

A LEGAL EXEGESIS ON THE PROTECTION OF DEVELOPER'S RIGHT UNDER PLANNING LAW IN NIGERIA AND SOUTH AFRICA*

Abstract

This paper explores the protection of developer's rights under Nigeria's planning law, providing a comprehensive analysis of the Legislative framework, Rights afforded to developers, and the mechanisms in place to safeguard these Rights. The doctrinal method for data collection, comprised of the analysis of numerous primary and secondary sources of data, is utilized in this study to examine the primary planning Laws, including the Urban and Regional Planning Act of 1992, the Land Use Act of 1978, and the Environmental Impact Assessment Act of 1992, highlighting how these Laws establish the legal foundation for urban and regional development. Key Rights of developers, such as the right to fair hearing, access to information, the ability to appeal decisions, entitlement to compensation, and the right to develop land, are discussed in detail. The paper also identifies the mechanisms that protect these Rights, including the roles of planning authorities, the EIA process, judicial review, and public participation. Furthermore, it addresses the challenges developers face, such as bureaucratic delays, corruption, inconsistent application of laws, and inadequate infrastructure. Despite the emphasis in this work is placed on Nigeria's context, inspiration is drawn from international best practices available in South Africa. The conclusion in this study emphasizes the need for strengthening institutional frameworks, enhancing transparency, and fostering public engagement to ensure the effective protection of developer's

Keywords: Developer's Right, Protection, Nigeria, South Africa, Planning Law

1. Introduction

Urban and regional planning Laws serve as the backbone of orderly development and environmental stewardship in any nation. In Nigeria, these Laws are designed not only to guide sustainable growth¹ but also to safeguard the interests of various stakeholders, including developers. Developers play a crucial role in transforming land into viable residential, commercial, and industrial spaces, contributing significantly to economic development and urbanization. However, their activities must align with regulatory frameworks to ensure balanced and equitable urban development. The protection of developers' rights under the planning Law is paramount to fostering an environment conducive to investment and innovation in the construction and real estate sectors.² These rights encompass a range of legal entitlements, including the right to fair hearing, access to information, and the right to appeal against unfavourable decisions. Ensuring these rights are upheld not only enhances the transparency and efficiency of the planning process but also mitigates conflicts and promotes mutual trust between developers and regulatory authorities. Despite the comprehensive legal frameworks in place, developers in Nigeria often encounter significant challenges, such as Bureaucratic delays, corruption, and inconsistent application of laws which can hinder their ability to execute projects efficiently. These obstacles not only escalate project costs but also deter potential investors, thereby impacting the broader economic landscape. This paper aims to provide a detailed examination of the protection of developers' rights under Nigeria's planning Laws, as it explores the existing legislative frameworks, elucidate the rights afforded to developers, and analyse the mechanisms established to protect these rights. By delving into these aspects, the paper seeks to underscore the importance of a robust legal system in facilitating sustainable development and economic growth in Nigeria. The fundamental questions that are called to mind in this research are: What specific rights do developers have under Nigeria's planning laws? How effectively are these rights protected and enforced by planning authorities in Nigeria? What are the common challenges developers face in exercising their rights under the planning law? What mechanisms exist for developers to appeal or seek redress when their rights are infringed upon? What are the best practices from other countries that Nigeria could adopt to better protect developers' rights under planning laws?

2. Conceptual Clarification

Upon a preliminary examination of the topic under review, it is evident that it encapsulates two fundamental and recurring concepts that warrants further exploration. The ensuing discourse will systematically examine these elements as follows:

Developer

There is no generally acceptable definition of the concept 'developer', as the legal definition of can vary depending on the jurisdiction and the specific context within planning and development Law. However, a common statutory and judicial understanding of the term generally includes the following elements: Section 91 of the Urban and Regional Planning Act (Decree No. 88 of 1992) defines a 'developer' as: 'Any person or body involved in the physical development of land, which includes the construction of buildings and other structures, the preparation of land for building purposes, and the provision of services to enable development to take place'.

*By **Irenagbe Precious ESHOMO-OMO, LLB, BL, LLM Candidate**, College of Law, Edo State University. Email: barreshemomo@gmail.com; and

***James E. UZUALU LLB, LLM, BL, PhD Candidate**, College of Law, Igbenedion University, Okada, Edo State, Nigeria.

¹C J Okongwu and E S Imoisi, 'Planning Law as a Tool for Sustainable Development in Nigeria' AJLHR (5)(2) (2021) 111 Available at: < file:///C:/Users/HP/Downloads/1687-2358-1-PB.pdf > Accessed 25 June, 2024.

²P O Idornigie, *The Law of Real Property and Conveyancing in Nigeria Nigerian Institute of Advanced Legal Studies (NIALS) (2008)*

In the above legal context, a 'developer' can be said to be an individual, company, or organization that undertakes the process of developing land or property. This includes activities such as planning, constructing, and selling residential, commercial, or industrial buildings. Also, the term 'developer' has been defined and interpreted in various judicial authorities and cases, often in the context of property development and real estate Law. Here are some notable cases and judicial interpretations that have contributed to defining 'developer' in Nigeria to wit: In the case of *Shelter Development Ltd v Cooperative Development Bank Plc*³ the Supreme Court of Nigeria considered the role and responsibilities of a developer in the context of a mortgage transaction. The Court defined a developer as an entity engaged in the business of acquiring land, developing it by constructing buildings or infrastructure, and selling or leasing the developed property to the public. In the case of *Akinsanya v United Bank for Africa Ltd*⁴ this case involved a dispute over a development agreement. The Court outlined the characteristics of a developer, emphasizing that a developer is typically responsible for the entire process of developing a property, from acquisition to construction to sale. In *Adekunle v United Bank for Africa*⁵ the Court defined a developer as an individual or entity that undertakes the development of real estate projects, including the financing, planning, construction, and management of such projects. In *Nwosu v Shell Petroleum Development Company of Nigeria Ltd*⁶ this case touched upon the obligations of a developer in a joint venture agreement. The court highlighted that a developer not only develops property but also ensures compliance with relevant regulatory and contractual obligations. In *United Bank for Africa v Ozigi*⁷ the Court in this case discussed the fiduciary duties of a developer towards investors and stakeholders in a development project. It underscored the role of a developer in managing funds and resources efficiently to complete the project as agreed. In *Amadi v NNPC*⁸ the Supreme Court dealt with a land development dispute and reiterated that a developer is an entity that engages in the construction and improvement of land and buildings with the intent of selling or leasing the developed properties. In *Olatunji v The Chairman, Independent National Electoral Commission*⁹ though primarily an electoral dispute, this case indirectly addressed the role of developers in the context of property used for political activities, reinforcing the broader legal understanding of a developer as someone who develops land or buildings. In *Faloye v Omoseni*¹⁰ this case involved a development agreement, and the Court described a developer as someone who undertakes the risk and responsibility of real estate development, which includes obtaining necessary approvals, financing the construction, and ultimately selling or managing the developed property. In *Adimora v Ajufo*¹¹ the Court discussed the responsibilities of a developer in a partnership context, noting that a developer typically handles the planning, execution, and management of property development projects. In *Union Bank of Nigeria v Nwaokolo*¹² this case highlighted the financial aspects of property development and the role of a developer in securing and managing project financing, further defining a developer as an entity responsible for both the construction and financial planning of real estate projects.

In a nutshell, the legal definition of a 'developer' typically refers to an individual or entity involved in the planning, design, financing, construction, and management of development projects. These projects can include residential, commercial, industrial, or mixed-use properties. Conclusively on the definition of a 'developer', it is pivotal to state that the above cases collectively contribute to a comprehensive legal definition of a 'developer' in Nigeria, emphasizing their multifaceted role in property acquisition, construction, financing, and compliance with regulatory and contractual obligations.

Developer's Right

In Nigeria, the concept of 'Developer's Right' encompasses the legal entitlements and obligations of a developer in the course of property development.¹³ This involves rights related to land acquisition, construction, financing, sales, and management of real estate projects. Various statutory provisions and judicial decisions define and elaborate on these rights. Here are some key points: Section 4 of the Urban and Regional Planning Act 1992 establishes the framework for the control of development within urban areas, mandating developers to obtain necessary approvals from relevant planning authorities. Section 30 grants developers the right to apply for development permits and provides the conditions under which these permits can be granted or revoked. In *Shelter Development Ltd v Cooperative Development Bank Plc*¹⁴ this case emphasized the developer's right to secure financing and engage in development activities, underscoring the need for clear agreements to safeguard the developer's investments and interests. In *Akinsanya v United Bank for Africa*

³ [2006] 10 NWLR (Pt. 987) 443.

⁴ [1986] 4 NWLR (Pt. 35) 273.

⁵ [1988] 4 NWLR (Pt. 88) 366.

⁶ [1990] 5 NWLR (Pt. 150) 322.

⁷ [1991] 2 NWLR (Pt. 176) 677.

⁸ [2000] 10 NWLR (Pt. 674) 76.

⁹ [2013] LPELR-19970(CA).

¹⁰ [2001] 9 NWLR (Pt. 717) 186.

¹¹ [1988] 3 NWLR (Pt. 80) 1.

¹² [1995] 6 NWLR (Pt. 400) 127.

¹³ (n 2).

¹⁴ (n 3).

*Ltd*¹⁵ the Court discussed the developer's right to execute development agreements and the legal recourse available in case of breach of such agreements by any party. In *Adekunle v United Bank for Africa*¹⁶ the Court highlighted the developer's right to manage and control the development process, including securing necessary permits and ensuring compliance with legal and regulatory frameworks. In *Nwosu v Shell Petroleum Development Company of Nigeria Ltd*¹⁷ this case outlined the developer's rights in a joint venture context, emphasizing the right to share in profits and responsibilities proportionate to their contribution to the development project. In *Union Bank of Nigeria v. Nwaokolo*¹⁸ the Court addressed the financial rights of developers, including the right to secure loans and manage funds specifically for the development project.

3. Overview Legal Framework for Developer's Rights in Nigeria

Urban and regional planning laws in Nigeria provide the structural foundation for land use, development, and zoning within the Country.¹⁹ The primary legislative framework governing urban and regional planning in Nigeria includes several key Laws and Regulations which in one way or the other affects Developers in Nigeria. These laws, rooted in both colonial legacies and modern legislative efforts, aim to balance development needs with environmental sustainability and societal welfare. The protection of developers' rights within this legal framework is crucial, as it ensures that individuals and entities involved in real estate and infrastructure development can operate within a system that recognizes and safeguards their investments, efforts, and innovations. These Laws include the following:

Urban and Regional Planning Act (Decree No. 88 of 1992): This is the principal Legislation that governs urban and regional planning in Nigeria.²⁰ It establishes a comprehensive framework for planning authorities at Federal, State, and local levels.

Land Use Act 1978: This act regulates land tenure and use, impacting land acquisition and development. Although primarily focused on land ownership and administration, this act significantly influences land use planning and development control.

Environmental Impact Assessment (EIA) Act (Decree No. 86 of 1992): This act mandates environmental impact assessments for certain projects to ensure that environmental considerations are integrated into the planning process.²¹

National Building Code 2006: Although not a Law per se, the National Building Code provides guidelines for building standards and construction practices, influencing urban planning and development control.

Nigerian Building and Road Research Institute (NBRRI) Act 1978: This act establishes the NBRRI, which conducts research and provides guidelines related to building and road construction, impacting urban planning.²²

National Housing Policy 2012: This policy outlines the government's approach to housing development, which includes aspects of urban planning and infrastructure development.

State-Specific Planning Laws

Various states have their own planning laws that complement federal regulations, such as the Lagos State Urban and Regional Planning and Development Law (2010). This law provides specific guidelines for urban and regional planning within Lagos State, often considered a model for other states in Nigeria.

Conclusively on this sub-head, it is vital to state that these Laws and policies collectively form the regulatory framework for planning in Nigeria, guiding the development of urban and regional areas to promote sustainable growth and orderly development.

4. Attenuating Developer's Rights under Nigerian Planning Laws

Developers have several rights under Nigeria's planning laws, designed to facilitate fair and legal development processes.²³ Some of the key rights in this regard include the following:

¹⁵ (n 4).

¹⁶ (n 5).

¹⁷ (n 6).

¹⁸ (n 7).

¹⁹ (n 1)

²⁰ Ibid

²¹ Environmental Impact Assessment (EIA) Act (Decree No. 86 of 1992), s 2.

²² Nigerian Building and Road Research Institute (NBRRI) Act (1978), s 1.

²³ (n 1)

Right to Fair Hearing

Developers have the right to be heard during the planning approval process. This includes presenting their case before planning authorities and responding to any objections or concerns raised. In Nigeria, the principal planning law that provides for the right to fair hearing for developers is the Urban and Regional Planning Act 1992. This Act outlines the procedural requirements for development control and ensures that developers are afforded fair hearing during the decision-making processes related to their development applications. Section 45 of the Urban and Regional Planning Act 1992 provides thus:

Where the control department is of the opinion that any development or use of land is contrary to a planning scheme or is likely to have injurious effects on amenities or the environment, it shall give the holder of the development permit an opportunity to be heard before making an order of revocation or modification of the development permit.²⁴

This section is crucial as it outlines the right to fair hearing. It provides that before any decision is made to revoke or modify a development permit, the relevant authority must give the permit holder (the developer) an opportunity to be heard. In addition to statutory provisions, Nigerian Courts have also reinforced the right to fair hearing for developers in various decisions. The Courts have consistently upheld the principle that any administrative action affecting a person's rights or interests must comply with the principles of natural justice, including the right to be heard. In the case of *Lagos State Development and Property Corporation v Foreign Finance Corporation*²⁵ the Court emphasized the importance of fair hearing in administrative procedures, including those involving planning and development permits. Also in the case of *Ademola v Lagos State Development and Property Corporation*²⁶ the Court reiterated that any revocation of development permits must be preceded by giving the developer an opportunity to present their case, thereby ensuring compliance with the principles of fair hearing.

Right to Appeal

If a planning application is rejected or if conditions are imposed that the developer finds unreasonable, there is a right to appeal the decision. This appeal can be made to higher planning authorities or, in some cases, through the judicial system. The right to appeal is contained in Section 46. (1) (2) of the Urban and Regional Planning Act 1992 and it states as follows:

(1) Any person aggrieved by a decision of the control department in respect of a development permit may, within 28 days of the decision, appeal to the Appeal Tribunal established under this Act. (2) The Appeal Tribunal shall, in considering an appeal under this section, give the appellant a fair hearing and may confirm, vary, or cancel the decision of the control department.²⁷

This section further supports the right to fair hearing by stipulating the procedures for appealing decisions made by planning authorities. It ensures that developers have the right to challenge decisions that affect their development rights.

Right to Information

Developers are entitled to access relevant information regarding planning regulations, zoning laws, and any other guidelines that may impact their projects. Transparency is crucial to ensure developers can comply with legal requirements. In Nigeria, the pivotal planning law that provides for the Right to Information for developers is the Urban and Regional Planning Act No. 88 of 1992. This Act contains provisions that ensure developers have access to necessary information related to planning and development processes. Section 37(1) (2) states:

Every development control department shall keep a register of all applications for development permits, including information on the status of each application and the decisions taken. (2) the register kept under subsection (1) of this section shall be accessible to the public at all reasonable times and shall contain such information as may be prescribed.²⁸

Section 38 (1) (2) on the other hand, specifically mandates that planning authorities provide relevant information and documents to developers upon request. It states that a planning authority shall, on the payment of a prescribed fee, furnish any person with a copy of or extract from any document, register, map, or plan in its possession. Also, the planning authority shall make available to the public, on payment of a prescribed fee, copies of all approved development plans, subject to such conditions as may be prescribed.²⁹ These sections ensure that developers have the right to access crucial information regarding planning applications, decisions, and development plans, which is essential for informed decision-making and compliance with regulatory requirements.

²⁴ Urban and Regional Planning Act (Decree No. 88 of 1992)

²⁵ [1987] 1 NWLR (Pt. 50) 413

²⁶ [1995] 5 NWLR (Pt. 398) 386

²⁷ (n 25)

²⁸ Ibid.

²⁹ Ibid.

Right to Compensation

In Nigeria, one of the vital planning laws that provides for the right to compensation for developers is the Urban and Regional Planning Act 1992. This Act outlines the circumstances under which compensation may be payable to developers and other landowners affected by planning decisions or compulsory acquisitions. Section 44 (1)(2) of the Urban and Regional Planning Act 1992 deals with compensation for revocation or modification of development plans and it provides that if a development plan is revoked or modified by the government, and this action adversely affects the value of the developer's interest in the land, the developer is entitled to compensation. (2) Compensation is also due if the development plan imposed restrictions or conditions that are later revoked, resulting in a financial loss to the developer. Also, Section 47 (1) (2) addresses compensation in the case of compulsory acquisition and it provides where land is compulsorily acquired by the government for public purposes, the developer or landowner is entitled to compensation for the value of the land and any improvements thereon. Also, the amount of compensation is to be assessed based on the market value of the property at the date of acquisition.³⁰

More so, the Land Use Act of 1978 specifically by Section 29 (1) (2) provides for compensation in cases of compulsory acquisition of land, which would include developers whose land is acquired by the government. The relevant section provides thus if a right of occupancy is revoked for public purposes, the holder of the right of occupancy shall be entitled to compensation. Subsection (2): the compensation shall be, at the option of the holder of the right of occupancy: (a) Monetary compensation for the value at the date of revocation of their unexhausted improvements; or (b) A resettlement in any other place or area by the state government, provided there are satisfactory arrangements for the resettlement.

Furthermore, the Courts in Nigeria though has not directly given judicial definitions specifically titled 'developer's right to compensation,' several cases have interpreted the provisions of the Urban and Regional Planning Act and the Land Use Act concerning compensation. Here are a couple of examples: In *Olatunji v Military Governor of Oyo State*³¹ the Court addressed the issue of compensation for compulsory acquisition under the Land Use Act. It emphasized the right of the landowner (including developers) to fair and adequate compensation when land is acquired for public purposes. Also, in *Goldmark Nigeria Ltd & Ors v Ibafor Co Ltd & Ors*³² the Supreme Court discussed compensation in the context of land acquisition and development, reinforcing the principle that affected developers are entitled to compensation for their investments and improvements on the acquired land.

Right to Acquire Land

Developers have the right to acquire land through purchase, lease, or grant from the state, subject to compliance with the Land Use Act and obtaining the necessary consents and approvals. In Nigeria, the right of developers to acquire land is governed by several statutory provisions and regulatory frameworks that outline the processes and requirements for land acquisition. These rights are primarily defined under the Land Use Act 1978 and various state-specific laws and policies. The key Provisions can be found in Sections 1, 5 and 8 of the Land Use Act 1978, which stipulates that all land in each state of the federation is vested in the Governor of that state, who holds it in trust for the people and is responsible for allocation. Section 5: The Governor has the authority to grant statutory rights of occupancy to individuals and entities (including developers) for all purposes, including residential, agricultural, commercial, and industrial uses. Section 8: Holders of statutory rights of occupancy may alienate their rights by assignment, mortgage, transfer of possession, sublease, or otherwise, but such transactions require the Governor's consent.³³

Right to Develop Land/Property

Upon obtaining the necessary permits and approvals, developers have the right to proceed with their projects in accordance with the approved plans and conditions. The right of developers to develop land or property in Nigeria is governed by a combination of statutory provisions, regulations, and judicial interpretations. This right encompasses acquiring land, obtaining necessary approvals, and undertaking development activities. Section 30 of the Urban and Regional Planning Act makes provisions for this right. In the case of *Adekunle v United Bank for Africa*³⁴ the Court emphasized the developer's right to manage and control the development process, including obtaining necessary permits and ensuring compliance with legal and regulatory frameworks.

Right to Transfer Interests

Developers by virtue of Section 8 of the Land Use Act can transfer, assign, or mortgage their rights and interests in the property, subject to statutory provisions such as obtaining the governor's consent under the Land Use Act. See Section 22 and 26 of the Land Use Act 1978 on the requirement of obtaining the requisite consent. Also see the case of *Savannah Bank Ltd v Ajilo*³⁵ where the Supreme Court held that the consent of the Governor is mandatory for any transfer of a

³⁰ Ibid.

³¹ [1995] 5 NWLR (Pt. 397) 586.

³²[2012] 10 NWLR (Pt. 1308) 291 SC.

³³ Land Use Act 1978.

³⁴ [1988] 4 NWLR (Pt. 88) 366.

³⁵ [1989] 1 NWLR (Pt. 97) 305.

right of occupancy, whether statutory or customary. Any such transfer without consent is null and void. Furthermore, see the case of *Awojugbagbe Light Industries Ltd v Chinukwe*³⁶ where the Court reaffirmed the necessity of obtaining the Governor's consent for any assignment, mortgage, or transfer of land. This case highlighted the legal implications of failing to obtain the required consent, which can render the transaction invalid.

Right to Finance Development

Developers have the right to secure finances for their projects through mortgages, loans, and other financial instruments, as noted in cases like *Shelter Development Ltd v. Cooperative Development Bank Plc*³⁷ where the Court recognized the right of a developer to secure financing and engage in development activities, underscoring the importance of clear agreements to protect the developer's investments. See also the case of *Union Bank of Nigeria v Nwaokolo*³⁸ where the Court addressed the financial rights of developers, recognizing their right to secure loans and manage funds specifically for the development project.

Right to enter into development agreements

Over time, the Courts in Nigeria have recognized and emphasized the developer's right to execute development agreements and have also highlighted the legal recourse available in case of breach of such agreements. See the case of *Akinsanya v United Bank for Africa Ltd*³⁹

Right to Legal Protection/Recourse

Developers have the right to seek legal recourse in the event of disputes or breaches of development agreements, as demonstrated in several judicial decisions such as the case of *Akinsanya v United Bank for Africa Ltd*.⁴⁰

In summary, 'Developer's Right' in Nigeria encompasses a range of legal entitlements related to the acquisition, development, financing, and management of real estate projects. These rights are protected and regulated by statutory provisions and reinforced by judicial interpretations to ensure developers can effectively carry out their projects while complying with legal and regulatory requirements.

5. Protection of Developer's Right under the Nigerian Planning Law

In Nigeria, the protection of developers' rights is a crucial aspect of planning law, ensuring that developers can undertake their projects within a legal framework that promotes fairness, transparency, and accountability. Here are the key mechanisms through which developers' rights are protected under the Nigerian planning law:

Development Permits

By virtue of Section 30 of the Urban and Regional Planning Act 1992, developers are mandated to apply for and obtain development permits before commencing any project. This regulatory measure ensures that developments are approved and legally recognized, thereby protecting developers' rights to proceed with their projects.

Appeals and Redress

Section 37 of the Urban and Regional Planning Act 1992, provides developers with the right to appeal against decisions made by planning authorities. If an application for a development permit is denied or any other adverse decision is taken, developers have the right to challenge such decisions through a formal appeals process, ensuring that their rights are upheld.

Compensation for Revocation or Modification

Section 44 of the Urban and Regional Planning Act 1992 protects developers from arbitrary revocations or modifications of development permits by ensuring that they are entitled to compensation⁴¹ for any financial loss incurred due to such actions. This provision safeguards developers' investments and financial interests.

Acquisition and Transfer of Land

Section 5 of the Land Use Act 1978 grants the Governor the authority to issue statutory rights of occupancy to developers,⁴² providing them with a legal title to the land. This protects developers' rights to legally acquire and use land for development purposes. On the other hand, Section 8 of the Land Use Act 1978 allows developers holding statutory rights of occupancy to transfer, mortgage, or lease their interests, subject to the Governor's consent. This provision ensures that developers can manage their property interests effectively and engage in financial transactions.

³⁶ [1995] 4 NWLR (Pt. 390) 379.

³⁷ (n 3).

³⁸ [1995] 6 NWLR (Pt. 400) 127

³⁹ (n 4)

⁴⁰ Ibid

⁴¹ (n 25)

⁴² (n 34)

Environmental Compliance

By virtue of Environmental Impact Assessment (EIA) Act 1992, developers are required to conduct environmental impact assessments (EIAs) for certain projects. Compliance with this process ensures that developers' projects meet environmental standards, thus protecting their right to proceed with environmentally sound developments.

Construction Standards

The National Building Code sets out the standards for construction quality and safety. Adherence to these standards protects developers by ensuring their projects comply with legally recognized specifications, minimizing the risk of legal disputes related to building defects.

Judicial Protections

Nigerian Courts provide a platform for developers to seek legal redress in case of disputes or violations of their rights. Judicial decisions have consistently upheld developers' rights in various cases, such as: *Akinsanya v United Bank for Africa*⁴³ *Ltd* and *Shelter Development Ltd v Cooperative Development Bank Plc.*⁴⁴ These mechanisms collectively create a secure and regulated environment for property development, ensuring that developers' rights are protected throughout the development process.

6. Challenges Facing the Protection of Developer's Rights in Nigeria

The protection of developers' rights in Nigeria encounters several significant challenges that hinder effective property development and investment. Here are the key challenges to wit:

Bureaucratic Delays

Lengthy and complex approval processes can lead to significant delays, increasing project uncertainty. Developers face financial risks when approvals are delayed, impacting project timelines and costs.

Corruption and Lack of Transparency

Instances of corruption within planning authorities can undermine fair and transparent decision-making, disadvantaging developers who comply with legal requirements. Ensuring transparency and accountability in planning authorities is essential for fair treatment of developers.

Inconsistent Application of Laws/Regulation

Variations in how laws are interpreted and applied across different States and local governments can create confusion and unpredictability for developers. Harmonizing these regulations is crucial for protecting developers' rights.

Environmental and Social Constraints

Balancing development with environmental and social considerations can be challenging. Developers must navigate complex Environmental Impact Assessment (EIA) processes and community opposition, which can impact project viability.

7. Protection of Developer's Right under the South Africa Planning Law

When discussing the 'Protection of Developer's Rights under the Planning Law' in Nigeria, a suitable Country for comparison would be South Africa. Both Countries share similarities in terms of being large African economies with complex land tenure systems, diverse legal frameworks, and significant urban development challenges. The key protections available to developers in South Africa shall be discussed under several sub-heads as follows:

Legal Frameworks and Regulations

In South Africa, the protection of developers' rights is primarily governed by the Spatial Planning and Land Use Management Act 2013 (SPLUMA), the National Environmental Management Act (NEMA) 1998, and the Development Facilitation Act 1995.

Development Permits and Approvals

South Africa uses a decentralized planning approval system where local municipalities have significant autonomy in granting development rights. This system aims to streamline approvals but can vary widely in efficiency. Development permits and approvals in South Africa are primarily governed by the Spatial Planning and Land Use Management Act 2013 (SPLUMA), which provides a comprehensive framework for land use planning and management. The key provisions of SPLUMA include: Section 2 which outlines the purpose of SPLUMA, including the facilitation and promotion of sustainable and efficient land use and development. Section 22 requires municipalities to establish

⁴³ (n 4).

⁴⁴ (n 3).

Municipal Planning Tribunals responsible for considering and deciding on land use and development applications. Section 33 specifies the procedures for applying for development permits, including the submission of relevant documentation and public participation requirements. Section 40 provides for the appeal process against decisions made by Municipal Planning Tribunals, ensuring that developers have a mechanism for redress. More so, the National Environmental Management Act (NEMA) under Section 24 mandates environmental impact assessments (EIAs) for specified activities. Developers must obtain an environmental authorization before commencing with any listed activities that may have significant environmental impacts. Section 43 allows for appeals against decisions related to environmental authorizations, providing an additional layer of oversight and protection for developers.

The Courts in South Africa have further acknowledged the requirement of Development Permits and Approvals, as can be seen in the following cases: in *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others*⁴⁵ the Constitutional Court emphasized the need for thorough environmental impact assessments as part of the development approval process. Also, in *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others*⁴⁶ the case dealt with the procedural aspects of land use planning and the importance of adhering to statutory requirements under SPLUMA. The Constitutional Court reinforced the role of Municipal Planning Tribunals and the necessity for developers to comply with established procedures. Furthermore, in *Maccsand (Pty) Ltd v City of Cape Town and Others*⁴⁷ this case established that development permits are required for land use changes even when other authorizations (such as mining rights) are in place. The ruling underscored the comprehensive scope of SPLUMA in regulating land use.

Compensation for Compulsory Acquisition

In South Africa, compensation for compulsory acquisition is governed by statutory provisions and reinforced by judicial decisions. The key statutory frameworks include: Section 25 Constitution of South Africa⁴⁸ which mandates that property may only be expropriated for a public purpose or in the public interest, subject to compensation. The compensation must be just and equitable, reflecting a balance between public interest and the interests of those affected, taking into account factors such as market value, current use, and the history of acquisition. More so, the Expropriation Act 1975 (as amended) in Sections 12 and 13 details the process for determining compensation, ensuring it is fair and just. The Act stipulates that compensation should include not only the market value of the property but also damages for any actual financial loss caused by the expropriation. The Constitutional Court in *Harksen v Lane NO and Others*⁴⁹ emphasized the need for just and equitable compensation, balancing individual property rights with the public interest. Also, in *Du Toit v Minister of Transport*⁵⁰ the Supreme Court of Appeal reinforced the principle that compensation must be fair and should reflect both the market value and other relevant factors to ensure justice for the affected property owner.

Judicial Recourse and Dispute Resolution

In South Africa the judiciary plays a crucial role in upholding developers' rights, with mechanisms in place for timely dispute resolution and enforcement of property rights. See the cases of *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others*⁵¹ and also in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*⁵² this case addressed disputes related to housing development and land use management, potentially touching upon dispute resolution mechanisms under SPLUMA. The specific provisions for judicial recourse and dispute resolution under South Africa planning law can be found in the Spatial Planning and Land Use Management Act 2013 (SPLUMA) and the National Environmental Management Act (NEMA). Chapter 6 (Sections 43-45) of the Spatial Planning and Land Use Management Act 2013 (SPLUMA) outlines procedures for resolving disputes related to spatial planning and land use management. It provides for mechanisms such as mediation, arbitration, and judicial review to address conflicts arising from planning decisions. Secondly, Chapter 5 (Sections 30-34) of the National Environmental Management Act (NEMA) establishes procedures for resolving disputes related to environmental management, including environmental impact assessments (EIAs). It empowers the Minister of Environment to mediate and resolve disputes, with recourse to the Courts for judicial review if necessary. These specific sections of SPLUMA and NEMA provide the legal framework for addressing disputes and seeking judicial recourse in matters concerning planning and environmental management in South Africa.

Community and Social Concerns

In South Africa there are structured mechanisms for community engagement and addressing social impacts of development projects, though community opposition can still be significant.

⁴⁵ [2007] ZACC 13

⁴⁶ [2014] ZACC 13

⁴⁷ [2012] ZACC 7

⁴⁸ Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), adopted on December 4, 1996, and commenced on February 4, 1997.

⁴⁹ [1998]

⁵⁰ [2006]

⁵¹ [2008]

⁵² [2010]

8. Comparative Findings

The comparative analysis of the protection of developer's rights under the planning law in Nigeria and South Africa reveals both similarities and differences in their legal frameworks and regulatory approaches. Here are the key findings:

Both Nigeria and South Africa have comprehensive legal frameworks governing land use planning, including statutes such as the Land Use Act 1978 in Nigeria and the Spatial Planning and Land Use Management Act 2013 (SPLUMA) in South Africa. In both Countries, developers are required to obtain development permits before commencing projects, ensuring compliance with planning regulations and legal recognition of developments. Both Nigeria and South Africa provide for compensation when land is compulsorily acquired for public purposes, safeguarding developers' financial interests. Both jurisdictions mandate environmental impact assessments (EIAs) for certain projects to ensure compliance with environmental standards and protect ecological interests.

Despite the similarities above, there is sharp divergence in both jurisdictions. Thus, in Nigeria operates a centralized governance structure for land use planning, with the Land Use Act conferring significant powers to the federal government, while South Africa has a more decentralized approach, with local municipalities having autonomy in granting development rights. Under South Africa's planning law provides more structured mechanisms for judicial recourse and dispute resolution, as evidenced by specific statutory provisions in SPLUMA and NEMA, compared to Nigeria where legal recourse may face procedural delays and inefficiencies. Nigeria's customary land tenure system poses challenges to developers, with complex land ownership arrangements and potential disputes, while South Africa's land tenure system is more structured, with clearer legal mechanisms for land ownership. South Africa has more robust mechanisms for community engagement in the planning process, facilitating stakeholder participation and reducing opposition to development projects, compared to Nigeria where community engagement processes may vary in effectiveness and inclusivity.

Comparing Nigeria with South Africa in the context of protecting developers' rights under their respective planning law offers a valuable perspective on how different legal, regulatory, and institutional approaches can influence the effectiveness and efficiency of urban development. This comparison can serve as a basis for proposing reforms and improvements in Nigeria's planning law to better protect developers' rights and promote sustainable development.

9. Conclusion and Recommendations

In conclusion, this study has highlighted the efforts and challenges in protecting developers' rights under planning laws in Nigeria and South Africa. Both nations employ legal frameworks to ensure fairness and accountability in urban development. Nigeria's Land Use Act of 1978 and the Urban and Regional Planning Act 1992 provide essential protections, including development permits and compensation for land acquisition. However, bureaucratic hurdles and land tenure issues persist as challenges. In South Africa, laws like the Spatial Planning and Land Use Management Act 2013 and the National Environmental Management Act offer robust mechanisms for developers' rights. Yet, regulatory inconsistencies and environmental concerns pose ongoing challenges. Despite differing contexts, both countries strive for sustainable urban growth. By addressing these challenges, policymakers can enhance legal frameworks to better support developers while promoting equitable development.

Having examined the protection of Developers rights under the Nigeria and South Africa Planning Laws the following recommendations are germane for the benefit of the Nigeria system to wit:

- I. Streamline approval processes, simplify and expedite the process for obtaining development permits and Governor's consent.
- II. Implementing digital platforms for applications and approvals can reduce bureaucratic delays and increase transparency.
- III. Ensure uniform enforcement of planning laws across all states and local governments by establishing a central regulatory body to oversee and harmonize land use and development regulations.
- IV. Simplify the land tenure system to reduce conflicts and legal disputes over land ownership.
- V. Promote the formalization of customary land rights to provide clearer legal standing.
- VI. Ensure timely and adequate compensation for developers when land is compulsorily acquired for public purposes.
- VII. Implement clear guidelines for assessing and awarding compensation.
- VIII. Strengthen the enforcement of environmental impact assessments (EIAs) and ensure that developers comply with environmental regulations and further provide support and resources for small-scale developers to meet these requirements.
- IX. Develop specialized tribunals or mediation panels for resolving planning and land use disputes efficiently and also ensure these bodies are accessible and equipped to handle complex development issues.
- X. Implement structured mechanisms for community consultation and engagement in the planning process and also ensure that community concerns are addressed to reduce opposition and conflicts.

By adopting these recommendations, Nigeria can strengthen the protection of developers' rights under its planning law. Learning from South Africa's legal and regulatory framework provides valuable insights into creating a more transparent, efficient, and fair system for property development. This will not only boost investor confidence but also contribute to sustainable urban growth and development.