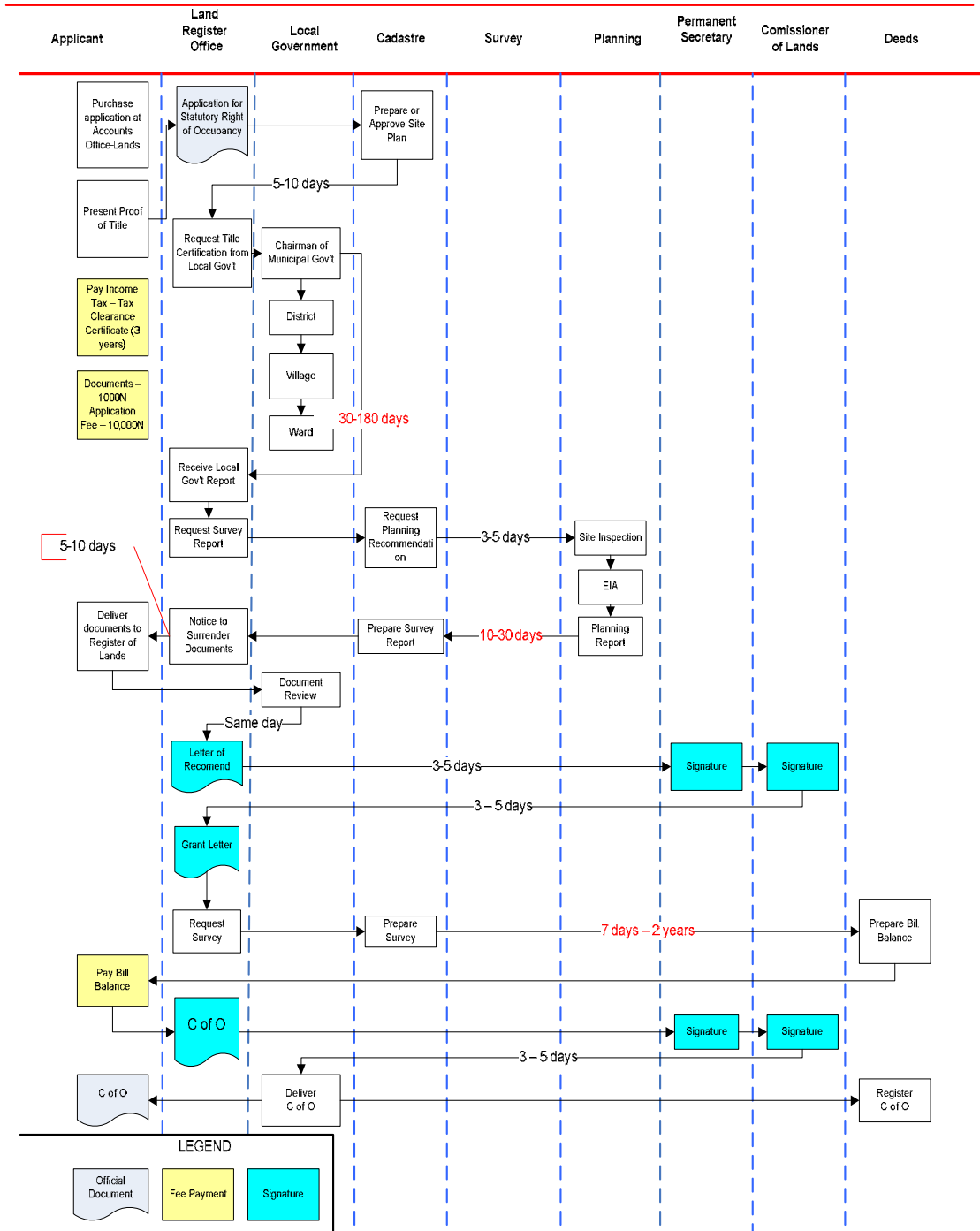
There is a good deal of progress being made by state governments on their own initiative, including development of electronic registration systems, simplification of procedures, lowering transactions costs, and opening up more state lands.

In Lagos the state government has implemented several major initiatives which include:

- Implementation of a 30 day rule for issuance of consents to subsequent transactions, which remains mostly aspirational but the trend is good. Many stakeholders in Lagos presently describe the consent process as more of an annoyance than a barrier to land transactions.



Figure 1: PROCEDURAL MAP: CONVERSION OF CUSTOMARY TITLE  
KANO, NIGERIA



- Lowered official fees and taxes for consent to assignment of land rights to 15% of asset value from the previous level of 30%.
- Lowered the official fee for consent to mortgage from 0.25% of mortgage amount to 0.20% of mortgage amount.
- Begun development of an electronic deeds recordation system in a joint venture with a private firm, that will make accessing title information easier, quicker and more accurate for system users. The effort includes scanning and indexing existing records and documents. While still a grantor/grantee recordation system, and a long way from completion, improvements are already apparent.
- Begun movement toward greater reliance on recurring land charges by increasing and consolidating a series of small land charges into a single assessment, and outsourcing collections to the private sector. Recent trends suggest increases in land revenues from these sources.
- Initiated a major "new community" project in partnership with foreign investors to open up new lands for business and residential purposes.

Some of the recent initiatives taken by the Kano state government include:

- Developing a sophisticated land information system that will provide the tools for land management, title registration and revenue collection.
- Developing through a public-private venture a significant new market area to provide traders now located at the old center city market an alternative with better space, access to transportation and infrastructure.
- Developing a new federal export-import zone that will allow local companies to bypass the export-import controls of Lagos port.
- A task force of private sector stakeholders and some government officials has developed a detailed action plan for reform of land management and administrative procedures concerning land.

## **II. RECOMMENDATIONS FOR ACTION**

To improve performance of the markets there should be undertaken a comprehensive review and reformulation of land management policy and an adjustment to the incentives and disincentives for both public and private stakeholders. The current principles on which the system is based appear to have lagged reality, and the current rules encourage procedural and budget opacity, speculation and scarcity, underdevelopment and unresponsive public service. Tinkering with specific aspects of the system, such as the recent changes to land consent procedures and decreases in official fees, are helpful but will not necessarily result in a comprehensive approach to the problems. Some of the issues and approached that may deserve consideration are described below.

## **1. State Land Allocation**

Considering the small part of the overall market comprised by new state land grants, it is reasonable to question how far, or for what purposes, the Nigerian states should continue to pursue a policy of land acquisition and development in the face of increasing protests from current land holders and gradual erosion over the years of most of the rationales for a state land program. Money and effort may be better spent on infrastructure and systematic titling programs rather than subsidizing firms and citizens that no longer need land subsidies, or providing lands that could be provided in the secondary markets. This is not to say that the state could not continue to be involved on a selective basis in granting land concessions to the private sector for business and industrial parks or affordable housing projects on the basis of market pricing and full cost recovery, or in targeting land programs under conditions of complete transparency to specific needy groups like low income people or small and start up businesses. Essentially, it is the indiscriminately subsidized "retail" land allocation program that is questionable.

Reuse of allocated but unused or underutilized lands might be an answer to the issues and expense of new state land acquisitions, but that line of action appears infeasible for several reasons. Even though with the decline of manufacturing activity there is a significant amount of allocated but unused land and attached facilities in older state land schemes, the states continue to plan and develop new land schemes. Apparently there is no practical approach, legally or politically, to recycle serviced land and facilities that have already been allocated. Rights attached to state land allocations are too strong, and there is little political will to take stronger measures to encourage re-use of state land which is now essentially removed from the market and held for long term speculation. In addition, the acquisition and carrying costs of the underutilized land are so low that there is little incentive for the current owners to market it. While the local officials intend to use persuasion to encourage re-use whenever possible and to bring this land to the attention of investors, at this time there is no interest in taking a more aggressive approach to re-use.

Arguably, a main direction of state land policy should be eventual withdrawal from the business of acquiring and allocating land to "retail" customers, but this will not be done overnight. It would take years to resolve the many titling issues that are keeping secondary markets, and in particular the informal market, from reaching their potential as allocation mechanisms. A series of closely interrelated steps that can be taken now to move toward this objective might include:

- (1) Implement a policy of cost recovery, market pricing and targeted subsidies for state land transactions.*

The Nigerian states can implement policies which require, at a minimum, full cost recovery for state land grants, and optimally they would implement market pricing. Movement toward market pricing could increase the cost of holding land and decrease incentives for speculation. Hidden subsidies which are presently given to all state grantees should be targeted under special programs with well developed social objectives and eligibility criteria. Possible target groups include subsistence agriculture, low income housing, and small business. With regard to targeted land subsidy programs, the states should consider restricting re-sale of the allocated properties to the same targeted groups that were eligible to receive an initial grant, as well as restrictions on price appreciation to assure continued affordability for the

targeted groups. Now, land allocated by the states is often the subject of speculation and the hidden subsidy ends up in private pockets rather than assuring continued affordability for targeted groups. It is likely that these restrictions could be achieved by certificate of occupancy covenants which run with the land without violating current legal concepts.

(2) *Budget transparency for land subsidies.*

A problem with the current state land program is that very few people know how much it costs in terms of direct infrastructure expense, foregone revenues and actual subsidies. It is not possible to make good management decisions without this information. Governors can immediately require that the actual costs of state land programs be reflected in the state budget document. This would require that all direct budgetary costs of the land programs be measured against revenues from land sales, but also that prices received for state land be measured against the market values for equivalent land sites and the differential carried as an implied land subsidy.

(3) *Implement competitive procedures for allocation of lands not reserved for targeted groups.*

Competitive procedures such as auctions can serve several important purposes, including greater transparency in allocation procedures, maximization of state land revenues, and lessening incentives for speculation. They would be particularly appropriate for commercial and industrial land.

(4) *Emphasize public/private partnerships and land concessions rather than "retail" land allocation programs.*

More emphasis could be placed on land grants under public/private partnerships or land development concessions, eliminating the need for government involvement in land development activities. In fact there seems to be a movement in this direction now. The main problem with this approach is the likelihood that private concessions will tend to serve the higher ends of the markets and not lower income people or start-up businesses.<sup>4</sup> This problem could be overcome by establishing conditions on state land allocation that require private sector developers to set aside a certain amount of land or housing for targeted groups at affordable levels, which could be accompanied by land use privileges such as increased densities. The concept of conditioning certain types of land development benefits on mandatory inclusion of affordable housing or other public amenities has become commonplace in developed economies.

## **2. Gubernatorial Consent Procedures**

There is some progress being made on improving gubernatorial consent procedures for market transactions. Some jurisdictions have already delegated authority for signing consent documents from the governor to the Commissioners of Lands or other subordinates, which can relieve pressure and address a bottleneck

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<sup>4</sup> Experience elsewhere suggests that large scale investments in industrial and commercial parks, whether sponsored by government or private concessionaires, do not serve small and start up business, but rather serve the larger, more capital intensive and export oriented businesses. See Butler, Stephen, [Viet Nam: Better Access to Land for Private Sector Development: Summary and Analysis of Survey Research](#), FIAS/IFC, March 2007.

that exists in other states. Lagos has taken further initiative to address inefficiencies in the procedures by implementing in 2006 its "30 day rule," under which all consents are to be completed within 30 days of application. Even though by most accounts this 30 day processing time remains mostly aspirational, reports are that the trend is positive and processing times are being reduced.<sup>5</sup>

Many private sector actors in the land markets consider consent procedures to be more of an annoyance than a barrier to transactions, though not an insignificant annoyance. And, as in some other emerging markets, there are indications that important market players view the procedures as less of an annoyance than smaller actors because of their ability to "game the system." It is also fair to say that the actual consent procedures are viewed as less of an issue than the direct costs of transaction fees.

It is a legitimate question whether efforts to tinker with specific steps and requirements of the governor's consent procedures for market sale and mortgage transactions will be more than marginally fruitful, or whether complete elimination of the consent procedures should be the objective. There are a number of reasons why the consent procedures are inefficient now which have relatively little to do with the procedures themselves, and which distinguish them from similar requirements in more developed economies:

(a) *Management.* Not all inefficiencies can be blamed on the steps and requirements of the procedures themselves. Often procedures are just poorly managed. This can arise from lack of human resources, management systems, or a simple lack of accountability to the public for good service. All of these seem to exist in Nigeria to some extent.

(b) *Lack of electronic cadastre, title and planning records; land information systems.* What is immediately apparent from the current procedures is that most of the steps and requirements would be insignificant if the state had more highly developed electronic systems and databases which would allow rapid title and land use verifications. For example, were there a highly developed title system it would be superfluous for an applicant to obtain and submit a certified document evidencing the root of title, as is required now. In a similar but related vein, transmittal of verification of fee payments to banks, which now can take days, could be accomplished in a matter of minutes if appropriate web based technologies were available to the banks which process the payments and to the land officials.

(c) *Greater reliance on private sector professionals.* Lacking the tools they need to provide a higher level of service - for example a cadastre and

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<sup>5</sup> Some officials argue that citizens most often bear the responsibility for longer processing times because of incomplete and defective documents or delays in paying fees and charges. This is not an uncommon response from public officials, but there is no way of determining its accuracy in the present case as there are no modern application tracking systems and records are not kept on reasons for rejection or delay of applications which would help to pinpoint systemic bottlenecks, pervasive problems and areas for greater management attention. In any case, if citizens are not prepared this is arguably a result of inadequate communications on the part of responsible officials. See, for example, Ashafa, Gbenga, *Land Use Handbook in Lagos State*, 2005, at p. 6. The problems caused by applicants are alleged to be incomplete documentation; irregular signatures; failure to comply with survey requirements; underpayment of taxes or fraudulent tax certificates; failure to discharge encumbrances on the land; poor legal draftsmanship; inconsistency among documents; defects in title; failure to pay fees; and incorrect contact details for applicants.

efficient title registry, private professionals in Nigeria today may be more than willing to avoid responsibility and liability by leaving most procedural steps to the state. However, there are indications that this is not the view of many professionals and there are calls by market players to move toward more reliance on private sector professionals to be responsible for the steps of the processes. In general, systems that rely on the private sector typically apply a cost-benefit calculation that acknowledges the risks of relying on the private sector but views those risks as avoidable and compensable, and in any case outweighed by the greater efficiencies to be achieved.

*(d) Multi-tasking.* As in many other emerging markets, the current consent procedures bear part of the burden for assuring compliance with other regulatory requirements such as building permission and payment of a wide variety of taxes, not just property taxes. The explanation is that these other regulatory systems are also inadequate, and the consent and registration process is seen as a checkpoint at which compliance with other rules can be determined, regardless of their relationship to the property transaction. If and when these other regulatory systems develop their own capacities, it may no longer be necessary for a corporation to present evidence that it has paid its income taxes as a condition of completing a property transfer.

Beyond these fundamental issues, to argue for elimination of the procedures or certain elements of the procedures it is necessary to address the main state concerns that led to implementation of the procedures in the first place. It seems clear that when the 1978 Land Law was adopted one of its main objectives was to exercise control over land allocation and use in such a way as to prevent unhealthy speculation and accumulation of landed wealth in a few hands, and to assure access to some land for a large part of the population. While these may have been laudable objectives, it is arguable now that they have not been achieved through the procedures implemented under the law. Speculation is rampant; there are few restrictions, if any, enforced against accumulation of state land grants; many land grants benefit the wealthy; many people, even the poor, retain pre-1978 occupancy even today; and the secondary markets, formal and informal, are becoming strong alternatives to state land grants. The more realistic justifications for the procedures today are (1) collection of revenues, and (2) prevention of fraud and other illegal transactions.

Regarding revenues, a governor of Lagos state has frankly called land and land transactions "our oil." Efficient collection of revenues from all sources is important, but difficult in an environment such as Nigeria that is profoundly anti-tax. There has been a deliberate effort of tax authorities to make delivery of vital government services, such as consenting to land transactions and registering rights, taxable events on the theory that taxes would be more difficult to avoid. The Commissioner of Revenues of Kano state acknowledged that theory, but then noted that the state is managing to capture only 10% of transactions because of informality and avoidance schemes. While many policy makers will concede the folly of loading too much weight on a few key government services that can be easily avoided, any modification to procedures that makes it possible less tax will be collected will not be viewed favorably.

It also seems clear that to the extent that at least some of the current consent procedures are designed to prevent fraud and sharp practice between

citizens and against the state, there must be reasonable assurance that elimination of procedures will not aggravate the situation. For example, some state publications suggest that citizens have been known to alter survey documents to locate land outside of a government land acquisition scheme, thereby allowing a sale to proceed which would otherwise be prohibited by law.<sup>6</sup> Similarly, there are suggestions of fraudulent conveyances through false certificates of occupancy and fraudulent identities. Presumably the states believe that through their review and consent procedures they can contribute to reducing illegality.

Notwithstanding these objectives, there are strong arguments that the longer term objective should be the complete elimination of the governor's consent for market transactions. While elimination could be achieved over the longer term, in the shorter run the focus should be on taking measured steps to phase out the consent procedures in those areas where the state objectives of revenue collection and prevention of fraudulent or defective transactions can be assured to a reasonable extent. As noted above, this could be achieved by placing greater emphasis on the role and integrity of private sector professionals in transactions.

The short run steps that can be taken to improve the efficiency of the consent procedures include the following:

*(1) Immediately eliminate the requirement for gubernatorial approval of mortgage transactions*

The Governor's consent to mortgage transactions is almost entirely superfluous for one important reason: *mortgage loans are typically made by licensed financial institutions that have every incentive to assure that the transaction is proper and the fees are paid.* Presumably the integrity of licensed financial institutions has already been established. There would be minimal risk involved with eliminating the mortgage consent, subject to a small set of clear rules, and the small risk that might persist is mostly outweighed by the benefits of the change. Those benefits include not only more efficient bank transactions, but also freeing up current staff in the lands departments to focus on other types of transactions for which consents may still be required. In effect, all procedures would be positively impacted by elimination of this one.

*(2) "Fast-track" assignment consent procedures for land transactions between commercial parties under the supervision of a licensed Solicitor.*

The objective would be to reduce processing time by allowing accelerated processing of applications submitted by licensed solicitors. In the application the solicitor would certify that (s)he has reviewed the transaction and the legal documents are valid and prepared in accordance with legal requirements; the identities of the parties are as represented; the land parcel is owned by the stated owner and not subject to prior or pending government acquisition; there have been no changes to the land boundaries since the last survey on record with the office of the Surveyor General; and the required fees have been calculated based on applicable schedules and paid to at the appropriate window, receipts attached. Relying on these representations the level and amount of review within the government land bureaucracy could be significantly reduced and the consent issued in a much shorter period of time. For example, reliance on the representation of a

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<sup>6</sup> This practice is so common that it has a name - "flying the coordinates."

licensed solicitor that required fees have been paid would give support to paper receipts and eliminate the need for confirmation of payment from the recipient banks.

### **3. Land Transaction Charges**

Comparisons of land transaction costs among nations is difficult and sometimes misleading. A good example of this is the capital gains tax on transfer of land rights in Nigeria. That tax is presently assessed at 2% of the value of the land right transferred.<sup>7</sup> This compares favorably with the tax on sale of capital assets in other states, which can be as high as 15-40% of actual gain. Moreover, the Nigerian tax is imposed only on the land value, and disregards improvements, which is a principle followed in probably a minority of other states. Regardless of the individual comparisons, charges and taxes on sale of land are perceived as high and are undeniably a major incentive to informality and failure to convert pre-1978 land rights to statutory certificates of occupancy.

Based on comparison with other countries (See Box 2) it is possible to conclude that certain of the Nigerian land transaction charges are higher than they should be. These charges include the registration fees, which are based on transaction value and not actual costs of the government service provided, and the consent fee, which is in effect a transfer tax that is higher than in practically all developed markets and many emerging markets. Moreover, the current transactions costs are arguably regressive in their impact, the same burden applying to relatively wealthy speculators and land developers as to small residential and business holders who just want to regularize their titles or extract a small amount of equity from their humble properties for other purposes (e.g. National Housing Fund loans). A more effective and equitable system may be to establish a progressive schedule of fees which increases as the amount of the transaction increases, thereby encouraging capture of more transactions at the lower end in the formal system.

It is possible to argue, and in some cases show, that state revenues will increase by lowering transactions charges, but in the absence of alternative sources of state revenue lowering fees and charges on land transactions is understandably a sensitive issue.<sup>8</sup> At the same time, it should be noted that consent fees presently contribute relatively little to state budgets - less than 1% of the Lagos state budget, and in Kano less than 0.01% (approximately \$700,000 out of budget of (80,000,000)). Considering their potential for distorting the market and the widespread efforts (and apparent success) in avoiding them, they should be eliminated in favor of less distorting and more reliable charges. The amount of money involved can be made up by appropriate increases in the recurring land charges, which are less likely to distort the market and also more difficult to avoid if collection systems are adequate.

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<sup>7</sup> As such it is not actually a gains tax, but another transfer tax. The capital gains law appears to provide that the tax is to be assessed on gains only, not asset value, but that provision appears to be ignored by the states.

<sup>8</sup> In some cases it has been shown that reductions in registration fees actually do result in greater registration revenues as more transactions are captured in the system. See Haidar, Jamal, How Efficiently is Capital Created? Evidence From Property Registration in Egypt, International Finance Corporation, 2007.



## Box 2: Are Nigerian Land Transaction Charges High?

Real property transfer fees are commonplace even in systems based on private land ownership. In the USA, 35 states tax the transfer of real property, at rates ranging from 0.01% to about 3%, with a median rate below 0.5% of the value of the transfer. New York is famous for its "mansion tax," which imposes a penalty of 1% of transaction value on sales of property valued at over \$1,000,000. Many developing and emerging markets also tax transfer of real property, some at lower rates than Nigeria, some at higher.

The difficulty in comparing transaction charges across national boundaries is that different charges are imposed on different "basis," such as asset or transaction value versus net proceeds; basis is calculated differently, with different deductions permitted; and properties are assessed at different proportions of market value. For example, in Nigeria the consent fee on transfer of land rights is imposed only on land value, not the value of improvements, while in other countries the transfer tax may be imposed on the entire property value. In addition, it is arguably more accurate to compare total costs of holding property for a defined time period and the expected after-tax rate of return on investment rather than simple comparisons of transaction charges. In that case, for example, the costs of recurring property taxes, or land holding costs, would have to be taken into account. In Nigeria recurring land rents and taxes are insignificant - in the range of 0.2% of property value - while in a developed economy annual property tax can be in the range of 1% of property value, resulting in a very different holding cost which must be factored into after tax return on investment. In addition, rates of price appreciation will greatly influence whether transaction charges are viewed as barriers to investment or merely costs of doing business, as they are viewed by professionals in the higher end markets of Lagos today.

A representative sample of taxes and other charges on transfer of real estate in other markets might include the following:

Country	Stamp Duty	Capital Gains	Transfer Tax	Registration
Nigeria	2%-3% of asset value	2% of land value	8-30% of land value (set by states)	3% of asset value
Rwanda	None	Ordinary income; 30% corporate, sliding scale personal	Flat fee - 20,000 Rwandan Francs (app. \$35)	Flat fee - 20,000 Rwandan Francs (app. \$35)
Malaysia	1-3% of transaction value	None on real property - see Transfer Tax	5-30% of gain, depending on holding period (temporarily suspended in 2007)	\$50 fixed fee
Taiwan	0.1% of asset value	10%-40% of gain in land value, adjusted by holding period	6% of asset value	0.1% of asset value
Croatia	\$10 (fixed fee)	20% of gain	5% of asset value	\$42 (fixed fee)
UK	1-4% of transaction value	10%-20%-40% graduated rate on gains over approximately \$20,000	None (see Stamp Duty)	Graduated fixed fees \$80 (under \$100,000) to \$700 (over \$2,000,000)
India	3%-6% of asset value (set by individual states)	10-20% of gain	None	2% of transaction value
Brazil	3% of asset value	15% of gain	2% (private land) to 7% (state land rights) of asset value	Up to \$2,500

A few differences between Nigeria and other countries may be noted. First, capital gains in other countries are taxed on actual gains, not gross asset value. At the same time capital gains taxes in many countries are far higher than Nigeria's 2% rate on asset value. Second, a significant number of other countries have graduated schedules of transfer taxes and stamp duties, taxing more expensive properties at a higher rate. Not shown in the above table, a significant number of countries also have tax exemptions for sale of personal residential property, either as a category or one time.

Recommendations for short to medium term steps that could be taken to reduce the burden of transaction charges and lessen avoidance of the formal system would include the following:

(1) *Reduce registration fees*

Registration services should be priced not as a profit center but as an essential public service. Best practice today argues in favor of lowering registration and recordation fees to levels sufficient to sustain the activity and contribute to development and maintenance of the system, but not to produce budget surpluses. It seems clear that any system which bases registration fees on the value of the transaction or asset is aiming at profit, not merely sustainability. The current fees of 3% of asset value (assignments) and up to 2% of mortgage value in some jurisdictions are high in comparison to developed and most emerging markets. Registration fees may be as high as they are today because so few transactions are captured and the marginal cost of sustaining the registration infrastructure is very high. There is no basis for analyzing that argument as no one knows how much it actually costs to register a transaction. The marginal cost of registration and therefore fees can be reduced as more transactions are captured in the system.

(2) *Reduce land transaction charges*

To encourage greater formality in the land markets and progressivity in taxation the states could consider reducing fees directly or establishing a sliding scale for fees and charges for market transactions with statutory land rights, with the amount of the fee tied to the value of the transaction. Lower income people would be encouraged to obtain statutory rights and enter the formal registration system. Ultimately, if a greater number of land holders enter the formal system government revenues could actually increase. The capital gains tax, at 2% on total asset value, probably compares favorably to capital gains levies in other countries. Even though it is not truly a capital gains tax, but just another transfer tax on full asset value, given the inadequate tax collection systems in Nigeria today this may actually be more effective and efficient than a self-reporting gains tax, and certainly easier to administer.

The most direct approach to reduction of fees would be to reduce the consent fee for assignment transactions to the range of 3%-4% from its current level of 8% in the most progressive jurisdictions, and from as high as 30% in others. This is more in line with real property transfer taxes in other countries, but also more appropriate for a country in which it can be shown that informality in property transactions is out of control and rather than diminishing over time, is probably getting worse. In addition, the consent charge for transfers could be put on a sliding scale with much lower fees for small land holders and higher fees for larger and wealthier holders and commercial operators. Graduated or progressive property transfer taxes are commonplace in other countries, both developed and emerging. Progressivity in fees could bring a greater number of lower end transactions into the formal system and encourage conversion from equitable to statutory rights, without affecting the activities of speculators and commercial operators. Preferably, the lowest rate for properties at the lowest end of the scale would be "0". A further recommendation may be to exempt sale of personal homes from the consent fee entirely, or at least to provide a one-time exemption to all citizens for sale of personal homes. Such exemptions are commonplace.

(3) *Increase levies on "flipping" undeveloped state land*

While in theory it is not permitted to transfer a state land grant prior to completion of development, the rules are typically not enforced. Statistics are not available on the typical holding period for state land grants and particularly the number of transfers prior to satisfaction of the covenant to develop the land, but anecdotally this practice is believed to be commonplace. The development covenant in state land grants has a purpose - to maximize use of land and assure that those who can use it have access to it at reasonable prices. This is in fact one of the ideological foundations of the entire national land program. Speculation undermines this objective.

The best policy might be to strictly enforce the rules on transferring undeveloped land and on termination of land rights for failure to develop, but there seems to be little enthusiasm for that approach. Clearly, in the absence of easy private credit or subsidies the impact of any zealous enforcement of the land development covenant would be likely to fall most heavily on lower income people, and that may explain the lack of enforcement to some extent. If the rules are not likely to be enforced, that point might as well be acknowledged and some additional revenue obtained by greatly increasing the fee for transferring undeveloped land rights. A range of 50%-75% of the gain on transfer would probably be reasonable. If the state is going to allow speculation in undeveloped state grants to continue, it might as well profit from it.

(4) *Move toward reliance on recurring land charges*

In the longer run, the states should plan to obtain most land revenues from recurring taxes such as ground rents, tenement charges and neighborhood improvement charges, and less from transactional taxes, which only tend to encourage informality. *Ad valorem* recurring charges can be more easily connected to actual wealth and ability to pay and more easily take advantage of the developing cadastre and registration systems for collection. They are usually harder to avoid if cadastre and tax collection systems are adequate. In the short run, if the recommendation to reduce transaction charges is implemented, gradual increases in recurring charges could commence to compensate for reduced revenues. The current revenues from transaction charges arise from fewer than 3,000 transactions per year in Lagos and Kano, and much smaller increases in recurring charges spread over all land holders should be able to compensate for lost revenues.