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CENTRE FOR AFRICAN JUSTICE, PEACE AND HUMAN RIGHTS

**THE RIGHT TO WATER, SANITATION & CHILDREN'S
DEVELOPMENT**

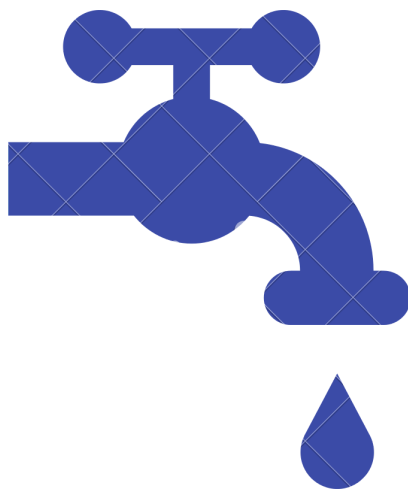


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The Evolution of the Right to Water and Sanitation

By Alexandra Chudina*



High demand for people to have the right to clean water and sanitation has finally led to the right being to be recognized by international law. The Right to Water and Sanitation was recognized as a human right by the United National General Assembly on 28 July 2010.[1] It took around 62 years, since the Universal Declaration on Human Rights (UDHR), to accept the right to clean water and sanitation as a fundamental right.[2]

People around the world stood up and brought attention to the local struggles to have access to clean, fresh water and sanitation services. [3] Neither the International Covenant on Economic, Social, and Cultural Rights (ICESCR) nor the UDHR of 1948 explicitly recognizes or even mentions the right to water and sanitation as a fundamental human right. The UDHR only mentions that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...’. [4]

[1] UNGA Res 64/292 (2010) UN Doc A/RES/64/292.

[2] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[3] Sharmila L Murthy, ‘The human right(s) to water and sanitation: history, meaning, and the controversy over privatization’ [2013] 31(1) Berkeley Journal of International Law 89-149, 91.

[4] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) article 25.

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The main evolution of the right to water started in the 1970s.[5] The Convention on the Elimination of All Forms of Discrimination Against Women mentions the right to 'adequate living', including 'water supply'. [6] Several years later, the 1977 Mar del Plata Conference addressed the problem of sanitation, stating that 'all peoples... have the right to have access to drinking water in quantities and of a quality equal to their basic needs'. [7] The issue of 'Integrated Water Resources Management' (IWRM) was at the heart of this conference which raised more awareness about the right to water. [8] IWRM is a process which promotes the coordinated development and management of water, land, and related resources to equitably maximize economic and social welfare without compromising the sustainability of vital ecosystems and the environment. [9]



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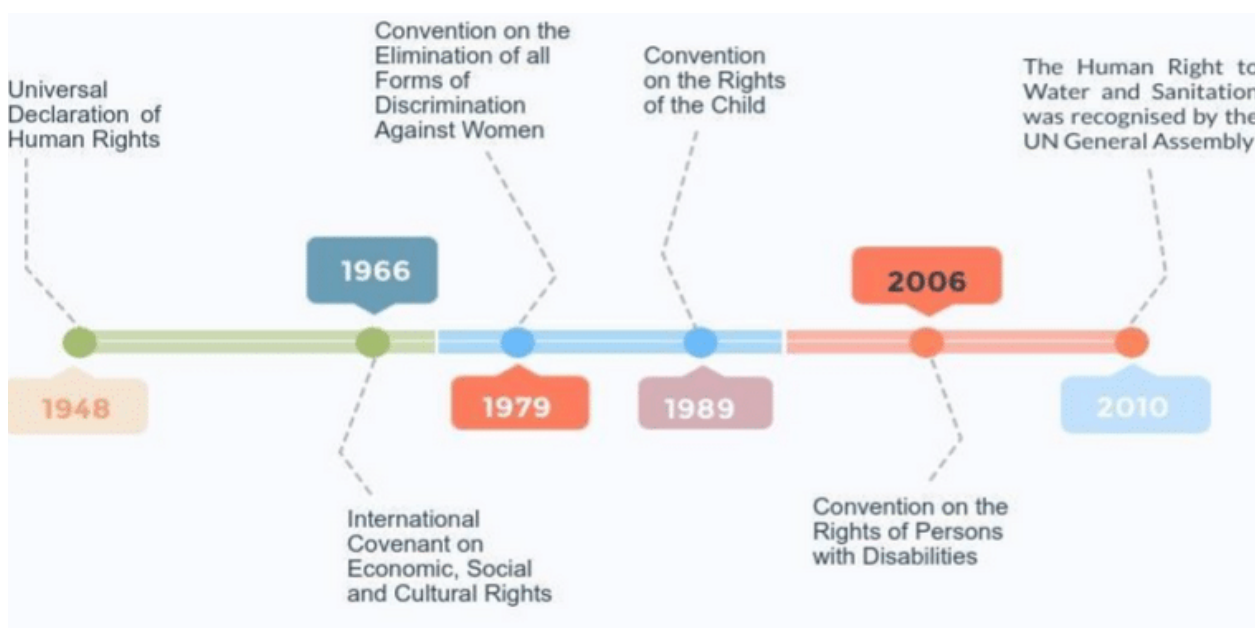
5 *Supra* 3, 92.

6 Convention on the Elimination of All Forms of Discrimination Against Women (signed 18 December 1979, entered into force 3 September 1981), article 14(2(h)).

7 Report of the United Nations Water Conference, (14-25 March 1977) UN Doc E/CONF 70/29.

8 *Ibid*

9 *Ibid*



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Following Agenda 21 of the Rio de Janeiro Conference, the decade between 1981 and 1990 was named as the International Drinking Water Supply and Sanitation Decade as a dedication to water. [10] It left an imprint on the Convention on the Rights of the Child of 1989, which embedded an explicit provision on the right to 'clean drinking-water'. [11]



Photo by cottonbro



Photo by Thomas Chauke

10 Sharmila L Murthy, 'The human right(s) to water and sanitation: history, meaning, and the controversy over privatization' [2013] 31(1) Berkeley Journal of International Law 89-149, 93.

11 Convention on the Rights of the Child (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) article 24

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States focused on the economic side of water during a conference in Dublin and decided that water must be 'affordable'.^[12] Such a statement raised many controversies.^[13] This was only a starting point.

At the 2002 World Summit, the right to water was finally recognized in General Comment No. 15 as part of Article 11 and 12 of the ICESCR. Following massive protests against the privatization of water in Bolivia, India and South Africa in the 2000s, a resolution 'on the human right to safe drinking water and sanitation' was proposed to the General Assembly in 2010.^[14]

After some disagreement and 41 abstentions, the resolution on 'safe and clean drinking water and sanitation' was adopted by the vote of 122 countries.^[15]

The right to water has been later a focus of several UN bodies, including The Human Rights Council. In 2015, states agreed to set Sustainable Development Goal No. 6 to increase access to drinking water for everyone by 2030.^[16]

It took some time for the international community to establish the essential right to water and adequate sanitation in

international law. However, this is only a start. Hopefully, the words will soon come to practice, by implementation and compliance of states. So far it has been challenging for the developing countries to provide water to the poorest communities.^[17]

Photo by Coco Images

12 *Ibid*

13 Sharmila L Murthy, 'The human right(s) to water and sanitation: history, meaning, and the controversy over privatization' [2013] 31(1) Berkeley Journal of International Law 89-149, 93.

14 *Ibid*, 102

15 UNGA Res 64/PV.108.

16 United Nations, 'Transforming our World: The 2030 Agenda for Sustainable Development', A/Res/70/1, Goal 6.

17 Stephen C McCaffrey, Kate J Neville, 'Small Capacity and Big Responsibilities: Financial and Legal Implications of a Human Right to Water for Developing Countries' 21(4) [2009] Georgetown International Environmental Law Review 679-704, 696

The African Commission's Approach to the Right to Water: Successfully claiming the Right to Water and Sanitation

By Diana Mocioc*

The birth of the human right to water on the African continent has been a slow process. The Abuja Declaration was adopted by 45 African States.[1] Those states committed to promote access to safe and clean water and sanitation as a right of their citizens within their jurisdictions, recognizing the importance of water as an essential element for survival and the socio-economic development.[2] Additionally, 32 of the 122 states that voted in favour of the General Assembly's Resolution Recognizing Access to Clean Water and Sanitation as a human rights were African States.[3]

Nonetheless, there is currently no free-standing right to water provision stipulated under the African Charter on Humans and Peoples' Rights (hereinafter: The Charter).[4] However, the case-law of the African Commission on Humans and Peoples' Rights promoted the vague appearance of the human right to water in the African regional system of human rights.



1 Abuja Declaration, adopted at First Africa-South America Summit, 26-30 November 2006 (Abuja, Nigeria) ASA/Summit/doc.01(I).

2 *Ibid*, para 18.

3 'General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right, by Recorded Vote of 122 in Favour, None against, 41 Abstentions: 64th General Assembly Plenary, 108th Meeting (AM))' GA/10967 (United Nations, 28 Jul 2010) <<https://www.un.org/press/en/2010/ga10967.doc.htm>> accessed 23 Feb 2020.

4 OAU, African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 1986) CAB/LEG/67/3 rev 5 21 ILM 58

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Concerning its interpretation, the Commission regards the right to water as falling under the right to dignity – Article 5 of the Charter –, the right to health – Article 16 of the Charter –, and the right to a healthy environment – Article 24 of the Charter.[5] The Commission treats the right to water as an auxiliary right, i.e. as a component of other human rights. The Commission's approach to the right to water is emphasized in the Pretoria Declaration on Economic, Social and Cultural Rights in Africa.[6] More precisely, the legal instrument highlights that the right to health comprises, among others, access to basic shelter, to housing, and sanitation, as well as the supply of potable and safe water.[7]

In the case of *Free Legal Assistance Group and Others v. Zaire*, the Commission held that, if the government had failed to ensure essential services, for instance, safe drinking water and electricity, Article 16 was infringed.[8] Furthermore, in *SERAC v. Nigeria*, the Commission concluded that the contamination of drinking water sources, by either state or non-state actors, epitomizes an infringement of Article 16 and Article 24.[9]



5 Takele Soboka Bulto, 'The Extraterritorial Application of the Human Right to Water in Africa' (Cambridge University Press 2013) 70.

6 'Statement from Seminar on Social, Economic and Cultural Rights in the African Charter' (adopted in Pretoria, 13-17 September 2004; published in 5 *African Human Rights Law Journal* (2005).

7 *Ibid*

8 (Joined) Communications 25/89, 47/90, 56/91, 100/93, *Free Legal Assistance Group and 2 Others v. Zaire*, 9th Annual Activity Report (1995-6), para 47.

9 Communication 155/96, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, 15th Annual Activity Report (2001-2), para 49, 57, 66 ('the SERAC case'), para 50-4.

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Taking into account the aforementioned considerations, one can only bring a claim on the violation of the human right to water via another right that could be infringed in cases where access of the victim to a sufficient quantity or quality of water is violated.[10] Unfortunately, some situations that escape the coverage of the other rights, as the human right to water may sometimes be breached separately, not contingent upon other rights.

In the 'Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights', developed by the African Commission, the interconnection between the right to water and the right to sanitation is emphasized .[11] Additionally, the right to water and sanitation is a component of the right to an adequate standard of living, stipulated under the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR). [12] The interrelation is not specified under ICESCR. It is however stipulated under General Comment No. 15 on the Right to Water. [13]



10 Takele Soboka Bulto, *The Extraterritorial Application of the Human Right to Water in Africa* (Cambridge University Press 2013) 73.

11 African Commission on Human and Peoples' Rights, 'Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (adopted in 2010), para 87-92.

12 UNGA, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

13 UN Committee on Economic, Social and Cultural Rights General Comment No 15: The Right to Water (Arts 11 and 12 of the Covenant), (adopted 20 January 2003 at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights) E/C 12/2002/11.

The African Commission's Approach to the Right to Water: Successfully claiming the Right to Water and Sanitation

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Nonetheless, a lot of African governments fail in their effort to prioritize development around the importance of access to clean and sanitized water. [14] This may indirectly imply that sanitation is not a human right, regressively hindering progress in this area.

The problem is that many governments end up spending a lot of money for the payment of nurses and doctors to treat water-borne disease, instead of focusing on the root of the problem.[15] This means that many of the governments in the African region take a reactive approach as opposed to a proactive approach to the issue.

At the same time, several African governments concentrate on the water crisis that their country is facing and invite the communities to actively participate in the process of making laws, plans, policies and infrastructural development on the matter.[16] For example, the government of Ghana acknowledged that the entitlements to access to water and sanitation are to be regarded as human rights.[17]

To sum up, there is a degree of discrepancy concerning the legal basis on the right to water in the African context. Nonetheless, the African Commission's approach has led to the progression of the human right to water. It is highly desired that the Commission makes a statement in which to emphasize that the right to water, even though not explicitly protected by the Charter, is to be protected implicitly. Moreover, African States are encouraged to develop and to implement domestic legislation and strategies that safeguard the right to water and sanitation, and to submit their progress on the issue periodically to the Commission.



14 Haki Zetu, 'ESC rights in Practice: The Right to Adequate Water and Sanitation' (2010) Amnesty International, 12.

15 *Ibid*, 50.

16 *Ibid*, 10.

17 *Ibid*, 43.

Right to Education: Insights

by Andreea Antohi*



Photo by Aksha Yapatra

The right to education is well established in international law.[1] However it is not equally protected and promoted on the international level by all States. Poverty and marginalization, the financial deficit of developing countries, and inequality between boys and girls all play a pivotal role in the failure to implement these laws.[2] Most countries in the developing world

fail to act based on these international legal standards, not because they lack the will or because there is no domestic policy implementation. These states lack the financial, professional and educational resources necessary for meeting their commitments. Poverty decreases school attendance and increases the drop-out rate of children.[3]

1 Universal Declaration of Human Rights (adopted 10 December 1948) (UDHR) UNGA Res 217 A (III), article 26; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) (ICESCR) UNTS 993 3, article 13 - article 14.

2 Humanium, 'Right to Education: Situation Around the World' <<https://www.humanium.org/en/right-to-education/>> accessed 23 Feb 2020.

3 Francis Dakwa, 'Poverty-Related causes of School Dropout- Dilemma of the Girl Child in Rural Zimbabwe' (2014) 3 Int J of Academic Research in Progressive Education and Development 1

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Right to Education: Insights

by Andreea Antohi*

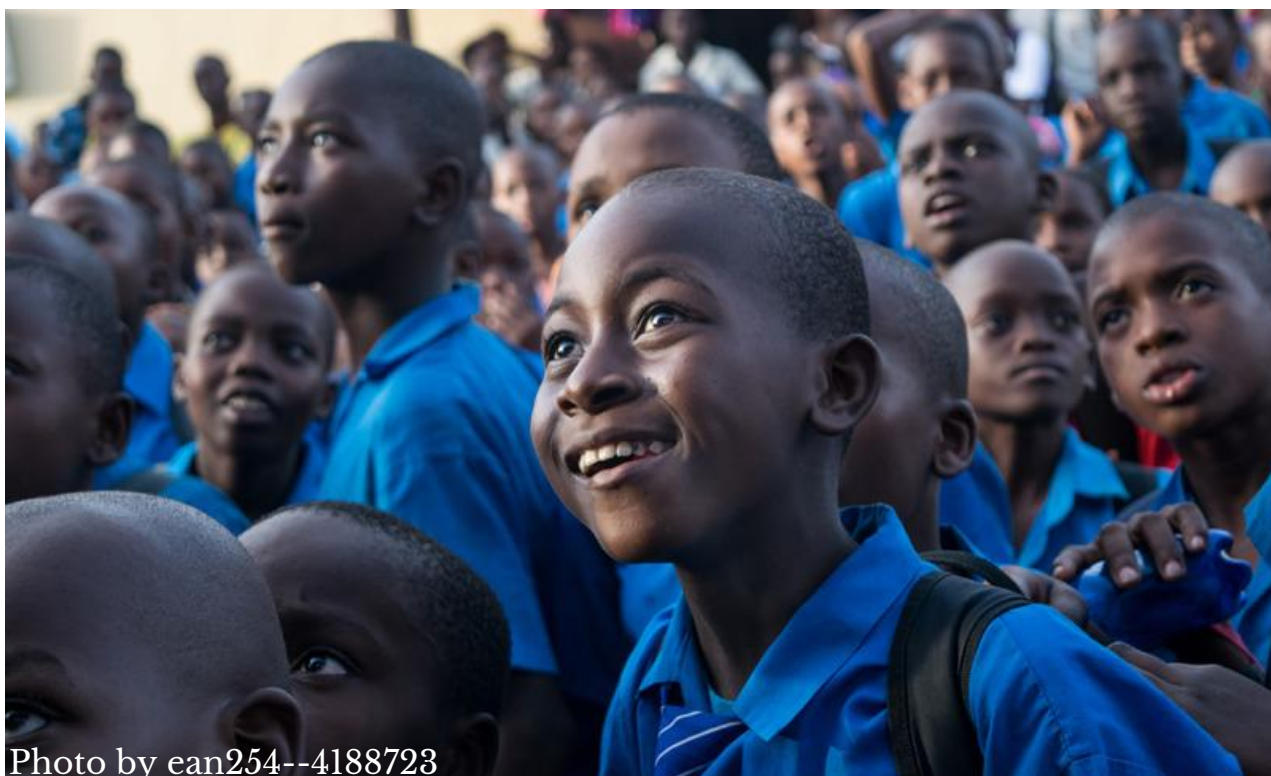


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Many children coming from a disadvantaged background are forced to abandon school due to medical conditions caused by either the use of dirty water or lack of water or both. Others have to drop out of school in order to support their families.[4] According to Save the Children education is the route that has to be followed by children to get them (and their families) out of poverty because it equips children with the knowledge and skills that are needed to improve the quality of life. [5] However, there are still 57 million primary school-aged children out of school worldwide because their families need them to produce money or stay at home to take care of the household.[6]

4 *Supra* 2.

5 Save the Children, 'The Right to Education' <<http://www.savethechildren.org.nz/what-we-do/the-issues/education/>> accessed 23 Feb 2020.

6 *Ibid*

The concept of 'marginalisation' underlines the inequalities made between children based on their sex, health condition and cultural identities, such as the ethnic origins, language, or religion. Due to these criteria children suffer from being on the margins and do not benefit from being educated under the roof of an educational institution. Therefore, they lack the general knowledge needed to develop healthy habits and technical skills and competencies to succeed in the future. This hinders the intellectual and social development of the child

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of today and the adult of tomorrow. [7] UNESCO has stated that ‘marginalization in education is a form of acute and persistent disadvantage rooted in underlying social inequalities’ and that different criteria are used to differentiate between children when they are being marginalized.[8] For example, educating girls is less important than educating boys in many countries and traditional practices such as marriage at an early age have a great impact on the position of girls versus the position of boys.[9]

Furthermore, the lack of financial resources contributes to violations of the right to education. This is because States do not appropriate the needed financial resources in order to invest in building schools or to provide the necessary materials needed to fully contribute to the educational development of children and teachers, such as access to decent washroom and toilet facilities in schools.[10] Moreover, the financial deficit affects the establishment of an educational system for children and the quality and effectiveness of teaching.[11]

7 Supra 2.

8 UNESCO, Global Education Monitoring Report Team, ‘Reaching the marginalized: EFA global monitoring report’ (2010) 150 <<https://unesdoc.unesco.org/ark:/48223/pf0000186606>>.

9 Ibid

10 Supra 2.

11 Supra 2.

Right to Education: Insights

by Andreea Antohi



Photo by Agung Pundit Wiguna

According to Human Rights Watch, ‘around 124 million children between 6 – 15 years old have either never started school or have dropped out’.[12] Furthermore, the organization also stated that behind the failure of ensuring the right to education stand governments, which bear responsibilities for ensuring that no child or young person is left without education. This lack of focus in development regarding governments’ human rights obligations leads to an ‘education deficit’.[13]

It is very important for states and individuals to realize the importance of providing guidelines for teachers and investing in the intellectual and social development of children that later on will become adults and will be part of a society based on new standards and values. Governments should ensure that the right to education is an interest for them and that education is integrated into national planning. Their contribution should aim at avoiding risk and at increasing financial assistance to children who are at risk of dropping out.

12 Human Rights Watch, ‘The Education Deficit: Failure to Protect and Fulfil the Right to Education in Global Development Agendas’ (2016) <https://www.hrw.org/sites/default/files/accessible_document/educationdeficit0616_accessible.pdf> accessed 19 February 2020.

13 *Ibid*

The importance of sanitation and clean water for the proper development of the child*

By Andrei Stan**

The old saying, 'Water is life', remains relevant today, especially considering climate change and the threat to water supplies. To improve the health of children in early childhood, investments in water, sewage and hygiene are essential, and these are widely considered vital for progress (Headey, 2019).

The persistence of these problems is a significant concern for public health. The effect of the precarious conditions of water, sewage, and hygiene affect the cognitive, sensorimotor and socio-emotional development of the child from the early period of the child's development (Ngure, 2014).

Early childhood development programs are designed to prevent the occurrence of risks and to mitigate the negative effects of risks but also to improve the survival, growth, and development of young children (Engle, 2007). The concept of child development refers to the abilities accumulated during the child's life, skills, and abilities acquired interdependently. This includes sensorimotor skills, cognitive language skills and socio-emotional functioning (UNICEF, 2006).

Complex phenomena, with a wide range of factors, directly contribute to a child's development. These include genetic factors, biological factors (such as nutrition), and the psychosocial and physical environment in which children are raised (Engle, 2007). Greater attention is needed for facilitating access to water, for the optimal development of the child and for children's increased psychological well-being. By satisfying the needs of hygiene, one combats or, at least, diminishes the negative effects with a direct impact on the child's growth.



Photo by Dick Scholten

*The citation style in this article follows the style used by the American Psychological Association (APA) because of the subject matter.

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By Andrei Stan

The living conditions of a community are essential in defining the quality of life in communities. Poverty and a low standard of living impact future generations (Engle, 2007). Investments must be made on the African continent with the aim of poverty alleviation. The high level of poverty is connected to a flawed/deficient early childhood development and the diminution of educational growth (Engle, 2007). Investments in water, sewage, and hygiene must be carried out.

“Investments in water, sewage, and hygiene must be carried out.”

Malnutrition is usually a result of unhygienic environments. There is a difference between ‘hunger’, ‘undernutrition’, and ‘malnutrition’. ‘Hunger’ refers to a lack of food on the short term that results in lacking nutrients, while ‘undernutrition’ describes the situation where children, on account of not having access to sufficient food, do not grow at the pace they should and ‘malnutrition’ refers to the ingestion of generally bad or low-quality food (Hoddinott, 2012).

There is a strong relationship between malnutrition and child development. Nutrition can have serious effects on both the structural capacity and the functional capacity of the brain (Jimoh, 2017). Malnutrition can lead to the disturbance of the rapid brain development processes that occur in the child’s first years of life (Jimoh, 2017). It brings with it apathy, low activity, as well as very poor motor development (Jimoh, 2017).



The importance of sanitation and clean water for the proper development of the child

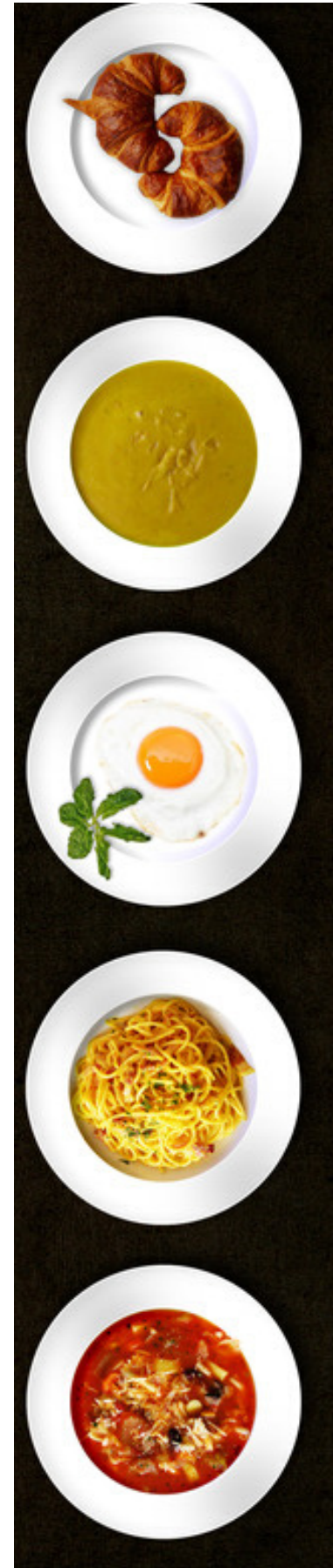
By Andrei Stan

Children that face malnutrition do not usually have the enthusiasm to explore their surroundings, and, therefore, they do not come to possess skills at a normal pace (Jimoh, 2017). Micronutrient deficiencies (deficiencies in iodine, iron, vitamin A, zinc) decrease the capacity of children to fight against infections, and their capacity to remember information and to learn. Moreover, undernutrition enhances child mortality, that stems out from infections, and it has strong neurological consequences, as it affects both the hippocampus and the formation of memory (Hoddinott, 2012).

"Children that face malnutrition do not usually have the enthusiasm to explore their surroundings, and, therefore, they do not come to possess skills at the normal pace"

There are various elements deeply connected with cognitive, social skills, and productivity. One of them is the adequate nutrition during pregnancy, especially during the first two years of life. This is critical for the development of a normal brain of the child (Ngure, 2014). Moreover, undernutrition has a severe impact on the long-run. It leads to a lower IQ, poor performance in school, and an increased risk for mental health issues (Haghighi, 2013).

According to the Lancet Child Development Series, there are a several risk factors including intrauterine growth restriction (IUGR), malaria, human immunodeficiency virus (HIV) infection, lead exposure, inadequate cognitive stimulation, iodine deficiency and iron deficiency (anaemia) that prevent children from reaching their optimal development potential (Walker, 2007).





Additionally, the lack of access to clean water at schools has a strong psychological impact on children. The Installation of sanitary facilities at schools leads to the reduction of fear in children, especially girls. Children going to relieve themselves in the open may encounter terrible problems like being bitten by snakes or scorpions or being kidnapped by criminal organizations) (Selendy, 2011). If they have access to clean water and toilet facilities, then they do not have to preoccupy themselves with these issues daily, which leads to the reduction of the reduction of anxiety and stress.

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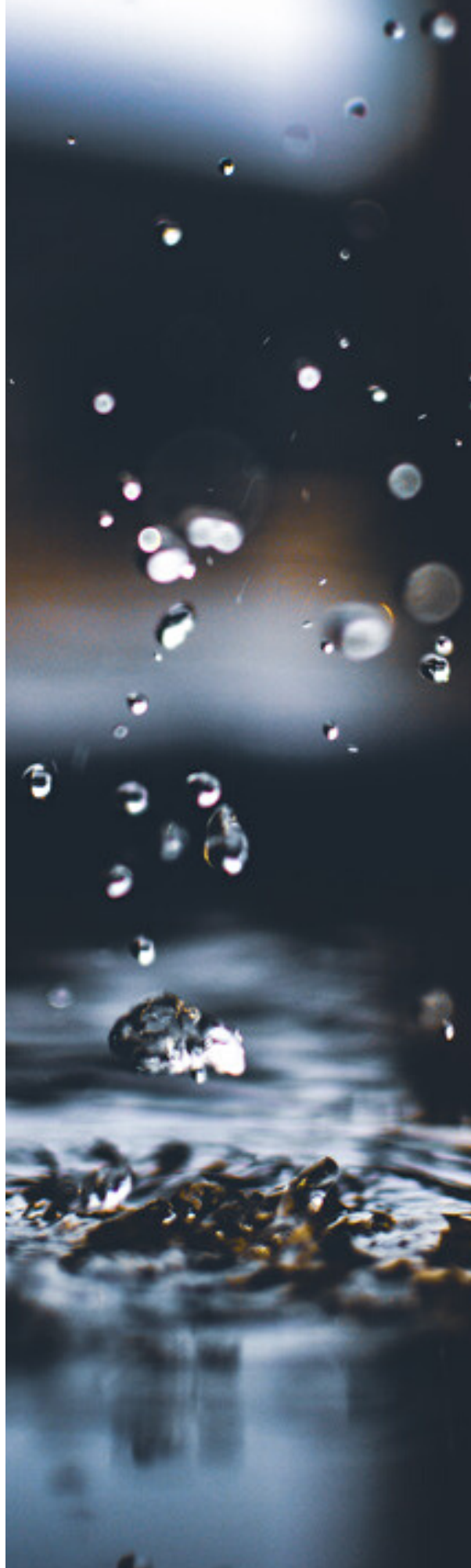
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