

# STILL PROGRESS

Reviewing the Implementation of the Human Right  
to Water and Sanitation in Francophone Africa





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to Water and Sanitation in Francophone Africa

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# Our Thanks

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# Disclaimers and Limitations

This review is based on information on law and policy available in English online and/or offline and based on information collected from research conducted and verified between May 2020 to June 2021. Because this review is carried out primarily based on information publicly available online, it has more than several hundred URLs and links to publicly available laws, regulations, and electronically published documents. All referenced URLs and links were checked at the time when they were inserted into the footnotes. There is no guarantee as to their future accessibility. Where the URL links to active websites rather than document files, the footnotes include mention of "last visited month, date, and year." In addition, in case of citing a published document in a footnote, the footnote may include information on an author (or an authoring institution), a year of publication, title, page range, and URL or a link where the referenced publication was uploaded.

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# Introduction

On 28 July 2010, the United Nations General Assembly adopted *Resolution 64/292* recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”. This action jumpstarted a decade of focus on water and sanitation around the world. Ten years later, we examine whether this UNGA Resolution has persuaded states to adopt domestic laws recognizing the rights to water and sanitation.

Water and sanitation are necessary for survival. Making these rights visible and meaningful in domestic law is the first step to realizing access to water and sanitation. This report identifies whether the rights to water and sanitation have been recognized expressly in the domestic law of francophone African countries.

## THE LAW IS THE KEY

Laws are commitments. National laws define the relationship between the government and the citizens. They turn visions, promises, and goals into commitments, and they commit a government to take or refrain from certain actions, abide by certain rules, achieve identified outcomes, and honor rights. Laws describe what the government owes to its people and what the people owe to their government and fellow people. They are obligations that should enable the achievement of a healthy, equitable society.

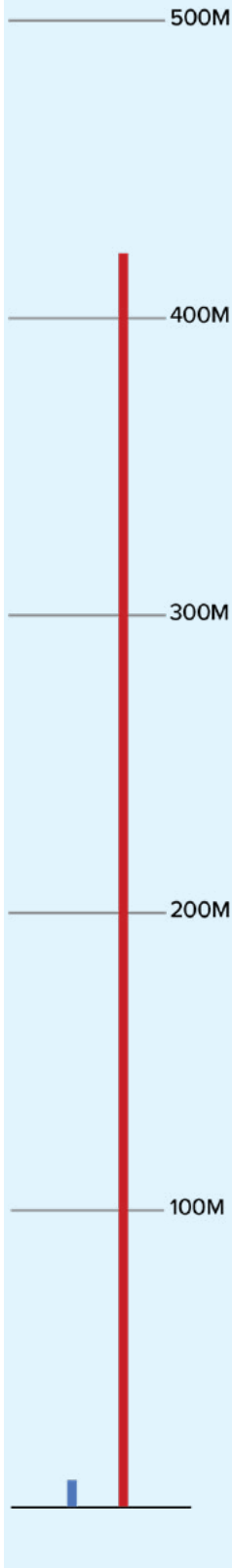
Laws should clearly articulate rights and obligations and create an enabling environment for realizing them. To create that enabling environment, laws must clearly articulate rights and obligations. They should define the contours of these rights and obligations so that what it means to “realize a right” is measurable. That is to say that it should be clear to identify when a right has or has not been attained. However, sometimes laws are silent. Other times, laws can intentionally or unintentionally hinder the realization of certain rights and goals. Still, laws can also be insufficient to establish meaningful rights or rules. For laws to create an enabling environment they must both identify and clearly define the rules of conduct and action.

By analyzing laws, we can understand the level of commitment made by a government to realizing rights. Where the law clearly expresses a right and defines what is required of the government or the people to realize that right, the law can create the necessary enabling environment for real action. Where rights and rules are not expressed, or they are so vague as to not be justiciable, this is a weak foundation for achieving the rights and outcomes that we want. The clearer the law, the stronger the commitment.

In this report, we examine specifically whether the rights to water and sanitation are expressed in domestic law. While international law can have a place in securing these rights, domestic law is often the most direct and justiciable way to enshrine rights. Further, expressing these commitments in writing is a critical first step in the realization of rights. While the law’s impact is weakened through no or poor implementation and enforcement, it does not change the importance that the words of domestic law play in granting rights.

## CONSTRUCTIVE RIGHTS ARE NOT FULLY REALIZED RIGHTS

Constructive rights are not substitutes for fully realized rights. Fully realized rights are those rights set out in law with institutions to enforce them, while constructive rights are rights that have not been articulated expressly in law. The rights to water and sanitation require a clearly stated and defined commitment by the government. Other rules, requirements, and processes can generate greater access to water and sanitation or improve the quality of water and sanitation services. For example, laws can prioritize water used for domestic purposes against and above all other water uses. While these laws provide that demands for water for drinking and hygiene will be met first in the event of water scarcity, this does not create the right to water. Similarly, laws which create financing opportunities for households without credit may enable those households to obtain access to money to then purchase sanitation technology. However, such a law does not establish the right to sanitation. In addition, laws that require greater monitoring and reporting on the health of water resources and coverage of water and sanitation services help to keep the government accountable. Yet, such laws do not replace the need for a clear right to water and sanitation.

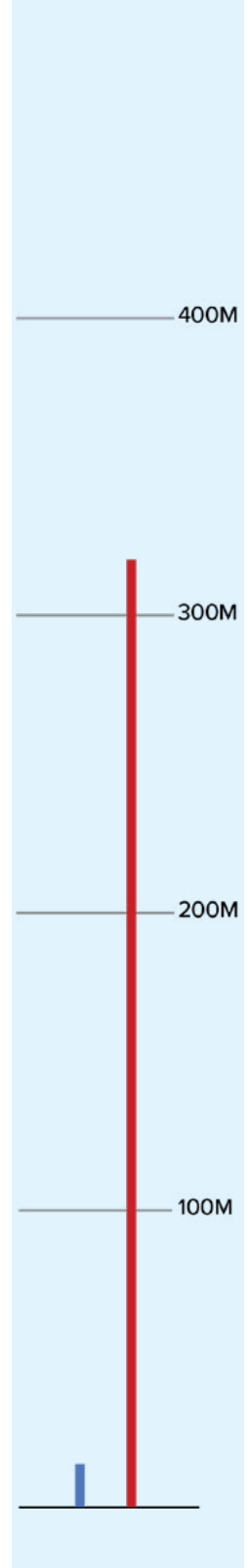
**SDG WATER**

Without clearly stated rights to water and sanitation, there is no guaranteed, justiciable right to water nor right to sanitation. The right to water and/or sanitation may be extrapolated from other rights or laws by courts. However, these interpretations are not the same as a constitutionally or legislatively established right where the right has been intentionally established and specifically defined. The right to water and sanitation should be deliberately rooted in domestic law.

**WORDS MATTER**

Rights must be unequivocally articulated. If a right is not expressed, it likely does not exist and can be ignored. If a right is not stated, the government may have no obligation to recognize or realize that right. If a right is not articulated, citizens will not be aware of the right they have and be able to ask for it from the government. If the right is not clearly stated, courts will be left to define its contours or leave it unenforced due to its vagueness.

Without water, life is impossible. Without sanitation, a necessary bodily function becomes an active threat to public health and the environment. Domestic laws should put into writing the rights to water and sanitation, and clearly define the obligations of the state and the people, as well as the actions that must be taken to realize the rights to water and sanitation. These written rights create clarity because the scope of the right can be clearly defined. For many countries, the challenge is not with defining the right but with committing to what it will take to realize the right.

**SDG SANITATION**

*The countries in this report are behind in providing water and sanitation at the SDG level. In the two figures on this page, the blue bars indicate how many people are currently receiving water (left) and sanitation (right) at the SDG level. The red bars show how many people need service for the SDGs to be met.*



# Methodology

To understand whether and how domestic law has adopted rights to water and sanitation, we examined national laws and policies relevant to water and sanitation. Our goal was twofold: (1) to identify a right to water and right to sanitation, and (2) to determine how well the right was described and articulated to enable actual realization. We expected to see clarity of scope and purpose. If the rights were not clearly stated, we asked: would a citizen know that the right exists and be able to use it to protect their interests? After all, the law is intended to serve the people, and if the people cannot use the law, the law is not complete.

## OUR APPROACH

On the tenth anniversary of the adoption of the human rights to water and sanitation by the U.N. General Assembly, we sought to determine whether countries expressed human rights to water and sanitation in their domestic law. We examined the national laws of 19 French-speaking countries in Africa to determine if and how their laws established the human rights to water and sanitation. The countries examined were Benin, Burkina Faso, Burundi, Cameroon, Central African Republic (CAR), Côte d'Ivoire, Chad, Comoros, Djibouti, Democratic Republic of the Congo (DRC), Gabon, Guinea, Madagascar, Mali, Niger, Rwanda, Senegal, Seychelles, and Togo.

We first determined whether the rights to water and sanitation had been explicitly established in the law. Rights establish what is owed to people and who is obligated to actualize those rights. By creating both a right to water and a right to sanitation in the law, the law mandates that people governed by that law are entitled to water and sanitation. Because these rights are an entitlement provided for and protected under the law, people can demand through the courts that their rights be realized. Without explicit rights established in the law, it would be difficult to successfully demand water and sanitation. Therefore, identifying whether countries create explicit rights to water and sanitation in their domestic law is important to understanding the strength of the basis upon which residents can expect and demand access to water and sanitation. We concluded that the rights to water and sanitation have been established if a “right” or a “human right” was explicitly created in the Constitution or the law. While we recognize that the rights to water and sanitation are separate but connected rights, we reflect these rights as separate or connected depending on the laws of each country that we surveyed.

For a law to be designated as having established the right to water or sanitation, the law must explicitly state that there is a right. Some laws may include a broad reference to human rights in the preamble. Some laws may refer to other documents in which a right to water or sanitation has been included. However, only laws which affirmatively state that there is a right to water and/or sanitation were designated as establishing the right to water or sanitation.

Although we examined policies, we did not conclude that a country had an express right to water or right to sanitation if the right was only stated in a policy. This is because policies do not typically create binding obligations on the government. However, we looked to policies to better understand how a country views the scope of the right and its obligations. Further, we noted policies that identified a right to water or a right to sanitation.

Second, we examined how the rights to water and sanitation have been described in the law or policy. The establishment of each right is necessary to create an entitlement owed to people governed by the law. However, if the laws do not provide greater detail on the scope and parameters of the right, then the law lacks the definition necessary to actualize the right effectively. Therefore, we examined how the laws describe the right, whether the laws define what the right entitles people to, and what it obligates the government to do. We also looked at policies to understand how the government envisions its responsibilities with respect to the rights to water and sanitation. While policies are not typically justiciable documents, they reflect the vision and strategy of the government for achieving goals and priorities. Therefore, policies are valuable sources of information for understanding what the government has decided are its responsibilities and the timeline on which it is planning to act.

Where neither the right to water nor sanitation has been established, we examined the language the government uses to discuss access to water and sanitation. We also identified other affirmatively established rights that could be interpreted to be related to water and sanitation.

To determine the status of the right to water and sanitation, we examined a wide range of laws and policies including the Constitution, environmental law, water law, public health law, WASH law, sanitation policy, drinking water or water policy, public health policy, and the development policy. For some countries, a law or policy for each category was reviewed. However, for other countries, there were fewer laws and policies within these categories. Some of the challenges we faced were determining whether there was a relevant law or policy within each of these categories, finding the documents to be reviewed, and confirming whether the law or policy had been amended, repealed, or replaced. Information about the laws and policies governing the water and sanitation sectors is limited and difficult to find.

Furthermore, given the limitations created by COVID-19, the report is limited to desktop research. The relevant laws and policies were found online through government websites and available platforms. It was challenging to find information on laws and policies as there often was no central repository that we could consult. In some cases, while we determined that a certain law or policy existed through reports or articles, the law was not available online.

# Country Reports

We applied the methodology to each country, looking through documents for any expression of the rights. We examined the law of 19 French-speaking countries from across the African continent, looking for similarities and differences in expression and implementation. Here, we identify whether the country has expressly adopted the right to water and/or sanitation in their domestic law and analyze the expression of the right.



WATER



SANITATION



YES



NO

# BENIN



The laws of Benin establish the right to water, but not the right to sanitation. While the Constitution is silent on the right to water, Benin’s water law establishes the right. The 2010 Water Law states that “[e]ach citizen has the right to have water for his needs and the basic requirements of life and dignity” (Article 6). To realize the right to water, the State and decentralized territorial regions are responsible for the organization and provision of public drinking water services (Article 59). However, the Water Law does not provide any additional clarity on the scope of the right. Terms such as “needs” or “basic requirements of life and dignity” are not defined or described in the Law. While it sets forth offenses, penalties, and methods of prosecution in the event of a violation, it is fundamentally unclear when the right to water is violated. This presents an opportunity to clarify the right to create a more clearly justiciable right to water.

Policies and strategies have reiterated the existence of the right to water and provided greater definition to the scope of the water right. The National Strategy on the Provision of Potable Water in Rural Areas (2017-2030) identifies SDG 6 and the universal provision of access to drinking water by 2030 as a legal and political foundation of the strategy. The government has made a strategic commitment to ensuring universal access to an improved source of drinking water, stating that “everyone has the right to improved access to potable water, with quality water and sufficient quantity, at a price which takes account of its standard of living.” The language of the strategy starts to shape the scope of the right to water by clarifying that the right to water is an issue of sufficient quantity of water, sufficient quality of water, and equitable pricing that will allow the user to afford access to water.

The focus on equitability in water issues is highlighted in other documents. The 2008 National Water Policy sets out a vision for ensuring equitable access and sustainable drinking water. The strategy states that “access to drinking water is a criterion of social justice, dignity, equity, and peace. It must be guaranteed for all and be sufficient, satisfactory and not discriminatory.” To realize the right to water, the policy mirrors the language of the Water Law and reiterates that the state and local communities are responsible for the organization and provision of drinking water and sanitation to realize the right to water. Ultimately, while the Water Law identifies a right to water, and policies help to define the contours of the right, the law could more clearly define the right to water to ensure its justiciability.

Neither the Constitution nor the laws of Benin create a right to sanitation. The Water Law states that the treatment and disposal of wastewater are elements of the right to water (Article 62). First, treating and properly disposing of wastewater is just one part of ensuring access to sanitation. Second, the Law states that wastewater treatment is an element of the right to water, not the right to sanitation. No right to sanitation is established where it could have been.

Furthermore, even though wastewater treatment is identified as an element of the right to water, Article 62 does not seem to clarify the definition of the right to water presented in Article 6. Typically, the right to water and the right to sanitation are separate and distinct concepts. The Law provides no explanation of the potential link between proper wastewater management and the realization of the right to water. Therefore, it is unclear how wastewater treatment enables the right to water.

Lastly, if Article 62 is read with Article 63, this provision could be seen to have more to do with the protection of the environment than ensuring access to sanitation or even access to water. Article 63 states that urban development plans must take into account the drainage of rainwater which is considered part of the right to security and the right to a clean and healthy environment. Therefore, Article 62 neither clarifies the contours and obligations of the right to water nor establishes the right to sanitation.

Policies provide few additional insights into the right to sanitation. The National Water Policy expresses a commitment to providing equitable and sustainable access to sanitation but does not identify a right to sanitation. The National Strategy for the Promotion of Hygiene and Sanitation in Rural Areas acknowledges the value of a “rights-based” approach over a “needs-based” approach. However, beyond these limited mentions, the right to sanitation is not recognized in law or policy.

Although the Constitution of Benin does not recognize either the right to water or right to sanitation, it recognizes several other rights, including the right to life, liberty, security and the integrity of his person” (Article 15). The Constitution also recognizes a right to a clean and healthy environment and positions the state as responsible for protecting the environment (Article 27). The responsibility of the state to protect the environment is complemented with the duty of individuals to defend the environment (Article 27).



*Access to clean, safe water in Woukpokpoe village, Benin.*

*Arne Hoel / World Bank*

# BURKINA FASO

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The laws of Burkina Faso establish both the right to water and sanitation. The 2001 Water Law established the right to water even before the Constitution did. The Water Law “recognizes a right to have access to water corresponding to their needs and to meet the basic requirements of life and dignity” (Article 2). This right to water, as written, could be interpreted as limited rather than broad because the Law creates a right of access to an amount of water which meets their needs and the basic requirements of life. The Ministers responsible for water, social affairs and health are responsible for adopting the measures necessary for exercising this right (Article 2). In 2015, the Constitution of Burkina Faso was revised to include a social and cultural right to drinking water and sanitation (Article 18). Beyond establishing the rights, the laws do not provide additional perspective on the scope and nature of the rights.

Several water and sanitation policies refer to and build on the recognition of the right to water and sanitation. The vision of the 2016 National Water Policy is to understand and efficiently manage the country’s water resources to realize the right of universal access to water and sanitation. Similar visions are shared in the National Strategy for Managing Public Drinking Water Service in Rural Areas in Burkina Faso (2020-2030) and the 2016 National Drinking Water Supply Program (PN-AEP 2030). The PN-AEP states that “water is a social good and access to drinking water for all social strata is a right.” Across these policies, the government identifies that actualizing principles of equity and non-discrimination is critical to increasing access to water and sanitation. Under the policies, achieving greater equity means reducing disparities in access based on income, gender, and place of residence.

The laws of Burkina Faso also create a right to life, a right to health, and a right to a healthy environment. The Constitution establishes these rights respectively in Articles 2, 26 and 29. The 2013 Environmental Code states that everyone has a right to a healthy environment (Article 5). Anyone can file a complaint to end the nuisance generated by activities that disturb tranquility or under security or public health (Article 5). While these rights are related to the rights to water and sanitation, they have not been explicitly linked together with the rights to life, health, and healthy environment in the constitutional framework.



## BURUNDI

The laws of Burundi do not create the right to water or sanitation. While the Constitution and laws do not create these right, they do recognize other rights. The Constitution expressly recognizes the rights to life and healthcare (Articles 24, 55). The Constitution also commits the government to ensuring that “to the extent to which it is possible...all citizens...have the means at their disposal to lead a life in accordance with human dignity” (Article 27). Furthermore, the Constitution states that children have the right to measures that assure or improve their well-being, health, and physical security (Article 44). These rights and commitments are related to but do not expressly include the right to water or the right to sanitation.

The Water Law makes efforts to prioritize human health and access to water but does not establish the right to water. According to the Law, the “population is at the center of all actions to be undertaken in management and use of water resources” (Article 2). As such, actions are to be taken to enable poor and other vulnerable groups to have access to affordable water and sanitation (Article 2). The Water Law also gives clear guidance on how different water needs are to be prioritized, positioning the needs of people for drinking water and watering livestock first (Article 89). While the Law seems to recognize the importance of drinking water and the need to consider the unique challenges of vulnerable communities, no right to water is established.

Burundi’s laws and the regulations that implement them never explicitly dictate a right to water. Even in the context of the development goals set forth in the development plan, where universal access to water is expected, there is no explicit expression of the right to water nor is there any indication that the development goal must be achieved. This stands in stark contrast to the rules for the energy sector, developed in tandem with the rules for potable water, where the government is tasked with ensuring the right to access.

The National Sanitation Policy of 2013 mentions the right to sanitation while referencing the General Assembly Resolution but does not articulate the right to sanitation. The policy notes that sanitation is fundamental to the social, economic and health well-being of Burundi. The policy notes that the UN Resolution has declared the right to sanitation as part of the fundamental rights of human beings, but does not declare a right to sanitation, even against the backdrop of the UN Resolution. However, the policy does set an objective of providing access for all to managed public sanitation services that protect the environment and are sustainable and efficient. Part of this objective is to improve basic human health and basic human rights, but the right to sanitation is not articulated, nor is there a foundation in Burundi’s law to substantiate the right to sanitation.

Ultimately, the rights to water and sanitation are not clearly and unequivocally articulated in domestic law.



# CAMEROON

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Cameroon's Constitution does not include a specific human right to either water or sanitation. The Constitution does include the right to a healthy environment, right to development, right to life and physical and moral integrity of the person. The right to a healthy environment is further defined in the environmental law, which states that laws and regulations must guarantee everyone's rights to a healthy environment. The law also demands that a balance be struck between the protection of ecosystems and the development of urban and rural areas. Finally, there is a right to be informed about the harmful effects of certain activities that are undertaken and will impact the environment.

# CENTRAL AFRICAN REPUBLIC

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The law of the Central African Republic (CAR) recognizes the right to water but does not recognize the right to sanitation. While the 2016 Constitution does not establish the rights to water or sanitation, the Water Law creates a right to water. The Water Code states: "the law recognizes the right of each citizen to an allocation of water according to his needs and the basic needs of life and dignity" (Article 40). The actual means and mechanisms of implementing this right is left to the Minister in charge of water. Furthermore, the Law prioritizes drinking water supply for the population when distributing water resources but allows the order of priority to be temporarily modified in the event of an emergency which undermines the original guarantee (Article 44).

While CAR's National Water Policy does not reiterate the right to water, the policy states that water should be managed in a way that "sustainably satisfies the water needs, in quality and quantity, for a growing population and a developing economy, with consideration of aquatic ecosystems, in an environmental context that is beneficial for the reconstruction and use of that resource." The policy also commits to provide specific water service levels of 75% in urban and rural areas. The laws and policies of CAR do not establish the right to sanitation. However, the National Water Policy includes a commitment to improving the country's approach to sanitation.

The Constitution establishes other rights such as the right to life and physical and moral integrity, protection from discrimination, the right to public health care, and the right to a healthy environment. The right to a healthy environment is further buttressed in the Environmental Law, which states that every citizen has the right to a clean environment. The Environmental Law also defines waters, and states that these waters will be protected and managed in a way that preserves their quality. It also provides that water for drinking is a priority, followed by water for agriculture, industry, tourism, and other uses, and finally for the ecosystem and environment. In this way, the Environmental Law supports the realization of the right to water.



## CHAD

Chadian law does not articulate the right to water nor sanitation. Neither the Chad Constitution nor any law or policy establishes or speaks to these rights. While the Water Law does not recognize the right to water, several provisions enable access to water for domestic needs. The law states that any person who wants drinking water can make a request to the operator of the water system, who “is required to conclude” a contract for the sale of water “except when the capacities of capture, treatment, storage, or existing supply of drinking water are insufficient” (Article 44). The Water Law also requires that the allocation of water resources always consider the social and economic needs of the population, while prioritizing supplying drinking water to the population when allocating water resources.

These two statements create an implied right to water, as the Water Law requires that water be provided when requested. It implies that there is no right to free water since a contract for the sale of water is required. Article 45 further highlights this point by requiring full cost recovery for water services, all but explicitly mandating fees for most, if not all, users.

Chad’s National Development Plan (2017-2021) states that an expected outcome of the plan is to create conditions of prosperity and intra and inter-generational equity. While access to water enables these conditions, there are no express rights or commitments to water and sanitation.

The 2018 Constitution does not articulate the rights to water and sanitation but does recognize other rights. The Constitution includes a right to be free from discrimination as well as a right to life, personal integrity, security, freedom, and the protection of privacy and property. There is also a right to culture and a duty of citizens to protect the environment. While access to water and sanitation may support the realization of these rights, there is no express establishment of rights to water and sanitation in the Constitution or laws of Chad.

# CÔTE D'IVOIRE

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Côte d'Ivoire's Constitution and laws do not establish the right to water nor sanitation. The Constitution creates an "inviolable" right to life and recognizes that all citizens have the right to a healthy environment and access to healthcare. These protections are rearticulated in the Environmental Law, where there is a concomitant duty to contribute "individually or collectively to the safeguarding" of the country's national heritage. The law also notes that sustainable development requires avoiding damage to the natural resources such as water, air, and soil. The Water Law states the need for water for consumption and for food but does not articulate the right to water. Furthermore, the sanitation policy acknowledges the negative impact of inadequate access to water and sanitation on GDP but establishes no mandate for realizing the right to water nor sanitation. Côte d'Ivoire does not have a clearly articulated or justiciable right to water or sanitation enshrined in law or in the Constitution.

# COMOROS

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No right to water nor sanitation is established in Comorian law. The laws and Constitution of Comoros recognize other rights including the right to health (Article 42). The National Health Policy (2015-2024) also references the right to health established in the Constitution. However, neither the Constitution nor the National Health Policy clearly define the scope of the right to health, nor link the right to health to the rights to water and sanitation.

The National Health Development Plan (2010-2014) links health, environment, and water, but does not discuss nor establish any rights. The Plan's objective is disease control and consequently it identifies health and the environment as priorities. The Plan states that a healthy environment favorable to the health and well-being of the population can be advanced by reducing the incidence of waterborne diseases. While the connection between environment, health, water, and sanitation is made, without an explicit mention of the right to health or the right to a healthy environment, the nexus does not seem to be driven by those rights.

The laws also create a right to a healthy environment, but it is unclear whether this right, by extension, creates a right to water and sanitation. The Constitution establishes a right to a healthy and ecologically stable environment (Article 43) and the 1994 Environmental Law states that every citizen has a fundamental right to live in a healthy environment (Article 4). The Environmental Law further creates an obligation on each citizen to contribute to the safeguarding of the environment (Article 4) and grants the Minister of Environment the responsibility to develop biological, chemical, and physical standards for drinking water (Article 27). It also requires that water withdrawal points for consumption be surrounded by protection perimeters (Article 28). While these provisions contribute to a healthy environment and improved health, it is unclear whether they were included to realize the rights to a healthy environment and the right to health.



# DEMOCRATIC REPUBLIC OF THE CONGO

As of 2015, the Democratic Republic of Congo (DRC) recognizes the right to water, but not the right to sanitation. Article 48 of the Constitution was revised to include the “right to access drinking water”. The wording of the right is more limited than the broader human right to water. By including the word “access,” the right could be understood to require that the government must create opportunities for accessing drinking water but does not require the government to ensure that people who cannot pay will receive those services. The right is also limited to drinking water. While water for drinking is a priority, water is also needed for other domestic purposes such as hygiene and subsistence farming. Water for purposes other than drinking water may not be protected under this right to access drinking water. The remaining provisions of the Constitution do not provide additional insight into the scope and requirements of the right. Instead, Article 48 states that the law will establish the “modalities of the exercise of these rights.”

The Water Law, revised in 2015, does not explicitly state the right to drinking water or even acknowledge the right to water. However, it adopts provisions which prioritize drinking water. Article 84 of the Law states that the “public water service is accessible to all.” However, this does not mean that the public has a justiciable right to water or that public services must be provided to all citizens, despite their inability to pay for water. In fact, Article 84 states that water service “is not free” and that its “price is determined by a tariff.” This provision could frustrate the realization of the right to access drinking water. If water services cannot be subsidized, water utilities cannot offer subsidized services to families unable to pay for drinking water services or cannot offer lifeline rates that would allow for a subsistence volume of water to be provided to families at no charge. Therefore, Article 84 could limit the realization of the constitutional right to access drinking water.

The Water Law also speaks to water use generally. For most uses, authorization and licensing is required. However, no authorization is required where the water will be used for domestic purposes (Article 24). Further, the use of water for domestic purposes, including consumption, hygiene and other household needs is the first priority in the order of water use priorities (Article 58). The second priority is use by municipalities for purposes related to public health, hygiene, and sanitation. However, this list of priority uses is “without prejudice to the essential requirements linked to the environment.” Based on the language of Article 58 alone, all uses, even use for domestic purposes, are subject to sufficient water being made available to meet environmental purposes. However, Article 12 seems to clarify that “drinking water is a priority above all other uses.” While the Water Law prioritizes water use for domestic purposes, it does not articulate the right to water.

The DRC Constitution establishes other rights including a right to health (Article 47) and a right to life (Article 16). It also creates a “right to a healthy environment that is favorable to their development” (Article 53). However, no right to water nor sanitation have been expressly stated.

# DJIBOUTI



The Djiboutian legal system does not explicitly protect the rights to water or sanitation. The 1992 Constitution, amended in 2010, establishes other rights. Article 10 provides that “every individual has the right to life, to liberty, to security, and to the integrity of the person.” Article 10 also calls each human life “sacred” and commands the State to protect each life. The Constitution also states that all humans are equal before the law. However, no rights to water and sanitation are included in the laws of Djibouti.

The Environmental Law creates a right to a clean environment that includes a corresponding citizen duty to preserve and protect the environment. Yet, no right to water nor sanitation is expressed.

# GABON



The right to water is recognized under Gabonese law, but the right to sanitation is not. The 2016 Water Law guarantees the right to access electricity and potable water and declares that the right applies to all equally and equitably. Under the law, the state is responsible for guaranteeing the enjoyment of that right. Other regulatory texts have built on this, reaffirming that the obligation to supply water and to equitably treat users is a key component of the continuous security obligations of the state. While a broad right to drinking water is provided for, the contours of the right remain unclear, the government’s responsibility to provide the right is inchoate, and the twin notions of equity and equality are not clearly applied to the right in the law itself.

Gabonese law recognizes other rights. Gabon’s 1997 Constitution creates a citizen’s right to the free development of his person. The Environmental Code establishes the right to a healthy environment and requires the protection of the environment for present and future generations. Both the state and the citizens are responsible for protecting and defending the environment (Article 7).



*A Market in Libreville, Gabon.*

*The Center for Water Security and Cooperation*

## Water and Sanitation Access Data Analysis

In 2015, the Sustainable Development Goals (SDGs) set a target of achieving universal and equitable access to safe and affordable drinking water for all by 2030. Based on available data, few francophone African countries are positioned to achieve universal access to safely managed drinking water by 2030 given current rates of access and the average change in access since 2000. Only one country – Cote d'Ivoire – has reported that a percentage of their population has access to safely managed drinking water. In 2017, access to a basic service level of drinking water in francophone countries averaged 63.3%. The Central Africa Republic did not report data for 2017. Chad reported the lowest access to basic service at 38.7% and the Seychelles reported the highest access at 96.2%. Between 2000 and 2010 and between 2010 and 2017, the average rate of access to basic service rose by 3.5%.

Even fewer countries are positioned to achieve universal access to safely managed sanitation by 2030 given current rates of access and the average change in access. In 2015, the SDGs set a target of achieving access to adequate and equitable sanitation for all by 2030. Only four countries – Djibouti, Mali, Niger, and Senegal – have reported any percentage of their population with access to safely managed sanitation. In 2017, access to basic sanitation averaged 31.3%. The Central African Republic did not report data for 2017. Niger reported the lowest access to basic service at 4% and Rwanda reported the highest access at 66%. Between 2000 and 2010, the average rate of access to basic sanitation rose 4.3% from 24.1% to 28.4%. Between 2010 and 2017, the average access to basic sanitation rose 2.9%.

Open defecation remains a significant problem in francophone Africa. In 2017, an average of 24.1% of the population practiced open defecation. Between the years 2000 and 2010, open defecation decreased by 3.4% while between 2010 and 2017 open defecation decreased by 2.4%. Only one country, the Seychelles, has eliminated open defecation as of 2017.

Francophone Africa has a higher rate of access to water but a lower rate of access to sanitation in comparison to Africa as a whole. Across Africa, the average access to basic drinking water was 62.1% for 52 of 54 reporting countries. The average rate of access to basic sanitation was 35.7% for 51 of 54 reporting countries. Therefore, the average percentage access to basic drinking water in francophone Africa was 1.2% higher than the average for Africa. The average percentage access to basic sanitation in francophone Africa was 4.4% lower than the average for Africa.

If countries are to achieve universal access to safely managed drinking water and sanitation by 2030, efforts must be accelerated. At the current pace, universal access to basic sanitation across francophone Africa may not be achieved for another 166 years.\* Universal access to basic drinking water across francophone Africa will be achieved in 73 years.\*\* These numbers are to achieve basic sanitation, one rung on the ladder off from the safely managed levels that is expected to be achieved by 2030 for both water and sanitation. While some countries are closer to achieving access than others, the data shows that drastic efforts will be needed to achieve universal access to water and sanitation by the end of this century, let alone by 2030.

\*In 7 years, access to basic sanitation rose by 2.9%. Assuming an average rate of increase of .41 per year during those 7 years, the total rate of increase in access to basic sanitation by the end of 2020 would be 4.14%. With current access to basic sanitation at 31.3, it will take 16.6 more decades or 166 years to achieve universal access to basic sanitation (68.7% remaining divided by 4.14%).

\*\*In 7 years, access to basic sanitation rose by 3.5%. Assuming an average rate of increase of .5 per year during those 7 years, the total rate of increase in access to basic drinking water by the end of 2020 would be 5%. With current access to basic drinking water at 63.3%, it will take 7.34 more decades or 73.4 years to achieve universal access to basic drinking water (36.7% remaining divided by 5%).

# GUINEA

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Guinea's laws recognize the right to water, but do not establish the right to sanitation. The Water Law states that "subject to the provisions of this law, everyone has the right of inalienable access to water resources and a right to their use for domestic purposes." The Law defines these needs as the water necessary for human consumption, hygiene, washing, and growing crops or raising livestock. The Law also seems to limit withdrawals by each person for their own family's domestic needs. Finally, it states that the rights referred to include the use of water extracted and contained in an individual or collective receptacle, further highlighting that this right cannot be exercised commercially. The Water Law also requires that water users exercise their right in a way that preserves the availability of the resource in quantity and quality and does not harm other users. In other documents, the government highlights that the usage priorities for the country start with human usage for the needs of "physical persons" and for necessary needs like drinking water, hygiene, washing and subsistence farming. The right to water created by the Law focuses on ensuring access to water resources to meet domestic purposes.

Guinea's 2010 Constitution recognizes other rights, but not the right to water nor sanitation. The Constitution states that every human person and their dignity are sacred and that every human being has the right to life, physical integrity, and moral integrity. The Constitution also includes greater protections for other areas, including the right to health and physical well-being, and the right to a healthy and lasting environment. While the state has the responsibility to protect the environment, citizens have a concomitant duty to not to harm it. The Constitution also specifically provides that disabled persons are guaranteed accommodation. Finally, the Guinean Constitution states that the Guinean people have the right to the preservation of their patrimony, their culture, and their environment. However, no provision includes the right to water nor sanitation.





## MADAGASCAR

Malagasy law does not establish the right to water or the right to sanitation. The Water Code merely references the fundamental right of access to water, and states that an unequal distribution of water causes economic, social and health problems. It also states that it is expected that the entire public receive water supply and wastewater services based on “the obligation to supply to all users a minimum quantity and a minimum service of drinking water.” Yet, the Code does not create any right to water or an obligation to realize the right to water. While there are references to the right to water and sanitation, the Code does not affirmatively create the right.

One policy also refers to the right to water and sanitation but does not affirmatively state there is a right to water. The National Water, Sanitation and Hygiene Strategy (2013-2018) was developed to implement the commitments made in the *Rio+20: The Future We Want* statement. Article 121 of the statement is an affirmation of the “commitments regarding the human right to safe drinking water and sanitation, to be progressively realized for our populations, with full respect for national sovereignty.” Articles 119, 120 and 121 are included in the strategy; however, no affirmative declaration of the right to water nor sanitation is included in the policy.

The Constitution and laws of Madagascar establish related rights. The Constitution establishes a right to healthcare (Article 19) and the Public Health law establishes a broader general right to health. While the Constitution does not establish the right to a healthy environment, Article 6 of the 2015 Environmental Law states that everyone has the fundamental right to live in a healthy and balanced environment. However, based on the laws, there is no express linkage to water and sanitation, nor any express adoption of the right to water and sanitation.



# MALI



Under Malian law, there are no rights to water or sanitation. While the Water Law does not articulate the right to water, it requires authorization for surface water or groundwater withdrawals that are “intended for domestic use” and “not exceeding a volume threshold fixed by decree by the Council of Ministers.” This does not create a legal right, but it implicitly protects limited domestic usage. Customary rights for rural populations are also recognized if they are not contrary to the public interest. This provision is echoed in the Pastoral Charter, which protects the right to access water from natural and improved water sources for use in keeping livestock. These types of provisions ease access to water resources despite no right to water having been established.

While these provisions do not clearly state a right to water, both the Development Policy and the National Water Policy state that “the right to access water is recognized by the fundamental legislative texts of the Republic.” Yet, the Water Law does not articulate either the right to water or the right to access water. Furthermore, while Mali has a sanitation policy, there is no right to sanitation articulated in that document or other legislation.

Other rights are recognized in the law. Mali’s 1992 Constitution states that the human person is sacred and inviolable and guarantees the right to life, liberty, security, and personal integrity. The Constitution also guarantees the right to a healthy environment, and obliges the State and all citizens to protect, defend, and promote the environment. However, there is no express link made between these rights and the right to water and sanitation.



*Building a water pump in Mali.*

*Curt Carnemark / World Bank*



# NIGER

The laws of Niger recognize the right to water, but not the right to sanitation. Niger's 2010 Constitution clearly expresses the right to water. Article 12 states that each person has the right to life, to health, to physical and moral integrity, to a healthy and sufficient food supply, to potable water, to education and instruction in the conditions specified by the law. The Water Law reiterates the right to water created by the Constitution. Article 4 states that each citizen has a fundamental right to water and formalizes the right of each person to have the water that corresponds to the satisfaction and fulfillment of their personal and domestic needs. The Law also obliges the State to provide each person with access to water of sufficient quantity and quality at an acceptable cost, at all times and everywhere it is needed (Article 5). To fulfill this right, the State must preserve and protect water in the general interest (Article 6). Furthermore, the purpose of water management is to satisfy water needs justly and equitably, for drinking, among other water uses. The Law also states that the State will maintain quantity, quality and fight against overexploitation and waste.

Additional provisions of the Water Law support the realization of the right to water. While the Law does not specifically prioritize water uses, it demands that special attention be given to essential human needs, including the creation of buffer zones around water sources used for human consumption. It also mandates the creation and management of public water services for human consumption and livestock, "in order to guarantee the exercise of the right to water recognized for each citizen." The Water Law also requires full cost recovery of water provision, and that water provided for public consumption must be potable. In areas that do not have public water service, whoever distributes water for human consumption must ensure its potability.

While there is no mention of the rights to water and sanitation in the Sanitation and Hygiene Operational Strategy (2014-2018), the WASH sectoral program (2016-2030) commits the government to transitioning from a needs-based approach to a human rights-realization approach, specifically mentioning the human right to water and sanitation. The document calls for the government to create citizen demand for these rights, which implies a desire to educate and build understanding among the citizens.

The government restates the right to water in its national action plan on Integrated Water Resources Management. The government also sets out strategic goals for achieving the right to water, including by demanding clarity in how the rights, requirements and obligations are defined; and calling for greater clarity in the roles and missions of all State actors, sub-state actors, users, and their associations, and CSOs. The document also highlights a right to information in the Niger Basin Charter, which is part of the right to water,

Finally, in its development policies, the government states that it will promote social development by improving the provision of social services founded in health and social protection sectors: education, water and sanitation, the scope of life, the promotion of gender and human rights, and the promotion of youth. The document states that to eliminate poverty in all its forms, the State will work to eliminate the poverty of both men and women and assure the same access to economic resources and natural resources. The plan also highlights that to realize SDG 6, the country will need to assure universal and equitable access to drinking water at an affordable cost, and to sanitation services and hygiene that are adequate. They also intend to meet the SDGs goals by implementing IWRM at all levels. In the Development Policy, sanitation does not have the same prominence, and is

absent when the list of social services is restated elsewhere in the report. Nonetheless, the government makes up for this exclusion by highlighting its sanitation challenges in a sanitation-related example included in the policy that focuses on efforts to end open defecation and improve hygiene.

Hygiene and sanitation are reinforced as a “sub-programme.” The objective of this sub-programme is to ensure access for all to adequate sanitation services and hygiene. The programme actions include improving hygiene and sanitation coverage and promoting a clean environment by reducing pollution. To improve sanitation, the government plans to focus on households, schools, training, and other areas, and strengthen institutional capacity for the management of hygiene and sanitation. The government also plans to use Community-Led Total Sanitation (ATPC). While the plan promotes efforts to extend access to sanitation, the plan does not expressly state the right to sanitation. This is in stark contrast to the strong language providing for the right to water.

The Constitution and laws of Niger create other rights. The Constitution requires that the state assure each person of the satisfaction of essential needs and services as well as full development. This right is buttressed by the right to enjoy the best state of physical and moral health. The Environmental Law of Niger establishes a right to a clean environment. The law requires the State to protect the environment for the public interest and requires that every person contribute to the safeguarding and betterment of the environment in which they live.



## RWANDA

Neither the right to water nor sanitation is established in Rwandan laws. The 2018 Environmental Law creates an obligation on the state to protect and conserve water resources and to promote sanitation but does not create any rights to water nor sanitation. However, the right to water and sanitation are explicitly recognized in the 2010 National Policy and Strategy for Water Supply and Sanitation Services and the 2016 National Sanitation Policy. The 2010 and 2016 policies state that each person and community have an equal right to access basic water services. To advance this right, the policies prioritize providing basic services to all, to ensure “some for all” rather than “all for some.” This approach will be taken until the Vision 2020 goal of universal coverage of water and sanitation has been achieved.

Furthermore, the 2016 policy is focused on ensuring “sustainable, equitable and affordable access to safe sanitation and waste management services for all Rwandans as a contribution to poverty reduction, public health, economic development and environmental protection.” The policy sets forth two indicators to measure advancement toward universal access of sanitation. The first indicator is access to basic sanitation, measured as the “percent of people able to acquire affordable services and improved private sanitation facilities as well as safe on- or off-site treatment and disposal of wastewater and sludge.” This means that households must have sufficient financial resources, that the market must offer solutions that are affordable and meet environmental standards, and that there is information available which allows households to select the solutions most appropriate for their needs and resources. The second indicator is coverage, measured as the “percent of people using an improved private sanitation facility and safe on- or off-site sanitation treatment.” Coverage represents sustainable, continuous use and access over time which means that not only do families have sanitation facilities, but that they use the sanitation facilities. The 2016 National Sanitation Policy creates a clear way for Rwanda to measure the country’s success in increasing access to sustainable, equitable and affordable sanitation services.

The Rwandan Constitution recognizes other rights. The Constitution creates a right to life (Article 12), a right to good health (Article 21), and a right to a clean and healthy environment (Article 22). The Constitution also creates an obligation on the State to promote human rights and designates the National Commission for Human Rights (the “Commission”) as primarily responsible for the promotion of human rights (Article 42). The Commission was established in 1999. Based on the 2013 revised law determining the mission, organization and functioning of the National Commission on Human Rights, the scope of human rights to be promoted by the Commission may not extend to the right to water and sanitation. The law was adopted pursuant to the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966 International Covenant on Civil and Political Rights, and the 1981 African Charter on Human and Peoples’ Rights, none of which includes the human rights to water or sanitation. Therefore, the Commission may not be under any obligation to promote the rights to water and sanitation because those rights are not included within the scope of “human rights” as set forth in the treaties to which Rwanda is a party or in the Rwandan Constitution.

However, the Commission discusses access to water in its work and reporting. Several reports by the Commission that review the implementation of human rights commitments also evaluate the progress made in increasing access to drinking water. For example, the review of the Implementation of the African Charter on the Rights and Welfare of the Child discusses efforts made to increase access to drinking water within the Economic, Social

and Cultural Rights section. Furthermore, in its 2018-2019 Annual Report, the Commission defines the right to health as consisting of “epidemic and endemic diseases prevention, access to medical care, medical facilities, availability of health services to which everyone can access without discrimination” in addition to “access to basic living needs such as clean water, food, housing, healthy environment and a calm workplace.” The Commission cites General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) which interprets the right to health as including not only “timely and appropriate health care” but also “underlying determinants of health, such as access to safe and potable water and adequate sanitation.” The CESCR is not authorized by the International Covenant on Economic, Social and Cultural Rights treaty to provide an official and binding interpretation of the treaty. However, based on the Annual Report, the Commission seems to agree that the right to health includes the right to safe and potable water and adequate sanitation.

Lastly, the Constitution establishes the Judiciary as the “guardian of human rights.” The courts thus determine whether any of the rights established in the Rwandan Constitution include a right to water and sanitation or whether the treaties to which Rwanda has become a party would obligate the recognition of the right to water and sanitation.



*A water tap in Rwanda.*

*A'Melody Lee / World Bank*

# Reflections on the Vote Passing UNGA Resolution 292

When Resolution 292 was adopted in the UN General Assembly in 2010, most of the francophone African states voted in favor. Four did not. These states – Cameroon, Chad, Guinea, and Rwanda – did not vote against the resolution, but rather, chose not to vote. In 2017, when given a new opportunity to support a rearticulation of the right to water and sanitation in Resolution 178 through the first roll call vote since 2010, all these states voted in favor of the resolution.

While none of the francophone states explained their vote during the debate in the General Assembly, some other African states voiced concerns about the Resolution. In particular, there were concerns that the Resolution did not consider “the rights of resource-poor countries” in setting out the right to water and sanitation. The concerns may have been shared by other African states that did not vote for the resolution.

Notably, at least one delegate from Europe noted the importance of explicitly stating human rights in treaties, stating that: “There is a limited number of human rights that are explicitly recognized in international treaties and customary law, and the right to water is not one of them. But these explicit rights do, of course, imply many more specific rights. This is also true for the right to water... Most human rights are, furthermore, not absolute in nature and must be seen in the context of the law. This is particularly true for rights within the realm of economic and social rights, whose realization is, to some degree at least, subject to the availability of resources. Most importantly, the obligation to implement human rights falls first and foremost on each individual State.”

*Source:* UN General Assembly Official Record, July 28, 2010, UN Doc. A/64/PV.108



# SENEGAL

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Neither the right to water nor sanitation is established in Senegalese law. The Sanitation Code for Senegal is currently being revised to align with the Sustainable Development Goals (SDGs).

The Senegalese Constitution recognizes other rights such as the right to life (Article 7), right to health (Article 8), and right to a healthy environment (Article 25). However, based on the laws it is unclear whether these rights relate to water and sanitation.



*Massive urban migration is making water and sanitation provision more difficult in cities like Dakar, Senegal.*

*The Center for Water Security and Cooperation*

# SEYCHELLES

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The laws of Seychelles do not establish the rights to water or sanitation. The laws however do recognize other rights. The Constitution of Seychelles creates a right to life (Article 15), a right to health (Article 29) and a right to live in a clean, healthy, and ecologically balanced environment (Article 38). The 2015 National Health Policy reiterates the right to health. However, these laws and policies provide no guidance on whether or how these rights relate to water and sanitation.

**TOGO**

No right to either water or sanitation is established in the laws of Togo. Article 14 of Law No. 2010-006 on the organization of public drinking water services empowers the ministry in charge of drinking water and collective sanitation to delegate authority of the public service of water and collective sanitation. Article 15 further states that the delegated authority must ensure “respect for the right of populations to access to drinking water and collective sanitation.” Yet, this law does not unequivocally establish the right to water nor sanitation, nor set out the contours of the right.

Despite the right to water or sanitation not being recognized, several policies discuss concepts of equity and fairness. Article 3 of the 2010 Water Code, which lays out the policy underpinnings of the law, states that the Code adheres to the basic principles of integrated water resources management, including the right of access to water for all and equitable distribution of water for domestic purposes, taking into consideration the protection of water resources. This statement does not create the legal right to water, though it does suggest that as a matter of policy that the government supports these rights. al territory (Article 13).

The right to a clean environment is reiterated in the 2008 Environmental Code (Article 3) and the right to health is reiterated in the 2009 Public Health Code. However, the laws and policies provide no guidance on whether or how those rights may relate to water and sanitation.

Equity is also a guiding principle of the 2006 National Policy on Drinking Water Supply and Sanitation in Rural and Semi-Urban Areas, the 2010 National Water Policy, and the 2018 National Water and Sanitation Policy. However, principles of equity are not the same as a right to water and sanitation. Overall, neither the laws nor the policies of Togo declare the rights to water or sanitation.

Togolese laws and policies recognize other rights. The Constitution establishes the right to health (Article 34) and the right to a clean environment (Article 41). The Constitution creates an obligation on the State to guarantee the life of all peoples living within the national territory (Article 13). The right to a clean environment is reiterated in the 2008 Environmental Code (Article 3) and the right to health is reiterated in the 2009 Public Health Code. However, the laws and policies provide no guidance on whether or how those rights may relate to water and sanitation.



# Conclusion

Taking into account all of francophone Africa, the human right to water and sanitation does not have a clear footing in most domestic legal systems. While most states have similar constitutional structures, domestic law and domestic political systems are evolving in very different ways. For the sector, there are some overarching conclusions that are laid bare by this report that can help to guide some of the fundamental changes that should be at the forefront of advocacy. The following findings lay out some of the failures, challenges, and surprises from this research as we consider the path forward from here.

**POINT ONE: Less than half of francophone Africa has clearly committed to a human right to water or sanitation in their national domestic law.**

At the international level, all nineteen countries have affirmatively accepted the right to drinking water and sanitation; however, fewer than half have embedded the right to water and sanitation in their domestic law. In 2017, all nineteen countries voted in favor of the U.N. General Assembly resolution reaffirming the human right to drinking water and sanitation. Of the nineteen francophone African countries researched, seven countries - Benin, Burkina Faso, Central African Republic, Democratic Republic for Congo, Gabon, Guinea, and Niger - have adopted a right to water domestically. Only one country - Burkina Faso - has adopted a right to sanitation.

This presents an opportunity for countries to strengthen their commitment to realizing the rights to water and sanitation. When a country adopts a right to water and sanitation it creates an obligation on the government. This obligation goes beyond being a mere promise. A right gives the people power to demand their rights and to use the levels of domestic power and justice to achieve them. The establishment of rights creates greater consequences and impetus for the government to take the steps necessary to ensure access to water and sanitation services. Without an established right to water and sanitation memorialized in national-level law, the people may not have the legal basis upon which to demand access to these services. Countries must adopt a right to water and sanitation in their domestic law to fully commit to achieving those rights.

**POINT TWO: Where countries have adopted a right to water and sanitation, the scope and requirements of the rights are unclear.**

Because rights to water and sanitation are more tangible, they require greater definition in the law. This definition is missing in the laws reviewed. Unlike other rights, water and sanitation are real, physical needs. They are not fungible. Water cannot be replaced with another liquid. This makes the rights unique and necessitates a different approach when establishing the right.

When it comes to water and sanitation, we know what needs to be done. For water, we know how much water households need to meet their domestic needs. For sanitation, we know that human waste presents a serious danger to human health and must be properly captured and treated. While the infrastructure and technology used to provide these services can differ and may need to differ based on different factors, the fact remains that they cannot be replaced nor exchanged.

We observed that even when countries adopted a right to water and sanitation, in most cases, the law did not define the scope of the right or the obligations and expectations they place on the government and the people. Where such definition is not provided, courts typically have the burden of interpreting the right.

In some instances, provisions enabled access to water for domestic purposes, while failing to recognize the right to water. For example, some countries granted automatic rights to withdraw water for personal use, including sanitation and farming. Others protected water for domestic use against all other uses in the event of water scarcity. While these provisions acknowledge the importance of water for domestic purposes, they do not create a right to water.

### **POINT THREE: Constitutional rights differ from legal rights.**

The mechanism for ensuring the right to water and sanitation, where we found it, was more often guaranteed by law than by the Constitution. Of the seven countries who have adopted a right to water and sanitation, only three - Burkina Faso, DRC, and Niger - express this right in the Constitution. The remaining countries - Benin, CAR, Gabon, Guinea - establish the rights in their water law. Constitutions create fundamental rights that cannot be limited or diminished by law. Laws also create rights, but these rights are more easily amended or repealed as the composition of legislatures change.

While some African states have seen changes to their constitutions since 2000, these changes have not brought water and sanitation into the panoply of guaranteed constitutional rights. Instead, countries have changed their constitutions while continuing to leave out the right to water and sanitation.

There are many examples of water laws, environmental laws, health laws, and sanitation laws that have been written since 2000 that do not include the right to water and sanitation. This indicates a larger need to reconcile the right as it exists and the laws that implement the right.

### **POINT FOUR: Many countries believe that they have provided for the right to water and sanitation in their Constitutions even when they have not.**

Every two years, the World Health Organization engages in a broad fact-finding mission to determine the status of policies on water and sanitation. The process involves countries filling out surveys that ask specific questions, including: do you have a constitutional right to water and sanitation? While researching, we considered this data alongside our own. Four countries stated that the right to water and sanitation were not in their constitutions: Gabon, Madagascar, Senegal, and Togo; one country, Mali, stated that it did not have the right to water but did have a right to sanitation. Djibouti and Rwanda were not surveyed. Every other country – Benin, Burkina Faso, Burundi, Cameroon, CAR, Cote d'Ivoire, Chad, Comoros, DRC, Guinea, Niger, and the Seychelles – stated that it has a right to water and sanitation in its Constitution. Based on our research, these rights do not appear in their Constitutions.

This disconnect might be explained by some states believing that the right to life, health or healthy environment includes a right to water or sanitation or both. Others may believe that signing the General Assembly Resolution or receiving the African Commission Guidelines on the Right to Water in Africa is sufficient, as states have accepted the UN Charter and the African Charter as obligations. Still others may believe that political or policy commitments are sufficient, if made by an official like the President or another high-ranking official. Regardless, while many countries believe they have addressed the right in their laws, in fact, they have not.

### **POINT FIVE: The Declaration of the Human Right to Water and Sanitation at the United Nations has not driven the changes to domestic laws that we expected.**

The right to water and sanitation has been articulated multiple times at the highest level, combined with additional articulation by the UN Human Rights Council, the Special Rapporteur on the Right to Water and Sanitation, and other regional bodies. The General

Assembly Resolution in 2010 marked a significant moment, where the right was clearly stated as an independent obligation. Since this vote, the rights to water and sanitation have developed inside UN structures.

However, the data does not show a sea change at the domestic level. WHO/JMP data does not show exponential growth in coverage for almost any state. Although there has been increased coverage for water and sanitation, the trends have been growing linearly since 2000, before the UN's pronouncement. The coverage gaps are still exceptionally large, and many people still rely on potentially polluted surface waters for drinking and open defecation for sanitation.

The law, too, has not seen the expected sea change. The CESCR's General Comment, which touched off the international push, took nineteen years to be incorporated in the African Charter. Although Constitutions have been written and rewritten in many countries since 2003 and even 2010, they still have not included the right to water, even when they have expanded other social rights. The laws show the same disconnect, with many laws declining to include the right to water and sanitation as a clear, justiciable right.

#### **POINT SIX: Change is difficult, but silence is not an option.**

Countries' domestic laws must include a right to water and a right to sanitation. Access to water and access to sanitation are essential for any healthy, equitable society. Realistically, these rights cannot be realized overnight. This should not stop countries from embedding a right to water and sanitation in their domestic law and committing to realizing real access to water and sanitation. The law should clearly state what rights are guaranteed and what citizens should expect from their government.

The law represents a commitment of the government to its people. Unfortunately, most states' constitutions and laws are silent on these basic rights. This silence speaks volumes.

## From MDGs to SDGs: A Long Road Ahead

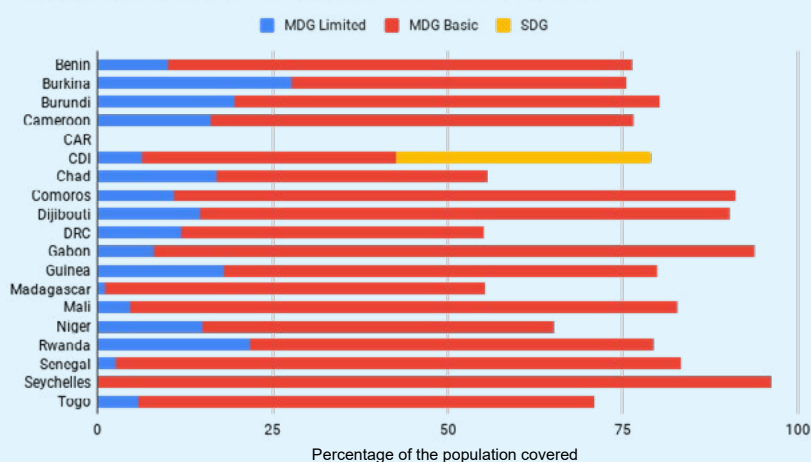
In September 2000, the UN General Assembly adopted the Millennium Development Goals (MDGs). The MDGs set a target of halving the proportion of people without sustainable access to safe drinking water and basic sanitation by 2015. Success was measured by the proportion of the population with access to improved drinking-water sources. The Sustainable Development Goals (SDGs) were adopted in 2015. Under the SDGs, countries are expected to achieve universal access to safely managed drinking water and sanitation by 2030.

These graphs show overall progress toward meeting the MDGs and the SDGs as of 2017, the last year data is available. As of 2017, two years after the deadline for meeting the MDGs, most francophone African countries have not achieved the service level required by the MDGs. Only a handful of countries have services that meet the SDG level.

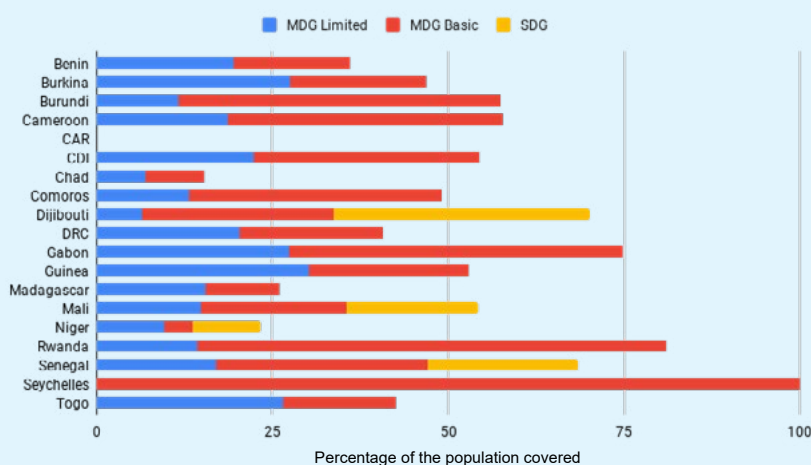
The MDGs required access to “improved” services, which equates to “basic” or “limited” services under the SDGs. Both basic and limited services require access to improved services. However, limited services allow for sanitation services to be shared and for drinking water services to be more than 30 minutes away, while basic sanitation services cannot be shared with other households and basic drinking water cannot take more than 30 minutes to access. For the MDGs to be met, 100% of the population need to have access to basic or limited services. Had the MDGs been met in 2017, the bars would reach 100% and be fully blue or red - as they are for the Seychelles in Sanitation. For the SDGs to be met, 100% of the population needs to have access to safely managed services. Progress toward achieving the SDGs is reflected by the yellow bars.

As can be seen, significant proportions of the population do not have access to basic or limited services let alone safely managed services. These graphs lay bare the significant amount of work that needs to be done to achieve the SDGs.

Drinking water: progress toward MDGs, SDGs as of 2017



Sanitation: progress toward MDGs, SDGs as of 2017



\*Data for the Central African Republic was not available for 2017.

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**\*These laws are included for reference, but were not found and, therefore, were not reviewed.**



