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OPINIONISTA

Labelling environmental litigation as anti-development is a pervasive misconception

By Allan Basajjasubi Follow 09 Oct 2025 1

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When people invoke the law to challenge procedural shortcuts, inadequate consultations or environmentally harmful decisions, they are not obstructing development. They are exercising their constitutional rights and demanding that development be lawful, inclusive and just.

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Opinion

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In today's hyper-industrialised world, a narrative has taken root: that communities, backed by environmental organisations, are inherently anti-development if they resist any industrial development (see here, here and here). This narrative, which is often surrounding environmental litigation against fossil fuel companies, is misleadingly skewed.

There is a pervasive misconception that cases brought by communities, particularly those supported by environmental organisations, are inherently anti-development. This oversimplified perspective not only undermines the legitimacy of these legal actions but also ignores their foundational intent: to ensure compliance with laws that safeguard our environment and communities.

At the heart of these legal battles lies a fundamental principle: the adherence to due process. Communities, when bringing these cases to court, are not primarily driven by an ideological opposition to development. Instead, they are responding to a failure on the part of state actors, decision-makers and project proponents to conduct their affairs in accordance with established laws and regulations. These cases are less about obstruction and more about holding parties accountable to the standards outlined by legislative frameworks such as the National Environmental Management Act (Nema) and, more broadly, the Constitution.

Take, for instance, the cases involving Shell and Impact Africa or projects in Richards Bay. In both cases, the project proponents (a company and parastatal) conducted little or poorly considered public consultation processes. Despite this, they received the go-ahead to conduct their activities, involving seismic surveys for oil and gas off the coastline, and the building of a gas-to-power station.

These instances exemplify how decision-makers and project proponents sometimes bypass necessary procedures, skip crucial steps or attempt to cut corners, all in the name of expediency. This raises important questions: Are these actors deliberately seeking to avoid community opposition? And what of the environmental assessment practitioners – are they trained merely to comply with technical requirements, or are they equipped to engage ethically and meaningfully with affected communities?

These questions are not rhetorical; they speak to the heart of environmental justice and the integrity of our regulatory systems. Such actions not only violate legal mandates but also endanger the very communities the projects are meant to serve. When these communities rise to challenge these oversights, they are not opposing progress; they are advocating for responsible and lawful development. Their resistance is a call for integrity, transparency and justice in decision-making, principles that should be foundational to any development initiative claiming to serve the public good.

Communities also have a lot to share – they hold special knowledge and provide valuable insights into what development could look like for them, if the government was listening.

The right to question and demand compliance with laws like Nema and constitutional mandates is not a hindrance to progress; it is a fundamental pillar of democratic society. Nema is specific in its insistence that environmental governance must be transparent, participatory and equitable. It enshrines the principle that development must be socially, economically and environmentally sustainable, and places affected communities at the centre of decision-making processes.

Importantly, Nema gives practical effect to section 24 of the Constitution, which guarantees the right to an environment that is not harmful to health or wellbeing and obliges the state to take reasonable legislative and other measures to protect the environment for present and future generations. These are not abstract ideals; they are binding legal obligations.

When communities invoke Nema to challenge procedural shortcuts, inadequate consultations or environmentally harmful decisions, they are not obstructing development. They are exercising their constitutional rights and demanding that development be lawful, inclusive, and just.

To therefore label these legal actions as anti-development is to ignore the rights of communities to demand adherence to the law. It also undermines the role of the judiciary as a check on potential excesses by powerful entities. Litigation, when needed, should be viewed as essential acts of civic engagement that ensure development proceeds in a manner that is just, equitable and sustainable.

As we move forward, it is imperative that we shift our perspective. Development and environmental protection are not mutually exclusive. By respecting and upholding legal frameworks, we can foster an environment where both objectives coexist harmoniously. **DM**