

Denver Journal of International Law & Policy

Volume 42
Number 1 *Fall*

Article 2

April 2020

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Recommended Citation

Laura Westra, The Conflict between Development and the Right of the Child to Health, 42 Denv. J. Int'l L. & Pol'y 1 (2013).

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THE CONFLICT BETWEEN DEVELOPMENT AND THE RIGHT OF THE CHILD TO HEALTH

LAURA WESTRA*

I. INTRODUCTION

This paper will examine the relation between development and human rights; specifically the right to health, as it applies to the most vulnerable, especially the child. Those most affected are local, land-based communities and indigenous groups located in resource-rich areas in South and Central America and Asia. So there are two main questions that arise: one is the precise meaning and reach of the right to development, as well as its feasibility; the other is the implications of public health in industrial development, especially in the light of scientific research, and the emergence of recent reports such as the World Health Organization Summary for decision-makers, *State of the Science of Endocrine Disrupting Chemicals 2012* (“WHO EDC Report”), which clearly indicates that the child is at grave risk from the spread of industrial activities, during the period of its development; from embryo, to fetus, to born child.¹

Section 2 traces the rights of indigenous peoples and of local communities to the right to self-governance and the right to say no to intrusive and hazardous corporate activities in their own region. Section 3 focuses specifically on the child as the victim of so-called development, particularly in relation to mining and other extractive operations. Many of these involve Canada, whose human rights record is increasingly poor. Section 4 turns to a different perspective on the problem of the right to health, as Professor Benjamin Mason Meier, after arguing for the problems raised by neoliberal development, proposes another approach and a better hope. Professor Meier proposes that perhaps the *Right to Development* instrument² itself might be used to prescribe appropriate remedies to mitigate or

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1. See WORLD HEALTH ORG. & UNITED NATIONS ENV'T PROGRAMME, STATE OF THE SCIENCE OF ENDOCRINE DISRUPTING CHEMICALS—2012 (Åke Bergman et al. eds., 2013); see also PHILIPPE GRANDJEAN, ONLY ONE CHANCE: HOW ENVIRONMENTAL POLLUTION IMPAIRS BRAIN DEVELOPMENT—AND HOW TO PROTECT THE BRAINS OF THE NEXT GENERATION (2013).

2. The Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Annex (Dec. 4, 1986). See Benjamin Mason Meier & Ashley M. Fox, *Development as Health: Employing the Collective Right to Development to Achieve the Goals of the Individual Right to Health*, 30 HUM. RTS. Q. 259, 342 (2008).

even eliminate the difficulties I discuss. Finally, Section 5 notes the results of the impacts of globalization and neoliberal development on the public health services previously provided by state governments. As their services are increasingly privatized, rather than remaining within the ambit of state obligations, the poor, the unemployed, and the populations of so-called developing countries, fare poorly, especially the children and the others among the population who are the most vulnerable.

II. THE RIGHT TO SAY "NO" AS THE RIGHT TO NON-DISCRIMINATION

Just as indigenous peoples have the right to pursue their own initiatives for resource extraction, as part of their right to self-determination and to set their own strategies for development, they have the right to decline to pursue such initiatives, as many do and no doubt will continue to do. Today, however, much more than being faced with the choice of whether or not to pursue their own resource extraction initiatives, indigenous peoples face resource extraction projects that are advanced by the State and third party business enterprises, typically when the State claims ownership of the resources.³

State responsibility includes both positive and negative obligations; given the grave differences in the economic situation of the citizens of various regions of the world, the issue of development is one of central importance. In September 2000, an open-ended working group on the right to development, established by the Commission on Human Rights,⁴ produced a report on the *Right to Development*.⁵ While attempting to cover all aspects of poverty and hunger alleviation, this report also indicates clearly the grave problems present in such a right, and in the concept of "development" as such.⁶

It might be best to start viewing the major problems that arise within the concept, let alone with terming it a "right." The first question that arises is: whose "right" is it? Presumably, one should think of "development" as being a right of those who are not yet "developed," that is, poor people in "developing countries." In fact, that right is intended as a remedy for the problems those persons encounter, to redress "the effects of poverty, structural adjustment, globalization, financial

3. Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: Extractive Industries and Indigenous Peoples*, at 6-7, Human Rights Council, U.N. Doc. A/HRC/24/41 (July 1, 2013) (by James Anaya).

4. The Commission on Human Rights has since been replaced by the Human Rights Council, G.A. Res. 60/251, ¶ 1, U.N. Doc. A/RES/60/251 (Mar. 15, 2006).

5. Independent Expert on the Right to Development, *The Right to Development, Report of the Independent Expert on the Right to Development Pursuant to General Assembly Resolution 54/175 and Commission on Human Rights Resolution E/CN.4/RES/2000/5*, Comm'n on Human Rights, U.N. Doc. E/CN.4/2000/WG.18/CRP.1 (Sept. 11, 2000) (by Arjun Sengupta) [hereinafter Sengupta Report], available at

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/4490c26031920601c12569610048a2a0/\\$FILE/G0015327.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/4490c26031920601c12569610048a2a0/$FILE/G0015327.pdf); see also *The Right to Development*, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Annex (Dec. 4, 1986) (article 10 authorizes the Commission to establish an open-ended working group).

6. See Sengupta Report, *supra* note 5, ¶ 32.

and trade liberalization and deregulations, on the prospects of the enjoyment of the right to development in developing countries.”⁷

Development then is related to the “removal of poverty,” hence it is from the start, an economic goal, one to be implemented as a “process” of economic, social, cultural, and political development, so that “all human rights and fundamental freedoms can be fully realized.”⁸ Much of the language of the working group’s report is patterned on the work of Amartya Sen.⁹ But reliance on the work of even a famous economist carries its own pitfalls. The working group’s report affirms that “[t]o have a right means to have claim to something of value on other people, institutions, the state, or the international community, who in turn have the obligation of providing or helping to provide that something of value.”¹⁰

No doubt, Sen would acknowledge that “something of value” would include more than the obligation to provide the economic means to relieve hunger or thirst. But it is unclear, with its globalizing drive to develop the undeveloped, whether this report takes into serious consideration the right of people *not* to “develop,” if they so choose.

Economic development goes hand-in-hand with certain grave costs. First and foremost, the rights of peoples’ own traditions and cultural lifestyle is indubitably at stake. One needs only to consider the abundant jurisprudence that demonstrates unequivocally the number of indigenous and local communities who try to say “no” to development, but whose voice is neither heeded nor respected.¹¹ “The ‘something of value’ these people treasure is the right to be free *not* to develop, *not* to lose the freedom to choose their own lifestyle and their children’s future.”¹² In these cases, the “perfect obligation”¹³ of states and other non-state agents, should be to respect agents’ choices, especially when they represent the will of these communities.

Similarly, the preferred means of viewing state obligations, that is “the Kantian view of imperfect obligations,” applicable to anyone who is in a position to help, is no better, if it excludes the choice not to develop following Western economic patterns.¹⁴ What remains problematic is the starting point of this report: the assumption that “development” unqualified (that is, not educational, moral,

7. *See id.* ¶ 2.

8. *Id.* ¶ 15.

9. *See id.* ¶ 6-8 (referencing AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999)).

10. Sengupta Report, *supra* note 5, ¶ 6.

11. *See* Human Rights Committee, Chief Bernard Ominayak and the Lubicon Lake Band v. Canada, Comm. No. 167/1984, ¶ 2.3, U.N. Doc. CCPR/C/38/D/167/1984, (Mar. 26, 1990); Chagos Islanders v. Attorney General, [2003] EWHC (QB) 2222, [98]; Aguinda v. Texaco, Inc., 303 F.3d 470, 473 (2d Cir. 2002); Bancoult v. McNamara, 370 F. Supp. 2d 1, 2-3 (D.D.C. 2004); Jota v. Texaco, Inc., 157 F.3d 153, 154-56 (2d Cir. 1998); Doe I v. Unocal Corp., 110 F. Supp. 2d 1294, 1295-96 (D.C. Cal. 2000), *vacated*, 403 F.3d 708 (9th Cir. 2005); Frederick v. N. Am. Res. Co., 60 P.3d 758, 760-61 (Colo. App. 2002).

12. LAURA WESTRA, FACES OF STATE TERRORISM 89 (2012).

13. SEN, *supra* note 9, at 230.

14. *Id.* at 230-31.

artistic, cultural, etc.), is the answer to poverty and hunger, despite the numerous ongoing examples to the contrary.

Consider first who truly benefits from the commercial activities that are viewed as bringing “development.” It is, first, the multinational corporations (“MNCs”) who come to mine, extract, log, build, and—in general—“develop” an area rich in resources.¹⁵ The impassioned pleas of those who are suffering the effects of those activities, mostly unrestrained by either environmental or public health mandates, ought to demonstrate that freedom is and must be understood as both negative and positive: the right *to* develop as well as the right to embrace and maintain the *status quo*, and refuse modern development.

The second group who benefits from “development” activities, includes the bureaucracies and governments of the affected countries, who may receive a part of the profits enjoyed by the corporate actors involved, at best, or roads and other infrastructure, as well as military or para-military support for their warlike action, at worst.¹⁶ When these elites are undemocratic or they represent outright military dictatorships, then any hope of even the least “trickle down” benefit is eliminated.

This happened for instance in Ogoniland at the time of the rule of dictator Sani Abacha in the 1990s.¹⁷ It was only in 2009 that finally Royal Dutch Shell Petroleum paid \$15.5 million over the Saro-Wiwa killing, but without even admitting their guilt for the multiple murders, rapes, and other violence, and the truly incalculable harms they had perpetrated.¹⁸ The Vienna Declaration states categorically, “[h]uman rights and fundamental freedom are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”¹⁹

When Shell arrived to bring its “development” to Ogoniland, the Ogoni people had a comfortable traditional lifestyle, cultivating their land and fishing, before the advent of what Saro-Wiwa termed the ‘ecocide’ and ‘omnicide’ that ensued once the oil extraction and open flares eliminated all possible cultivation in

15. See, e.g., Suzana Sawyer & Edmund Terence Gomez, *Transnational Governmentality in the Context of Resource Extraction, in THE POLITICS OF RESOURCE EXTRACTION: INDIGENOUS PEOPLES, MULTINATIONAL CORPORATIONS, AND THE STATE* 1, 1-2 (Suzana Sawyer & Edmund Terence Gomez eds., 2012).

16. See, e.g., *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289, 295 (S.D.N.Y. 2003).

17. LAURA WESTRA, ENVIRONMENTAL JUSTICE AND THE RIGHTS OF INDIGENOUS PEOPLES: INTERNATIONAL AND DOMESTIC LEGAL PERSPECTIVES 281 (2008).

18. Ed Pilkington, *Shell Pays Out \$15.5M over Saro-Wiwa Killing*, GUARDIAN, June 8, 2009, <http://www.theguardian.com/world/2009/jun/08/nigeria-usa>.

19. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 1, U.N. Doc. A/CONF.157/23 (July 12, 1993) (this Declaration came out of a two week conference in 1993 that was based upon strengthening human rights around the world); see also U.N. Charter arts. 55-56; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

the area.²⁰ They eventually received some compensation,²¹ but not all local communities today are so lucky.

For the most part, today, “development” is aimed at economic profit, not at the health and freedom from want of peoples,²² as it often destroys, alters, or removes the resources upon which local communities depend.²³ In addition, even when the community is neither an island nor a coastal one nor yet one that is located in the high Arctic, climate change effects can be felt across the globe, as it imposes extreme weather events and temperatures.²⁴

Essentially then, if the “imperfect obligations” of state and non-state actors (“the claims are addressed generally to anyone who can help”), according to the working group’s report, the *Right to Development* must ensure freedom to (a) maintain and retain the cherished values of communities; and (b) to eliminate or at least reduce poverty and hunger.²⁵ This should have started long ago, before the present impasse was reached. The obligations would have included their own “no” to activities that harm the natural ecological basis upon which most of the world’s people depend; “no” to international instruments that like the World Trade Organization, which place environment and public health behind trade;²⁶ “no” to the political and economic support of corporate bodies whose activities and whose human rights records demanded careful scrutiny and regulation, rather than friendly cooperation.

All that the working group’s report on the *Right to Development* demands is that the right to development be understood as the right to a “process,” which demands cooperation among all interdependent states, and that the form “development,” should include “a sharp increase in GDP, or rapid industrialization or an export-led growth.”²⁷

Yet paragraph fifteen of the working group’s report acknowledges that despite the listed forms of development, poverty may not be reduced, and there might be

20. See, e.g., M.A. MOHAMED SALIH, ENVIRONMENTAL POLITICS AND LIBERATION IN CONTEMPORARY AFRICA 77 (1999).

21. See Pilkington, *supra* note 18; see also *Ogoniland: FG Begins Implementation of UNEP Report*, NIGERIAN TRIBUNE, Feb 6, 2014, <http://www.tribune.com.ng/news2013/index.php/en/news/news-headlines/item/32704-10.html> (highlighting that the Nigerian government has started to provide remedies to communities that have been adversely affected by oil industrial activities).

22. See, e.g., Helena Nygren-Krug, *A Human Rights-Based Approach to Non-Communicable Diseases*, in HEALTH AND HUMAN RIGHTS IN A CHANGING WORLD 567, 574 (Michael A. Grodin et al. eds., 2013).

23. See, e.g., Bradford C. Mank, *Civil Remedies*, in GLOBAL CLIMATE CHANGE AND U.S. LAW 183, 229 (Michael B. Gerrard ed., 2007).

24. *Climate Change Impacts: The effects of Warming on Our World Can Be Seen Today*, ENVTL. DEF. FUND, <http://www.edf.org/climate/climate-change-impacts> (last visited Feb. 12, 2014).

25. See Sengupta Report, *supra* note 5, ¶¶ 8-11.

26. See General Agreement on Tariffs and Trade art. XX, Oct. 30, 1947, T.I.A.S 1700, 55 U.N.T.S. 194 (allowing states to opt out of GATT requirements in order to protect the environment and human life and health, thus highlighting that the primary concern of this agreement is economic development).

27. Sengupta Report, *supra* note 5, ¶ 15.

no commensurate “improvement in social indicators of education, health, gender development or environmental protection.”²⁸ The placement of environmental protection last, rather than first, as a basic right is a further symptom of the misunderstanding of what constitutes a real “basic right,”²⁹ which would indeed be “the entitlement of every human person as a human right.”³⁰ Hence, we can conclude that the *Right to Development's* perception of the meaning of “development” even with the unremarkable additional of “sustainable” (unspecified and mostly misunderstood), is flawed and incomplete.

The loss of cultural and ecological integrity is not compensated by the introduction of some Western “improvements” especially when these arise from an unconsented project. In fact, the overwhelming use of resources and energy already in existence, fostered by the overconsumption of Western affluent countries (as indicated by ecological footprint analysis), casts all further industrial development in doubt.³¹ Not only are most of its effects extremely deleterious to life on Earth in general, and specifically, to the most vulnerable people in impoverished developing countries,³² but also there is neither enough energy nor materials on Earth to continue to expand the industrial enterprise and to bring it to all countries, to “raise” them to the level of growth present in the West today.³³

Hence, sustainable development remains an oxymoron, as any form of development (beyond the intellectual/cultural/moral kind), is intrinsically unsustainable and physically unachievable. Perhaps the only positive aspect of the *Right to Development* is the fact that the right to development is viewed as a *collective* rather than an individual right.³⁴ But even that “plus” cannot begin to offset the numerous deficiencies discussed above. However, international instruments aimed primarily as collectives are few and far between, hence it is

28. *Id.*

29. See HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 19 (2d ed. 1996) (“The reason is that rights are basic in the sense used here only if enjoyment of them is essential to the enjoyment of all other rights.”).

By minimum economic security, or subsistence, I mean unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care. . . . [T]he basic idea is to have available for consumption what is needed for a decent chance at a reasonably healthy and active life of more or less normal length, barring tragic interventions.

Id. at 23.

30. LAURA WESTRA, GLOBALIZATION, VIOLENCE AND WORLD GOVERNANCE 39 (2011).

31. See MATHIS WACKERNAGEL & WILLIAM REES, OUR ECOLOGICAL FOOTPRINT: REDUCING HUMAN IMPACT ON THE EARTH 13-16 (1996); see also William E. Rees & Laura Westra, *When Consumption Does Violence: Can There Be Sustainability and Environmental Justice in a Resource-limited World*, in JUST SUSTAINABILITIES: DEVELOPMENT IN AN UNEQUAL WORLD 99, 99-101 (Julian Agyeman et al. eds., 2003).

32. Fiona Harvey, *World's Poorest Will Feel Brunt of Climate Change, Warns World Bank*, GUARDIAN, June 19, 2013, <http://www.theguardian.com/environment/2013/jun/19/climate-change-developing-countries-world-bank>.

33. See WACKERNAGEL & REES, *supra* note 31, at 7-8.

34. The Right to Development, G.A. Res. 41/128, art. 2(2), U.N. Doc. A/RES/41/128, Annex (Dec. 4, 1986).

necessary to devote careful study to each existing one, in order to see whether any support can be found for the position of collectives today.

III. THE CHILD AS A VICTIM OF DEVELOPMENT

In March 2010, a Médecins Sans Frontières (Doctors Without Borders) team in Nigeria noticed an alarming number of children were dying in the northern state of Zamfara. It turned out to be a lead-poisoning outbreak—reportedly the worst in recorded history—and more than 400 children are estimated to have died as a result.³⁵

UNICEF's, *The State of the World's Children: Excluded and Invisible 2006 Report* ("UNICEF Report") does not even mention "development" as a possible source of problems for children's life and health.³⁶ But this Nigerian disaster is simply the result of gold mining and of industrial practices that release lead.³⁷ This is only one of the multiple grievous harms imposed on vulnerable populations. Nor is this an isolated example of such abuses resulting from "development." Canada, a so-called democratic country, was scheduled for its "universal periodic review" at the Human Rights Council on April 26, 2013:

The abuses by Canadian mining companies are a systemic part of an economic development policy that disregards human rights and disdains the environment. It is no coincidence that Canada is now home to 75% of the world's mining companies, the majority operating overseas. The Canadian government has accelerated its pursuit of investment treaties in the global south to serve the interests of the extractive industry.³⁸

Most indigenous groups want to be left alone to live their lives in the traditional ways they have practiced since time immemorial, *not* to "develop" in some forced and foreign direction. For instance, an indigenous Mayan group in Guatemala, the Sipakapa of San Marcos, live peacefully in their little country, practicing agriculture and animal husbandry.³⁹ In 2005, Montana Exploradora, a subsidiary of the Canadian/U.S. transnational corporation Goldcorp, received \$45 million from the World Bank Group to exploit an open pit gold mine in their

35. Jennifer Yang, *Lead-Poisoning Outbreak Turns Corner in Nigeria*, TORONTO STAR, July 5, 2013, at A15; see also DOCTORS WITHOUT BORDERS, *LEAD POISONING CRISIS IN ZAMFARA STATE NORTHERN NIGERIA* (2012).

36. UNITED NATIONS CHILDREN'S FUND, *THE STATE OF THE WORLD'S CHILDREN: EXCLUDED AND INVISIBLE 2006* (2005) [hereinafter UNICEF], available at http://www.unicef.org/sowc06/pdfs/sowc06_fullreport.pdf.

37. HUMAN RIGHTS WATCH, *WORLD REPORT 2013: EVENTS OF 2012*, at 144-45 (2013), available at https://www.hrw.org/sites/default/files/wr2013_web.pdf.

38. Meera Karunanathan, *U.N. Must Challenge Canada's Complicity in Mining's Human Rights Abuses*, GUARDIAN, Apr. 24, 2013, <http://www.guardian.co.uk/global-development/poverty-matters/2013/apr/24/un-canada-mining-human-rights>.

39. See Lyuba Zarsky & Leonardo Stanley, *Can Extractive Industries Promote Sustainable Development? A Net Benefits Framework and a Case Study of the Marlin Mine in Guatemala*, 22 J. ENV'T & DEV. 131, 134 (2013).

area.⁴⁰ A video documentary about this project clearly demonstrates the vast gulf between the arguments and proposals of the mine representatives and the responses of the local people.⁴¹ In the final analysis, the people's "no" should have meant just that. The ILO Convention No. 169 and, even the Constitution of Guatemala, demand a consultation with the indigenous peoples.⁴² The result was *not* consensus but a resounding "no" to the project, but that was not respected and the exploration and work continued.⁴³

While the Guatemalan Courts are still to pronounce themselves on the topic, in April 2006, the open pit mining was in full operation with its highly toxic cyanide ponds required for the operation, and its heedless use of the scarce local water for industrial activities.⁴⁴ Repeated in the video, the people ask "what is *our* advantage?"⁴⁵ The answer to this question remains unclear, while the damages inflicted emerge clearly, and the courts deliberately proceed at a slow pace, the corporations continue with their unwanted and harmful "development."

It is instructive to note that the only disease or pre-birth issue that harms the child and is openly discussed in the UNICEF Report, is HIV/AIDS, which contains a strong element of choice at least for the infected parent, rather than the numerous industrial exposures which, as noted, adversely affect the child in multiple irreversible ways, but which hold no element of choice for the transmitting mother, or for the developing child.⁴⁶

The UNICEF Report states that a great portion of the mortality of children under five is due to armed conflicts, not only directly, but through "poor

40. Nick Dearden, *Guatemala's Chixoy Dam: Where Development and Terror Intersect*, GUARDIAN, Dec. 10, 2012, <http://www.theguardian.com/global-development/poverty-matters/2012/dec/10/guatemala-chixoy-dam-development-terror>.

41. Álvaro Revenga, *Sipakapa No Se Vende*, YOUTUBE (Guat.) (May 10, 2012), <http://www.youtube.com/watch?v=qfHDgWnBC5s>.

42. International Labour Organization [ILO], Convention Concerning Indigenous and Tribal Peoples in Independent Countries No. 169 art. 1, June 27, 1989, 1650 U.N.T.S. 383; CONSTITUCIÓN POLÍTICA DE REPÚBLICA DE GUATEMALA [C.P.] arts. 66-67.

43. Valerie Croft, *Goldcorp Drilled by Shareholders*, DOMINION (June 8, 2010), <http://www.dominionpaper.ca/articles/3486>.

44. ON COMMON GROUND CONSULTANTS, HUMAN RIGHTS ASSESSMENT OF GOLDCORP'S MARLIN MINE: APPENDIX F—OVERVIEW OF LEGAL CASES INVOLVING THE MARLIN MINE (2010), *available at* http://hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_F_Legal_Cases.pdf; *see also* Dawn Paley, *Goldcorp: Occupation and Resistance in Guatemala (and Beyond)*, DOMINION (June 21, 2008), <http://upsidedownworld.org/main/guatemala-archives-33/1346-goldcorp-occupation-and-resistance-in-guatemala-and-beyond> (commenting on how the operations of the mine continued during legal proceedings); Brenda Norrell, *Mayans in Guatemala: No Compromise, Halt Mining*, NARCOSPHERE (Sept. 30, 2007, 12:20 PM), <http://narcosphere.narconews.com/notebook/brenda-norrell/2007/09/mayans-guatemala-no-compromise-halt-mining> (demonstrating that metals from the mine are draining into the river); Nathan Einbinder, *Guatemala: The Hope for an Endless Mine*, UPSIDE DOWN WORLD (Aug. 12, 2008), <http://upsidedownworld.org/main/guatemala-archives-33/1421-guatemala-the-hope-for-an-endless-mine> (highlighting the use of cyanide in the mining operation).

45. Revenga, *supra* note 41.

46. *See* UNICEF, *supra* note 36.

governance.”⁴⁷ The reasons for this situation include “the destruction of physical infrastructure, strains on healthcare and education systems, workers and supplies, and increasing personal insecurity caused by the conflict or its remnants—such as landmines and unexploded ordnance.”⁴⁸ At this time, it is important to consider that the “destruction of infrastructure” and the strains to health care and education also contribute to the insecurity and lack of physical safety of children in all cases of development projects that affect their living conditions in developing countries and weak, but resource-rich nations.

Communities, indigenous to an area, that live traditionally on the land that is and has been historically theirs, but are confronted by any industry that is particularly hazardous to “fragile states,” whose weak institutions, “with high levels of corruption, political instability and weak rule of law,”⁴⁹ which thus cannot resist the power of corporate expansion, as they succumb to further weakening of their bureaucracies and institutions, the results are, most often, irreversible harms to the most vulnerable, including the children.

These conclusions can be easily drawn by studying the general situations in all cases where development is imposed on vulnerable communities. It can be inferred that children will suffer the worst impacts of any of these toxic operations. However, there is no mention of children or of any special protections for their particular vulnerabilities, at least no such language may be found in the *Right to Development*.⁵⁰ Yet in the resolution adopted by the General Assembly entitled *A World Fit for Children* (“2002 Resolution”) paragraph 7(4) reads: “**Care for every child.** Children must get the best possible start in life. Their survival, protection, growth and development in good health and with proper nutrition are the essential foundation of human development.”⁵¹ Yet paragraph five says “[w]e stress our commitment to create a world fit for children, in which sustainable human development . . . tak[es] into account the best interests of the child . . .” and relates a number of principles needed to achieve the projected goal, culminating in the “interrelatedness of all human rights, including the right to development.”⁵²

It seems that the “essential foundation of human development” refers to something other than the “right to development,” which is simply not aimed at securing safety and health, as the main actors are not the affected local populations, but the MNCs, who plan, decide, and effect their industrial operations based solely on economic advantage. Hence the double and self-contradictory meaning of “development” needs to be discussed openly and defined with sufficient specificity to clarify when it is meant as a favorable expression regarding

47. *Id.* at 14-15.

48. *Id.* at 14.

49. *Id.* at 15.

50. The Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Annex (Dec. 4, 1986).

51. A World Fit for Children, G.A. Res. S-27/2, ¶ 7(4), U.N. Doc. A/RES/S-27/2, Annex (May 10, 2002) (a resolution adopted by the General Assembly, on the report of the Ad Hoc Committee of the Whole, which was adopted following the World Summit for Children).

52. *Id.* ¶ 5.

children's health, and when it is instead meant as—at best—the amoral economic practices of corporate legal persons.

Another desirable goal of the 2002 Resolution is outlined in paragraph 7(10):

Protect the Earth for Children. We must safeguard our natural environment, with its diversity of life, its beauty and its resources, all of which enhance the quality of life, for present and future generations. We will give every assistance to protect children and minimize the impact of natural disasters and environmental degradation on them.⁵³

The Resolution acknowledges that both “additional resources,” and “renewed political will” are necessary to translate even laudable goals into practice.⁵⁴ In paragraph twenty, however, the 2002 Resolution acknowledges that “[d]iscrimination gives rise to a self-perpetuating cycle of social and economic exclusion and undermines children’s ability to develop to the fullest,”⁵⁵ yet it does relate discrimination to “development,” which is simply seen as an instrument of globalization, intended to reduce chronic poverty: “We recognize that globalization and interdependence are opening new opportunities through trade, investment and capital flows and advances in technology, including information technology, for the growth of *the world economy*, development and the improvement of living standards around the world.”⁵⁶ But there is no indication that the “growth of the world’s economy” simply replicates the already discredited theory of trickle down economics,⁵⁷ to benefit either the general living standards of impoverished people, or the health and safety of children. In fact, the conflict between economic growth and the protection of children is seen most clearly in the conflicts arising in the home countries of the MNCs, as even there, despite the stronger existing infrastructures and—presumably—the legal protection of human rights consonant with democracy. One recent example will suffice. As explained by Philippe Grandjean in *Only Once Chance*:

In the summer of 2006, the *New York Times* and other major American newspapers displayed full-page advertisements to convince readers that mercury in fish was safe. . . . The message was: “Concerned about mercury? You shouldn’t be. Unless you eat this.” Then there was a picture of canned whale meat.⁵⁸

The ads were placed and funded by the Center for Consumer Freedom, an industry-funded think tank that regularly downplayed “the dangers of obesity, smoking, and drunk-driving”; although in this case “the campaign was apparently paid for by the tuna industry” that had lost significantly since the worry about

53. *Id.* ¶ 7(10).

54. *Id.* ¶ 8.

55. *Id.* ¶ 20.

56. *Id.* ¶ 19 (emphasis added).

57. JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY* 6 (2012).

58. GRANDJEAN, *supra* note 1, at 119.

mercury had surfaced.⁵⁹ In that case, like in many others, “industry skillfully turns what should be a debate over policy to a debate over science.”⁶⁰

“[B]ecause of the mercury scare, [producers of canned tuna organized] a \$25 million campaign.”⁶¹ Grandjean adds: “In one year, they would spend an amount much greater than the total support for mercury research that I had received during 20 years from the National Institute of Health.”⁶² Other industries employed similar strategies for years, including the smoking and tobacco industry until the Framework Convention on Tobacco Control was enacted.⁶³ A whole industry of paid “researchers” ensure that doubt is raised, when none exists, on any specific scientific issue that affects public health regarding some industrial activity or product. Some of the best known of these organizations are the Center for Science and Public Policy, the Center for Indoor Air Research, and the Citizens for Fire Safety Institute; these are the “‘front groups’ for financial interests,” despite their benign-sounding names.⁶⁴

A parallel “disinformation campaign” has been staged by climate change deniers, and the multiple oil and energy corporations whose economic interests are threatened by the reality of global warming, already acknowledged by science worldwide.⁶⁵ Thus, under a barrage of well-paid hired guns, the worst and most harmful activities and the science that indicts them, are doubted, critiqued without any scientific basis, and generally downplayed by the very corporations that gain from the ongoing production and use that those activities generated.

Neither truth, nor science, nor yet human rights prevail in this ongoing situation in the affluent North. Thus those in the global South, suffering from chronic poverty and weakened institutions, have no hope to affirm and fight for their rights and those of their children, no matter the seriousness of the imposed harms. In fact, there is no effort on the part of corporate moguls to even mount disinformation campaigns, as they can proceed at will towards their goals with no resistance even from governments who are signatories to the Convention on the

59. *Id.* at 119-20.

60. *Id.* at 120 (citing DAVID MICHAELS, *DOUBT IS THEIR PRODUCT: HOW INDUSTRY’S ASSAULT ON SCIENCE THREATENS YOUR HEALTH* 60-78 (2008); UNION OF CONCERNED SCIENTISTS, *HEADS THEY WIN, TAILS WE LOSE: HOW CORPORATIONS CORRUPT SCIENCE AT THE PUBLIC’S EXPENSE* 13-30 (2012)).

61. *Id.* at 120; see also Terry Rodgers, *As Canned Tuna Sales Dive, Companies Plan Ad Blitz to Reel Buyers Back In*, SAN DIEGO UNION-TRIBUNE, July 27, 2005, http://www.utsandiego.com/uniontrib/20050727/news_1b27tuna.html.

62. GRANDJEAN, *supra* note 1, at 120.

63. WHO Framework Convention on Tobacco Control, May 21, 2003, 2302 U.N.T.S. 166 [hereinafter WHO Framework]; see John Tierney, *‘Misleading’ Research from Industry?*, N.Y. TIMES (Oct. 30, 2008, 11:02 AM), http://tierneylab.blogs.nytimes.com/2008/10/30/misleading-research-from-industry/?_r=0.

64. GRANDJEAN, *supra* note 1, at 121.

65. Donald A. Brown, *Ethical Analysis of the Climate Change Disinformation Campaign*, CLIMATE PROGRESS (Jan. 10, 2012, 2:13 PM), <http://thinkprogress.org/climate/2012/01/10/399724/ethical-analysis-of-the-climate-change-disinformation-campaign>.

Rights of the Child and other instruments intended to protect children's rights.⁶⁶ There is no corresponding legal regime to restrain the harms perpetrated by "development," while there is an instrument benignly titled the *Right to Development* instead.

IV. THE RIGHT TO HEALTH, THE CHILD, AND AN ALTERNATIVE PERSPECTIVE ON DEVELOPMENT

While public health scholars and activists have attempted to employ the right to health as part of this right-based approach to development, the promise of the right to health has largely proven illusory in development discourse. Founded upon the non-derogable right to life, the Universal Declaration on Human Rights (UDHR) affirms in Article 25(1) that "[e]veryone has a right to a standard of living adequate for the health and well-being of himself and of his family, including . . . medical care and necessary social services."⁶⁷

Professor Meier acknowledges that development, which is understood as "purely economic (measured in terms of aggregate GDP)," does not include "broad social, political, and cultural change"⁶⁸ and he proposes incorporating these notions in an improved "ecological model of public health."⁶⁹ However, he also acknowledges that the present economic models of neoliberal globalized development are "insalubrious" as they stand because,⁷⁰ according to that model, public goods are viewed as a "market" failures: "Yet despite the recognized importance of these public health systems, the neoliberal development paradigm's pursuit of national economic growth at the expense of human development, undermines the supply of public goods affecting entire societies."⁷¹ This reality leads Professor Meier to conclude, correctly I believe, that "neoliberal development programs" harm public health.⁷² The major accepted understanding of development in economic terms prospered in the "normative vacuum" provided by globalization and neoliberalism,⁷³ as previous government-supported social and public health services were privatized instead, and left "to the whims of international markets,"⁷⁴ thus further inflicting "additional suffering on

66. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; see also *International Norms and Standards Relating to Disability, Part V. Persons with Disabilities and Multiple Discrimination—Rights of Special Groups*, UNITED NATIONS ENABLE, <http://www.un.org/esa/socdev/enable/comp501.htm#1.1> (last visited Nov. 4, 2013) (listing other international instruments that govern children's rights).

67. Meier & Fox, *supra* note 2, at 296; UDHR, *supra* note 19, art. 25(1).

68. Meier & Fox, *supra* note 2, at 269.

69. *Id.* at 271.

70. Benjamin Mason Meier, *Employing Health Rights for Global Justice: The Promise of Public Health in Response to the Insalubrious Ramifications of Globalization*, 39 CORNELL INT'L L.J. 711, 713 (2006).

71. Meier & Fox, *supra* note 2, at 273.

72. *Id.* at 274.

73. *Id.* at 276.

74. *Id.* at 277.

disenfranchised and vulnerable populations.”⁷⁵ The deterioration of public health systems, in the context of the present understanding of development is based primarily on three ongoing problems:

First, through [structural adjustment programs] and subsequent neoliberal programs, the IMF has eviscerated the developing state public health systems

Second, mandated health sector efficiency controls have resulted in cost recovery schemes that have had a dramatic impact on countries’ health services

Finally, these intellectual property regimes of the World Trade Organization (WTO) often prevent States from reasonably providing affordable medications and treatment for their people.⁷⁶

Thus far Professor Meier’s analysis enriches rather than contradicts the argument of this work; particularly in regard to the discriminatory presence of the worst of these harmful effect of development, on the poor of the third world and indigenous populations, as Professor Meier explicitly decries elevating “corporate cupidity over the imperatives of public health.”⁷⁷ Neoliberal imperatives might permit the research required to find cures for rich men’s diseases, but they do not allow research for medicines to treat “tropical” or “orphan” diseases, which remain neglected because of market imperatives.⁷⁸

Professor Meier points out that, because of neoliberalism, over the last fifty years, previous gains in health care brought by the role of governmental institutions have been reversed.⁷⁹ But, in the last fifty years or so, there has been an ongoing but novel attack on public health, which is as likely (often more likely) to attack those in wealthy countries than those who are poor. A clear exception to this conclusion is the multiple attacks on indigenous peoples that we have noted. The source of these attacks is the introduction of multiple untested industrial chemicals that have grown apace with the withdrawal of state-based health protection in general.⁸⁰

In 2006, I argued that future generations’ rights, in fact the very existence of future generations themselves, depended on a new understanding of the concept of “development,” rather than the simple acceptance of the currently accepted meaning.⁸¹ The “development” of the child, that is, of those who comprise the first

75. *Id.* at 282; see also Joyce V. Millen et al., *Introduction: What is Growing? Who is Dying?*, in *DYING FOR GROWTH: GLOBAL INEQUITY AND THE HEALTH OF THE POOR* 3, 6-7 (Jim Yong Kim et al. eds., 2000).

76. Meier & Fox, *supra* note 2, at 285-87.

77. *Id.* at 288.

78. *Id.*; see also PAUL HUNT ET AL., WORLD HEALTH ORG., *NEGLECTED DISEASES: A HUMAN RIGHTS ANALYSIS* 38 (2007), available at http://www.essex.ac.uk/hrc/research/projects/rth/docs/Neglected_Diseases.pdf.

79. Meier & Fox, *supra* note 2, at 289.

80. See generally GRANDJEAN, *supra* note 1.

81. LAURA WESTRA, *ENVIRONMENTAL JUSTICE AND THE RIGHTS OF UNBORN AND FUTURE GENERATIONS: LAW, ENVIRONMENTAL HARM AND THE RIGHT TO HEALTH* 198-99 (2006).

generation, is or should be the most important form of development. Without a legal framework that gives primacy to preborn development, that acknowledges the nefarious impact of most of those unchecked chemicals on the first generation, normal development will not be possible either for the first or other future generations beyond it, and environmental justice will not be achieved.⁸²

The research that has been emerging over the last few decades demonstrates that there is even more at stake than the poor general health that Professor Meier documents, as we note in Dr. Grandjean's recent work.⁸³ We now confront various sorts of abnormal development, which would also have effects not only on the exposed child or preborn, but on others across generations, as these substances affect the DNA, as well as the future health of adults.⁸⁴

However, the next question that needs to be asked, is whether the right to health includes, or at least should be understood to include, the right to normal development for the protection of the most vulnerable: the child. Professor Meier, as we shall see, would like to combine a program of public health to the "right to development."⁸⁵ I would counter that unless the right to development is first understood as "right to normal development," even that desirable goal will be insufficient.

V. THE RIGHTS OF THE CHILD IN THE CONTEXT OF PRESENTLY DAMAGED PUBLIC HEALTH INSTITUTIONS

A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Essentially, a rights-based approach integrates the norms, standards, and principles of the international human rights system into the plans, policies and processes of development.⁸⁶

Coupled with the "lofty language" of "the highest attainable standard of health" in the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), these official words support, at best, individual medical needs, but do little or nothing to advance the cause of public health, despite the acknowledged progress from the earlier "medical model" of public health to the more recent

82. *Id.* at 147-48.

83. See generally GRANDJEAN, *supra* note 1.

84. See KEITH L. MOORE ET AL., BEFORE WE ARE BORN: ESSENTIALS OF EMBRYOLOGY AND BIRTH DEFECTS 306-09 (8th ed. 2013); Christopher M. Somers et al., *Air Pollution Induces Heritable DNA Mutations*, 99 PROC. NAT'L ACAD. SCI. 15904 (2002); Ker Than, *Pollution Can Change Your DNA in 3 Days, Study Suggests*, NAT'L GEOGRAPHIC NEWS (May 17, 2009), <http://news.nationalgeographic.com/news/2009/05/090517-pollution-changes-dna.html>.

85. Meier, *supra* note 70, at 765-66.

86. Third United Nations Conference on the Least Developed Countries, May 14-20, 2001, Brussels, Belg., *Human Rights, Poverty and Governance in Least Developed Countries: Rights-based Approaches Towards a New Framework of Cooperation*, at 5, U.N. Doc. A/CONF.191/BP/8 (May 13, 2001).

“social/ecological model.”⁸⁷ The latter is now accepted by doctors, epidemiologists, and other representatives of public health institutions, but international law has not developed and progressed equally.⁸⁸

The ICESCR was adopted in 1966, but nothing has been added to keep pace with the scientific advances of the last fifty years to eliminate or at least minimize new threats. The case law involving collective public health damages to indigenous and other vulnerable communities reflects the lacunae present in legal regimes, despite the strong language present in the Human Rights Council Resolution on “Human Rights and the Environment”; the World Health Organization (WHO) Report on the Social Determinants of Health; and the UNCHR Resolution addressing “[t]he right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁸⁹

Nevertheless, despite the presence of these international legal instruments, additional to the “right to development” that Professor Meier cites as the most hopeful venue for progress, the *proof* of their ability to sustain public health and to curb abuses promoted by neo-liberal-inspired “development,” demonstrates their impotence instead.⁹⁰ There are two basic reasons for this impotence. The first is the power of industry, trade, and ultimately corporations, who are not bound by any of the legal instruments we have cited, and have no interest in accepting restraints on their operations. A number of examples could be adduced where corporate interests explicitly run counter to public health requirements. For instance, tobacco companies are fighting hard under trade agreement laws to restrain countries with whom they want to deal from enacting stringent anti-smoking laws:

Facing vehement protest from tobacco state lawmakers and business groups, the Obama administration appears to have retreated from efforts to keep cigarette makers from using trade treaties to attack countries that adopt strong anti-smoking rules.

At issue is whether a pending free trade deal should include language protecting the authority of nations to adopt tough regulations to reduce smoking.⁹¹

87. See ICESCR, *supra* note 19, art. 12; Christopher Masi, *When Less is More in Public Health*, 51 PERSP. BIOLOGY & MED., 479, 479-80 (2008) (discussing the “medical model” of public health and highlighting that under this model there has been a “slowdown in life expectancy gains”); Meier & Fox, *supra* note 2, at 265 (discussing the “social/ecological model” of public health).

88. Meier & Fox, *supra* note 2, at 292.

89. Human Rights Council Res. 16/11, Rep. of the Human Right Council, 16th Sess., Feb. 28-Mar. 25, 2011, at 24, U.N. Doc. A/HRC/16/2 (Mar. 25, 2011); WORLD HEALTH ORG., CLOSING THE GAP IN A GENERATION: HEALTH EQUITY THROUGH ACTION ON THE SOCIAL DETERMINANTS OF HEALTH (2008); Comm’n on Human Rights Res. 2002/31, Rep. of the Commission on Human Rights, 58th Sess., Mar 18-Apr. 16, 2002, U.N. GAOR, Supp. No. 3, E/2002/23, at 144 (Apr. 22, 2002).

90. Meier, *supra* note 70, at 763.

91. Myron Levin, *Tobacco State Protest Could Hurt Obama Trade Deal*, SALON (Aug. 13, 2013, 6:42 AM), http://www.salon.com/2013/08/13/tobacco_state_protest_could_hurt_obama_trade_deal.

Examples could be multiplied. Corporations like Monsanto are so aware of the dangers of their products that their lobbies have succeeded in having President Obama sign the Monsanto Protection Act in March 2012.⁹² Much has been written on corporate crimes. But the second issue, which is the topic of this work, is the fact that the interface and the linkages between the environment and, in general, ecological conditions and public health, are neither understood nor acknowledged. These “missing linkages” can be summed up under four headings:

- a. explicit denial of the interface in jurisprudence, from U.S. cases under the Alien Torts Claims Act (ATCA), to the European Court of Human Rights and the International Court of Justice;
- b. lack of explicit prohibitions on the part of the WHO regarding industrial chemical and agricultural processes, despite the abundant evidence amassed by that U.N. body and available in medical journals regarding the human health consequences of those industrial activities, which today can be compared to the evidence gathered by the WHO before drafting their Framework Convention on Tobacco Control;
- c. ongoing denial of the egregious human rights violations that follow upon climate change, including glacial melts in the Arctic through drought and famine in sub-Saharan Africa, while the same Western practices continue to contribute to global warming, including the over-use of water and grains in industrial meat production with its resulting methane releases; and,
- d. insistence on the “right” to “sustainable development,” without the right of indigenous and other land-based communities to say “no” when the development in question is unwanted, as it continues to gravely impact these peoples’ very subsistence, as well as their health and survival, both as individuals and as peoples.

As well, the numerous cases, especially in North, Central, and South America, involving indigenous peoples, and the grave harms they suffer because of industrial exposures due to the development agenda of MNCs, unfortunately, make the belief in progress based on the right to development doubtful at best. In that I concur with Professor Meier’s 2006 work,⁹³ as well as his more recent assertion that “[i]ndividual [r]ights [a]re [p]owerless to [p]rotect [p]ublic [h]ealth [s]ystems.”⁹⁴

In contrast, “[p]ublic health and safety are community or group interests.”⁹⁵ What needs to be addressed is that the rights that must be supported are the rights

92. See LAURA WESTRA, *THE SUPRANATIONAL CORPORATION: BEYOND THE MULTINATIONALS* 87-88 (2013) [hereinafter WESTRA, SUPRANATIONAL]; Michelle McGuinness, ‘Monsanto Protection Act’ Called ‘Outrageous,’ *Dangerous*, MSN NEWS (Mar. 28, 2013), <http://news.msn.com/us/monsanto-protection-act-called-outrageous-dangerous>.

93. See Meier, *supra* note 70, at 727-732.

94. Meier & Fox, *supra* note 2, at 293.

95. *Id.* at 337 (quoting Dan E. Beauchamp, *Community: The Neglected Tradition of Public Health*, HASTINGS CENTER REP., Dec. 1985, at 28, 29).

of humankind, of the human collectivity, although, as we argued elsewhere, some groups and communities are particularly valuable and need support in addition to the humanity they share with the rest.⁹⁶ When the affected “community” is primarily that of the preborn and thus that of the child, then the weakness of the “development” argument becomes even clearer. Professor Meier adds: “Development through free markets is often justified by arguments for collective good and aggregate benefit, with growth distributed without regard for individual economic and social rights.”⁹⁷ But “development” is largely driven by corporate interests,⁹⁸ the same corporate interests that demand in-house testing for their products and processes,⁹⁹ and who lobby for elastic language in domestic and international legal instruments, even demanding a prior immunity from the possible (and in fact anticipated) harms these same products will produce.¹⁰⁰ One of the largest and most dangerous, Monsanto, is even prepared to protect its privileges by force, if money does not suffice to smooth their path.¹⁰¹

In order for the future to be of the hopeful scenario Professor Meier envisions, the first step is the revision of the testing protocols applied to all industrial substances and processes, one that involves the presence of impartial public health organizations, rather than the existing in-home procedures. The second step is revising all the cited instruments in support of public health, including language consonant with that of the 2012 WHO EDC Report as well as previous WHO Reports regarding child health. Finally, the most important step would be to return to state-supported health institutions and organizations, immune from both funding and intrusion from corporate sources. That ideal situation, unlikely as it is to materialize in the foreseeable future, would eliminate privatized services by the same corporate actors who are united in the WTO and NAFTA to ensure that even the health findings of democratic countries’ health systems, could be reversed on economic and trade grounds.¹⁰²

Even if we simply consider the malnutrition and starvation that affect the impoverished populations in the third world, in addition to the chemical exposures that impose hazards upon the wealthier countries, especially on their children, we

96. LAURA WESTRA, HUMAN RIGHTS: THE COMMONS AND THE COLLECTIVE 12, 221 (2011).

97. Meier & Fox, *supra* note 2, at 337.

98. See UGO MATTEI AND LAURA NADER, PLUNDER: WHEN THE RULE OF LAW IS ILLEGAL 58-63 (2008).

99. See WESTRA, SUPRANATIONAL, *supra* note 92, at 93-98.

100. See Holly Yeager, *Senate Funding Bill Strips Controversial Provision on Genetically Modified Crops*, WASH. POST, Sept. 26, 2013, http://www.washingtonpost.com/politics/senate-funding-bill-strips-controversial-provision-on-genetically-modified-crops/2013/09/26/353247ae-26c4-11e3-b3e9-d97fb087acd6_story.html.

101. See Jeremy Scahill, *Blackwater's Black Ops: Internal Documents Reveal the Firm's Clandestine Work for Multinationals and Governments*, NATION (Sept. 15, 2010), <http://www.thenation.com/article/154739/blackwaters-black-ops#>.

102. See DAVID R. BOYD, UNNATURAL LAW: RETHINKING CANADIAN ENVIRONMENTAL LAW AND POLICY 258 (2003) (describing the Methanex case, where Health Canada was forced to retract its findings, accept a carcinogenic additive in gasoline, and pay almost \$20 million to the U.S. corporation that manufactured the substance).

find a scenario that reinforces the fear, rather than hope in development: "The world's croplands could feed 4 billion more people than they do now just by shifting from producing animal feed and biofuels to producing exclusively food for human consumption, according to new research from the Institute on the Environment at the University of Minnesota."¹⁰³

If you add to those figures the immense amounts of water wasted by so-called "animal agriculture," the climate change effects arising from it, and the ongoing danger arising from the overuse of antibiotics for the same unfortunate animals, the costs for public health and human survival itself are extreme.¹⁰⁴ Of course the use and overuse of meat by richer people is a public health danger in itself, to the individual health of so many that obesity/diabetes endanger with all concomitant diseases, is present in all developed countries, once again enriching a number of corporate persons, from fast foods, to agribusiness, to the pharmaceutical industry itself.¹⁰⁵

VI. CONCLUDING THOUGHTS

It is disheartening to see that an instrument like the *Right to Development*,¹⁰⁶ which should have been there to ensure respect for the economic and social rights of human beings, is used instead to facilitate economic activities that result in the "development" of multinational corporations, rather than the betterment of the conditions of the poor.

This conflict emerges most clearly when we consider the issue of public health, not only the provision of medical services, but, more importantly, the concern for the healthy development of the most vulnerable: the children. As we saw, UNICEF's report refers to the child as "invisible" in a world where there is little in law or governance to protect the child, and where even the Convention on the Rights of the Child has no specific reference to the problems presented by industrial operations, and the related exposures affecting the child.¹⁰⁷

Hence, unless some drastic change occurs along the lines proposed by Professor Meier, it would seem that not only the right to health (including normal development), but the right not to suffer discrimination on any grounds are not presently ensured for the child.

103. Univ. of Minn., *Existing Cropland Could Feed Four Billion More by Dropping Biofuels and Animal Feed*, SCI. DAILY (Aug. 1, 2013), <http://sciencedaily.com/releases/2013/08/130801125704.htm>.

104. See Lisa Winebarger, Comment, *Standing Behind Beastly Emissions: The U.S. Subsidization of Animal Agriculture Violates the United Nations Framework Convention on Climate Change*, 27 AM. U. INT'L L. REV. 991, 1006-09 (2012); see *Meat: Now It's Not Personal!*, WORLD WATCH MAG., July-Aug. 2004, at 12, 12-19.

105. See *Meat: Now It's Not Personal!*, *supra* note 104, at 18-19.

106. The Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Annex (Dec. 4, 1986).

107. UNICEF, *supra* note 36, at 14-15; see generally CRC, *supra* note 66 (demonstrating no specific reference to industrial operations' effects on children).