

# *Water sector accountability review: Malawi*

*Water Supply and Sanitation*

## ***Executive summary***

Improved governance is the key to unlocking progress towards universal access to water supply and sanitation, shared water security, climate resilience and water-related Sustainable Development Goals. At the heart of improved water governance lies stronger accountability.

This report documents the findings of a review of accountability within Malawi's water sector, specifically its water supply and sanitation (WSS). The study comprises two sections, a de jure and a de facto assessment. The de jure assessment evaluates the degree to which accountability for essential water sector functions is provided for within Malawi's legal framework. The de facto review considers how effectively accountability is executed in practice. The aim is to recognise where strengths and weaknesses lie, to identify opportunities to strengthen sector policy and practice and to stimulate dialogue and action.

### **Water Supply and Sanitation (WSS)**

For most functions of WSS, Malawi's **legal and policy framework performs well across the accountability cycle**. However, there are **essential areas for strengthening** both water supply and sanitation:

- There is **confusion on leading responsibilities for planning and service delivery functions**. The Water Resource Act 2013 and the National Water Policy 2005 identify both the National Water Resources Authority (NWRA) and Ministry of Water and Sanitation (MoWS) as leads for the same planning and service delivery activities. In practice, the MoWS develops the National Water Resources Master Plan and oversees service delivery.
- There is **confusion on responsibilities for sanitation service delivery**. The legislation gives responsibility to manage sewage treatment plants to water boards. However, in practice, these plants are currently operated by city councils.
- **At the time of the study, the NWRA could not carry out key WSS functions it is responsible for**, such as licensing and enforcement of regulations, due to not being operational. Since then the NWRA noted it has a new leadership and is being revitalised.
- The assessment of how accountability mechanisms perform in practice highlighted **challenges impacting performance reviews for both water supply and sanitation**. The inactive Joint Water Sector Review (JWSR) process is a missed opportunity to implement a transparent and stakeholder-inclusive mechanism to review public services performance.
- **Issues with accessing Government data and slow follow-up on customer complaints** constrain civil societies' ability to meaningfully engage the Government on the quality of services provided and the performance of Government institutions.

## Recommendations

The evidence highlights significant opportunities to strengthen accountability and drive improvements across Malawi's water sector. It also suggests that these will benefit Malawi's people, economy and environment. To seize these opportunities, what needs to change?

1. Through dynamic **Government leadership, the NWRA needs to be given the powers** to implement crucial water supply and water management functions. On being invited to comment on the report, NWRA has noted that a process of revitalisation has started to achieve this. The process is in its infancy and therefore requires monitoring and support from partners.
2. **The annual JWSR process needs to be strengthened as a performance reporting mechanism** under the leadership of the MoW with the support of the water sector stakeholders (e.g. Government bodies, CSOs, development partners, private sector).
3. Through **Government leadership**, delivery of key WSS functions should be strengthened, through the transfer of **the management of sewage treatment works** to water boards and through the **clear definition of regulation, roles and responsibilities** for water supply service delivery.
4. **Bottom-up processes for monitoring** the quality of service delivery and infrastructure projects must be supported by CSOs to ensure these necessary participatory processes function.
5. **Clarification of the legislation describing rules and leading roles for monitoring and oversight, planning and service delivery** are needed through review of legislation by the Government.

## **Contents**

Executive summary .....	1
Contents .....	3
Summary of abbreviations .....	3
1. Introduction .....	4
2. Methodology and approach.....	4
3. Results .....	9
3.1 How well is accountability for water supply provided for on paper?.....	9
3.1.1 Rules and responsibilities.....	10
3.1.2 Performance monitoring and corrective measures .....	11
3.2 How well is accountability for sanitation services provided for on paper?.....	11
3.2.1. Rules and responsibilities.....	12
3.2.2 Performance monitoring and corrective measures .....	13
3.3 How well is accountability for water supply and sanitation services provided for in practice?.	13
3.3.1. Rules and responsibilities.....	14
3.3.2 Performance monitoring and corrective measures .....	17
3.3.3 Underlying issues .....	19
4. Insights from the literature .....	20
4.1 Rules and responsibilities.....	20
4.2 Performance monitoring and corrective action .....	22
5. Conclusions and Recommendations .....	23
References .....	26

## **Summary of abbreviations**

<b>Abbreviation</b>	<b>Explanation</b>
<i>EAD</i>	Environmental Affairs Department
<i>JWSR</i>	Joint Water Sector Review
<i>MoWS</i>	Minister for Water and Sanitation
<i>NSP 2008</i>	National Sanitation Policy 2008
<i>NWP 2005</i>	National Water Policy 2005
<i>NWRA</i>	National Water Resources Agency
<i>WRA 2013</i>	Water Resources Act 2013
<i>WRM</i>	Water resource management
<i>WRR 2018</i>	Water Resources Regulations 2018
<i>WUA</i>	Water Users Association
<i>WWA 1995</i>	Water Works Act 1995

# 1. Introduction

Improved water security is fundamental to attaining Malawi's development ambitions, supporting the achievement of the Malawi Vision 2063 and the UN Sustainable Development Goals (SDGs).<sup>1</sup> However, challenges in legislative frameworks and their implementation hinder the performance of the water sector.

Effective governance and implementation of institutional arrangements are critical determinants of sector performance (UNDP 2006). Governance means the rules, institutions, processes, and practices which articulate interests, take decisions, regulate human behaviour and exercise power (Ernstorfer and Stockmayer 2009). In the water sector, these make up the system that determines who gets what water and water services, when and how (UNDP, SIWI, WIN 2013). A growing body of evidence both within and outside the water sector shows how efforts to strengthen accountability can drive improved governance and services, benefiting the most vulnerable (Hepworth, Brown and Brewer 2020).

This systematic evaluation assesses how well accountability is provided on paper (de jure) and in practice (de facto) across Malawi's legislative frameworks for water supply and sanitation services. The aim is to assess accountability and make recommendations that result in improved water supply and sanitation services.

## 2. Methodology and approach

The study uses a methodology developed by the global [Accountability for Water](#) programme. The process incorporates ideas important to accountable governance, such as transparency, participation, integrity, and system strengthening, and draws from various existing approaches and methodologies.

The study focuses on assessing the performance of Water Supply and Sanitation Service (WSS) functions. The approach looked at the critical functions of WSS and categorically assessed each function in terms of service delivery. In summary, the methodology involves the following steps:

1. Identification of **key functions** of WSS, as well as the cross-cutting governance functions.
2. Assessment of performance against each function across a simplified **accountability cycle** (Figure 1).

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<sup>1</sup> Water security is defined as universal access to safe water, sanitation and hygiene, the water needed for livelihoods to thrive, and protection against floods, drought, water conflict, pollution & eco-system degradation.

3. A review of the current **de jure**, or ‘on paper’, performance and scoring based on how well existing policy, legislation, regulations and statutory guidance in Malawi provide for accountability.<sup>2</sup>
4. A review of the **de facto**, or ‘in practice’ performance through key informant interviews to assess how well each performs in practice.
5. Based on this assessment of strengths, weaknesses, overlaps and gaps, essential **recommendations** are made for strengthening accountability and performance in water supply and sanitation service delivery across the sector.

Accountability performance is reviewed across a simplified ‘accountability cycle’ (Figure 1). Accountability is a simple notion, but at the same time is a complex area of theory, policy and practice. To handle this complexity, we have drawn on existing literature to propose a simplified conceptual framework that can be applied in multiple contexts or settings. Each step of the cycle is essential to create strong incentives for delivery and continual improvement and to ensure responsive governance, legitimacy and trust between communities, government, civil society and delegated service providers.



**Figure 1: The 5Rs of a simplified accountability cycle applicable to water sector function**

Our methodology proposes that accountability for water can be understood, described and fulfilled through five basic steps:

1. The existence of appropriate **rules and standards**;

<sup>2</sup> **De facto** means a state of affairs that is true in fact – an ‘on the ground’ reality which may diverge from that which is officially sanctioned. In contrast, **de jure** means a state of affairs that is set out in, and in accordance with law (i.e. that is officially sanctioned).

2. Fulfilment of clearly assigned **responsibilities and duties**;
3. **Reporting and monitoring** of performance against these;
4. **Review and disclosure** of performance, which in turn informs:
5. An **appropriate and effective reaction** through improved practice, reformed policy, or imposition of new incentives, sanctions or enforcement.

The accountability cycle of ‘rules’, ‘responsibilities’, ‘reporting’, ‘review’ and ‘response’ is helpful for understanding and analysing governance performance and for pinpointing and addressing implementation challenges. It encompasses key elements of integrity by considering transparency in terms of clarity of roles and access to information, participation in making rules, monitoring and reviewing performance, and triggering corrective action and anti-corruption in terms of corrective action. This study combined the assessment of steps three, reporting, and four, review, to simplify the process.

The simplified “5Rs” accountability cycle can be applied across multiple domains of accountability: from individual, social, contractual, to legal and political accountability. The omission or weakness of any one step within the cycle invites an accountability trap of unchecked poor performance, whether that be of a farmer over-abstracting water, a multi-national corporation causing pollution, a failing utility, a ‘briefcase’ non-governmental organisation or an under-resourced Ministry.

The 5Rs accountability cycle was applied to assess the strength of accountability across **fourteen essential functions of WSS**. These functions, summarised in Table 1, are organised in **seven thematic areas: planning, financing, regulatory oversight, licensing, compliance, customer engagement and service delivery**. The key functions of WSS were developed with WSS experts in Malawi internationally and in part adapted from the regulatory functions of WSS listed in the OECD 2015 report “The Governance of Water Regulators”.

*Table 1 Summary of key water supply and sanitation functions, adapted from OECD 2015.*

<b>Thematic Area</b>	<b>Function</b>	<b>Description</b>
<b>Planning</b>	Ensuring legislation, regulations and policy support the delivery of national targets.	Ensure legislation, regulations and policy support the delivery of national targets. This function includes developing and effecting legislation, reviewing it, and amending it as necessary.
	Assessing service levels and current and future demand.	Assess the current service levels and demand and make predictions of future demand.
	Planning future supply and sanitation requirements.	Plan how future demand and requirements for the sector will be met. These plans should include targets towards universal and equitable access to WSS in line with SDG6 targets. In addition, plans and targets should

		work towards building climate resilience in the WSS sector.
<b>Financing</b>	Financing of water and sanitation infrastructure.	Establish a viable financing plan for meeting SDG6 targets, including through tariffs, taxes and transfers.
	Setting and reviewing of fees and charges.	Set and review fees and charges related to WSS services and infrastructure.
	Collecting of fees and charges.	Collect fees and charges related to WSS services and infrastructure.
<b>Regulatory oversight</b>	Monitoring and regulatory oversight to ensure safe management of water and sanitation.	Establish regulations and standards to ensure safely managed water supply and sanitation, as well as to carry out monitoring of infrastructure and activities. This includes setting quality standards for drinking water and for trade discharge into wastewater treatment and their monitoring, as well as setting quality standards for safe toilets and for transport, storage and treatment of faecal sludge and their monitoring.
<b>Licensing</b>	Licensing, registration and record-keeping of water supply infrastructure and activities.	Licence and register infrastructure and activities related to water supply. Such infrastructure and activities include commercial utilities (CUs) and private schemes & service providers and borehole drillers. In addition, the sector should also keep records of all licences and registration.
	Licensing, registration and record-keeping of sanitation infrastructure and drainage networks operators.	Licence and register infrastructure and activities related to sanitation. Such infrastructure and activities include CUs and private schemes & service providers, drainage networks operators. In addition, the sector should also keep records of all licences and registration.
	Social and environmental impact assessment and safeguarding.	Assess the social and environmental impacts of infrastructure and activities related to WSS. Safeguarding relates to the measures but in place to effect the findings of the assessment to keep environment and people safe.
<b>Compliance</b>	Enforcement of regulations regarding safe management of water and sanitation.	Ensure that regulations on safe management of water and sanitation are enforced. In particular, regulations and standards on emergency sewerage discharges, sewage storage, transport and treatment, trade discharges to wastewater facilities and drinking water should be enforced.
<b>Customer engagement</b>	Transparent and inclusive customer engagement.	Engage the customers in transparent and inclusive ways. This includes, for example, public consultation and communications.
	Complaints, incident management and problem-solving.	Implementing systems for receiving and handling complaints, incident management and problem solving.



<b>Service delivery</b>	Design, commissioning, operation and maintenance of water infrastructure.	Design, commissioning, operate and maintain water and sanitation infrastructure.
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The adequacy of provisions in the policy and legislation is reviewed for each function and a score is assigned. Scores are based on whether each accountability step is provided for and the degree to which provisions are clear and adequate across each stage of the accountability cycle.

During the de jure analysis, key legislative documents, sector strategic plans and reports were reviewed. A sample of legislative documents reviewed is presented in Table 2 below. A complete list is provided in Annex 1 and 2.

*Table 2 Sample of legislation reviewed during the de jure analysis.*

Reviewed Documents	
<b>1</b>	Government of Malawi (1995). Water Works Act.
<b>2</b>	Government of Malawi (2004). National Environmental Policy.
<b>3</b>	Government of Malawi (2005). National Water Policy.
<b>4</b>	Government of Malawi (2008). National Sanitation Policy.
<b>5</b>	Government of Malawi (2013). Water Resources Act.
<b>6</b>	Government of Malawi (2017). Environmental Management Act.
<b>7</b>	Government of Malawi (2017). National Water Resources Master Plan. Vol V. Water Supply and Sanitation.
<b>8</b>	Government of Malawi (2018). Water Resources Regulations.

To explore how effectively accountability is executed in practice (the de facto analysis), key informant interviews (KII) were held with eleven duty bearers from Government ministries, departments, and agencies as well as relevant stakeholders in September 2022 (Table 3).

*Table 3 Summary of key informant interviews respondents and the institutions they belong to.*

Institution	Number of Respondents		
	Male	Female	Total
Ministry of Water and Sanitation	2	2	4
NWRA	2	0	2
Blantyre Water Board	2	0	2
Lilongwe Water Board	1	0	1
Blantyre City Council	2	0	2

Each KII interview adopted a semi-structured interview, with a theme-based guiding questionnaire to facilitate the discussion. The themes were based on how specific functions for WSS are executed in

terms of Planning, Financing, Regulatory Oversight, Compliance, Customer Engagement, and Service Delivery (Table 4).

**Table 4 Thematic areas discussed during key informant interviews.**

Institution	Thematic areas
Ministry of Water and Sanitation	Planning, Financing and Service Delivery
Water Boards	Planning, Financing, Licensing, Compliance, Customer engagement and Service delivery
NWRA	Planning, Regulatory Oversight, Licensing, Compliance and Service Delivery
City Councils	Planning, Financing, Regulatory Oversight, Compliance, Customer Engagement and Service Delivery

The intention is to provide a simple framework that is cost-effective to apply, easy to interpret and accessible to multiple stakeholder groups, helping:

- **Government** to target interventions for improved service delivery, responsiveness to citizen and water user needs, and ensure socially and economically beneficial water use.
- **Communities, civil society and businesses** as a means of unlocking positive change and action for improved water security for social, environmental, and economic water use.
- **Donor/development community** to pinpoint priorities for technical support and to improve aid efficacy in the water sector.

## 3. Results

### 3.1 How well is accountability for water supply provided for on paper?

The results dashboard is set out in Table 5 below and is supported by a summary data sheet in Annex 1. The annexes are available on the Water Witness website. These provide complete references to the original materials upon which the assessment is made and justification of each score.

A clear pattern emerges from the *de jure* analysis that for many of the critical functions of the water supply sector in Malawi, rules, processes, and standards are clearly articulated in policy and law. However, the analysis observed a lack of solid provisions on rules and responsibilities for some functions, which received a partial score (Table 5).

Table 5. Summary results of the de jure assessment of accountability provisions across key functions of Malawi’s Water Supply sub-sector. The steps of the accountability cycle are scored for each key function in accordance with the following scoring system: 0 – not present [RED], 1- weak [ORANGE], 2 – intermediate/partial [YELLOW], 3 – strong [GREEN] for each phase & sub-question/characteristic.

<i>How well does Malawi’s policy and legislative framework provide for</i>				
	<i>Rules, processes, and standards</i>	<i>Responsibilities and duties</i>	<i>Performance monitoring and review</i>	<i>Corrective measures, incentives and sanctions</i>
1. Ensuring legislation, regulations and policy support the delivery of national targets	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
2. Assessing service levels and current and future demand.	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
3. Planning future water supply requirements	<i>Strong</i>	<i>Partial</i>	<i>Strong</i>	<i>Strong</i>
4. Financing of water supply infrastructure	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
5. Setting and reviewing of fees and charges	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
6. Collecting of fees and charges	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
7. Monitoring and regulatory oversight to ensure safe management of water	<i>Strong</i>	<i>Weak</i>	<i>Strong</i>	<i>Strong</i>
8. Licensing, registration and record keeping of water supply infrastructure and activities	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
9. Social and environmental impact assessment and safeguarding	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
10. Enforcement of regulations regarding safe management of water supply	<i>Partial</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
11. Transparent and inclusive customer engagement	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
12. Complaints, incident management and problem-solving	<i>Partial</i>	<i>strong</i>	<i>Strong</i>	<i>Strong</i>
13. Design, commissioning, operation and maintenance of water infrastructure	<i>Strong</i>	<i>Partial</i>	<i>Strong</i>	<i>Strong</i>

### 3.1.2 Rules and responsibilities

Rules, processes and standards are clearly laid out in the necessary legislative provisions for water supply which include: The Water Works Act 1995 (WWA 1995), the National Water Policy 2005 (NWP 2005) and the Water Resource Regulation 2018 (WRR 2018). These documents make provision for water supply, drinking-water quality standards and guidelines for the development and protection of drinking-water sources and the treatment, maintenance and distribution of safe drinking-water.

The rules for handling complaints, incident management and problem-solving regarding water supply are mentioned in the WWA 1995. However, **the act does not provide guidance on how the complaints will be addressed.**

In general, responsibilities for the delivery of water supply functions are well articulated. **However, there are contradictions between the WRA 2013 and the NWP 2005 on the lead role for planning and service delivery functions.** The WRA 2013 assigns the National Water Resources Authority (NWRA) as the responsible authority for developing the National Water Resources Master Plan, which includes water supply planning. The NWP 2005 affords the Ministry of Water and Sanitation (MoWS) similar responsibility to plan for future supply. In addition, the WRA 2013 assigns the NWRA responsibility for approving the design and commissioning of water infrastructure for service delivery, while water boards and water users' associations are responsible for operating and maintaining the water infrastructure. However, the NWP 2005 establishes the Ministry as the responsible institution for investing in sectoral water infrastructure planning, development, and construction. There is no clear delineation of how responsibility is shared or whether the more recent WRA 2013 takes precedence over the older NWP 2005 document.

In term of regulation the analysis observed that there are no regulations that are specific to water supply. Currently there is a department of water supply and sanitation that oversees this function but does not have a guiding document with no separation of the regulatory functions from executive functions within the water supply and sanitation sector.

### **3.1.2 Performance monitoring and corrective measures**

**Provisions for monitoring performance and corrective measures**, the final two steps of the accountability cycle, **are clearly expressed and well-written** for all the functions examined.

For example, reviewed documents highlight a robust performance monitoring provision to be carried out through annual reports to the Ministers or Board of Directors. The responsible Ministers or Board of Directors are mandated to review the performance of each function. Furthermore, performance monitoring is reinforced through the public performance management system provided in the Malawi Public Service Management Policy 2018. In addition, oversight for corrective measures and sanctions for public services are provided by the Ombudsman Act 2014. This Act gives the Office of the Ombudsman power to sanction public servants if they fail to perform the duties assigned.

## **3.3 How well is accountability for sanitation services provided for on paper?**

The results dashboard set out in Table 6 below is supported by a summary data sheet in Annex 2. The annexes are available on the [Water Witness website](#). These provide complete references to the original materials upon which the assessment is made and justification of each score.

The five steps of the accountability cycle are clearly articulated for the majority of the critical functions of sanitation service provision in Malawi. Opportunities for strengthening were

identified for rules and responsibilities for monitoring and regulatory oversight function and the design, commission and maintenance of sanitation infrastructure where there was a lack of clarity and confusion between policies.

Table 6. Summary results of the de facto assessment of accountability provisions across key functions of Malawi’s Sanitation Service sub-sector. The steps of the accountability cycle are scored for each key function in accordance with the following scoring system: 0 – not present [RED], 1- weak [ORANGE], 2 – intermediate/partial [YELLOW], 3 – strong [GREEN] for each phase & sub-question/characteristic.

<i>How well does Malawi’s policy and legislative framework provide for</i>				
	<i>Rules, processes, and standards</i>	<i>Responsibilities and duties</i>	<i>Performance monitoring and review</i>	<i>Corrective measures, incentives and sanctions</i>
1. Ensuring legislation, regulations and policy support delivery of national targets	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
2. Assessing service levels, and current and future demand.	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
3. Planning future sanitation requirements	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
4. Financing of sanitation infrastructure	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
5. Setting and reviewing of fees and charges	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
6. Collecting of fees and charges	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
7. Monitoring and regulatory oversight to ensure safely managed sanitation	<i>Partial</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
8. Licensing, registration and record-keeping of for sanitation infrastructure and activities	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
9. Social and environmental impact assessment and safeguarding.	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
10. Enforcement of regulations regarding safe management of sanitation	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
11. Transparent and inclusive customer engagement	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
12. Complaints, incident management and problem-solving	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
13. Design, commissioning, operation and maintenance of sanitation infrastructure.	<i>Strong</i>	<i>Partial</i>	<i>Strong</i>	<i>Strong</i>

### 3.2.1. Rules and responsibilities

Rules, processes and standards, and roles and responsibilities, for almost all key sanitation functions are clearly laid out in the water sector legislative documents, such as WWA 1995,

National Sanitation Policy 2008 (NSP 2008), Public Health Act 2017, National Health Policy 2018, WRA 2013, WRR 2018, NWP 2005, Environmental Management Act 2017, National Environmental Policy 2004, Environment Management (Waste Management and Sanitation) Regulations 2008, Malawi Bureau of Standards Act. However, the analysis highlighted **rules or responsibilities were only partially set out** for two essential functions:

1. **For monitoring and regulatory oversight**, provisions lacked **rules** for collaboration between institutions to enforce good sanitation practices at district level.
2. For **design, commissioning, operation and maintenance** of sanitation infrastructure, the lead **role** is unclear. The NSP 2008 assigns the lead role to water utilities organisations, such as Water Boards, while the NWP 2005 gives the same to the MoWS.

### **3.2.2 Performance monitoring and corrective measures**

Performance monitoring is well provided for across all functions. There are provisions for fines, penalties and even prison sentences for breach of some legal requirements for all sanitation functions.

Sector policies and laws clearly set out how the performance of sanitation functions should be monitored through formal processes and structures. There are strong provisions within the NSP 2008 to ensure implementation of essential functions are monitored by the MoWS.

Legally the Ombudsman Act 1996 gives powers to the Ombudsman to sanction duty bearers and offer remedies for corrective measures. Complaints can be lodged through the office of the Ombudsman by members of the public regarding unsatisfactory service delivery.

## **3.3 How well is accountability for water supply and sanitation services provided for in practice?**

The results' dashboards are set out in Table 7 below, summarising how effectively accountability is executed in practice (the de facto findings) for WSS.

Based on the key informant interviews, the findings suggest a robust implementation of accountability across most functions for WSS. However, the implementation of roles was only partial for monitoring and regulatory oversight functions. In addition, roles, performance monitoring and corrective measures were weak for the enforcement of regulations function.

Table 7. Summary results of the de facto assessment of accountability provisions across key functions of Malawi’s Sanitation Service sub-sector. The steps of the accountability cycle are scored for each key function in accordance with the following scoring system: 0 – not present [RED], 1- weak [ORANGE], 2 – intermediate/partial [YELLOW], 3 – strong [GREEN] for each phase & sub-question/characteristic.

<i>How well does Malawi’s policy and legislative framework provide for</i>				
	<i>Rules, processes, and standards</i>	<i>Responsibilities and duties</i>	<i>Performance monitoring and review</i>	<i>Corrective measures, incentives and sanctions</i>
1. Ensuring legislation, regulations and policy support delivery of national targets,	<i>Strong</i>	<i>Strong</i>	<i>Partial</i>	<i>Strong</i>
2. Assessing service levels, and current and future demand.	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
3. Planning future sanitation requirements	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
4. Financing of water WSS infrastructure	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
5. Setting and reviewing of fees and charges	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
6. Collecting of fees and charges	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
7. Monitoring and regulatory oversight to ensure safely managed WSS	<i>Partial</i>	<i>Partial</i>	<i>partial</i>	<i>Strong</i>
8. Licensing, registration and record-keeping of WSS infrastructure and activities	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
9. Social and environmental impact assessment and safeguarding.	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>
10. Enforcement of regulations regarding safe management of water	<i>Strong</i>	<i>Weak</i>	<i>Weak</i>	<i>Weak</i>
11. Transparent and inclusive customer engagement	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>partial</i>
12. Complaints, incident management and problem-solving	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	<i>Partial</i>
13. Design, commissioning, operation and maintenance of water supply infrastructure.	<i>Strong</i>	<i>Partial</i>	<i>Strong</i>	<i>Strong</i>

### 3.3.1. Rules and responsibilities

The de facto findings align with the de jure analysis findings, indicating that **strong provisions on roles and responsibilities are generally well implemented**. However, the de facto results also highlighted the **partial or weak implementation of responsibilities for functions** related to monitoring and regulatory oversight, licensing and enforcement of regulations. These are generally due to overlaps or lack of clarity in responsibilities.

Overall, the planning division within the water supply and sanitation department of the MoWS is responsible for **planning functions**. The NWP 2005 and NSP 2008 define institutional

roles and responsibilities and outline how strategic collaboration and coordination within all relevant departments will be implemented under the policy implementation plans. The acts guide how the planning will be implemented and articulate procedures to ensure strategic planning. There is confusion about how planning for water supply is executed, as also indicated by the de jure findings. According to the WRA 2013, the NWRA is responsible for generating the National Water Resources Master Plan. However, in practice, planning for water supply is done by the water supply department, as the NWRA is not fully operational. This may have led to missed opportunities and lack of coordination. For example, in 2017 a new National Water Resources Master Plan was developed, but it was never approved due to challenges in verifications of findings. Currently, the MoWS is still using the National Water Resources Master Plan of 1986. When invited to comment, the NWRA has noted a process of revitalisation has started and the authority is being operationalised to fulfil its obligations.

The **finance division** within the water supply and sanitation department has **clearly outlined roles and responsibilities regarding financial functions**. Responsibilities are assigned to develop budgets and facilitate and execute financial management as guided by the Public Finance Management Act 2014. The department submits annual reports, including financial management reports, to the office of the Auditor General for auditing.

The WRR 2018 assigned NWRA the responsibility to enforce **some regulatory oversight for water supply** functions. In particular, the authority is responsible for regulating borehole drilling of abstraction points that feed into water supply systems. The NWRA only partially implemented this function, due to not being fully operational. However, this issue is being addressed as part of the ongoing revitalisation process on the NWRA. While the Ministry ensures that the utilities supply quality drinking water in line with the requirements set under the Malawi Bureau of Standards' Drinking Water Standards. Respondents indicated challenges with ensuring a consistent and appropriate standard for water supply services. In fact, there are no regulations nor regulatory bodies to guide performance management and apply effective enforcement. Respondents note the MoWS is exploring proposals to address this, looking at best practice in the region.

**Sanitation service regulation** is coordinated by the Environmental Affairs Department (EAD), NWRA and Local Councils. These institutions are identified as lead agencies for waste management and are guided by the Environmental management regulations on waste management and sanitation. The regulations offer procedures and guidelines for integration and oversight of waste management and sanitation plans. Regarding regulatory oversight, representatives from lead agencies were satisfied with the level of collaboration.

*“Lead agencies coordinate and collaborate well to minimise overlaps and confusion. Although in some cases inefficiencies caused by limited resources and staff can affect regulation enforcement.” (Director, Ministry of Water and Sanitation, Lilongwe, September 2022).*



**Licensing** for water suppliers, private schemes and drainage network operators is guided by provisions and schedules stipulated in the WRR 2018. For water suppliers like Water Boards, WUAs and private schemes, abstraction permits are issued by the NWRA. Drainage network operators, such as treatment plant operators, waste handlers and transporters, are issued wastewater discharge permits by the NWRA. Most solid and liquid waste treatment sites are managed by councils, with no private treatment plants requiring licenses. In addition, when regulations are not clear on licensing, the NWRA engages EAD for guidance, especially where environmental and social impact assessments are needed. A strict licensing procedure for water suppliers is implemented following the Environmental management regulations on waste management and sanitation. Finally, lead agencies like city and district councils are mandated to maintain records of waste management and sanitation facilities within their areas of jurisdiction. The city councils require handlers and transporter to pay fees based on the type of waste and quantity deposited at designated sites.

Overall, **water supply compliance has well-defined roles**, with some assigned to NWRA to enforce. Specifically ensuring that boreholes are drilled to requirements and are certified to supply quality water by drillers. During the interviews, respondents observed that the authority partially fulfilled this function, due to not being operational. When invited to comment, the NWRA stated the authority is in the process of becoming fully operational to enforce this function.

**Compliance with sanitation** was raised as a challenge for councils, as they lacked the human capital to take on the responsibility. Although some inspections are carried out, waste generators, such as households or municipal sites, tend to take advantage of gaps in enforcement to avoid complying with the regulation.

*Mainly inconsistencies in enforcing regulations and sporadic inspections exercise have created loopholes for non-compliance (NWRA, Lilongwe, September 2022).*

There is unequivocal guidance on ensuring **customer engagement** for both water supply and sanitation. The interviews showed that implementation is in accordance with procedural guidelines setting out how complaints related to water supply should be addressed, in line with the WWA 1995. In addition, service providers, like water boards and city councils, provide information and educate citizens on essential service functions through awareness and sensitisation programs. Through the Malawi Public Service Charter, any public institution must be transparent and provide a platform for service providers and users to engage and consult on improvement.

*One way this is achieved is through suggestion boxes where customers can provide inputs on how they were served. However, many customers have expressed a lack of follow-up in this approach. (Blantyre Water Board, Blantyre, September 2022)*

Acts, regulations and standards guide the implementation of **service delivery**, which includes the design, operation and maintenance of **water supply infrastructure**. For example, the WRR 2018 provides dam design, operation, and maintenance, specifications on borehole development, and guidance on construction and management, through borehole drilling manuals. The water boards are responsible for the commissioning and maintaining water works within the defined water areas, as mandated by the WWA 1995. Although the capacity of existing infrastructure to service current demand was mentioned to be a challenge faced by many water boards.

*Some of the infrastructure is outdated and performing below expectations. Despite significant progress, we are still falling short of the desired capacity. In most cases, this is due to a lack of investment (Blantyre Water Board, Blantyre, September 2022).*

Several legislative documents set out the roles and responsibilities of **sanitation service delivery**. However, there is confusion about who is responsible for managing public water-borne sewage or treatment plants in cities. The WWA 1995 allows Water Boards to construct and maintain public water-borne sewage treatment plants within their water areas. According to the Local Government Act 2017, city councils should be restricted to the draining, cleansing, and sanitation of their area. However, currently, the plants are managed by city councils.

### **3.3.2 Performance monitoring and corrective measures**

The de facto findings for WSS align with the de jure findings and that practice is guided by what is laid out on paper, for monitoring and corrective measures across the majority of the WSS functions. However, key accountability challenges were highlighted in the implementation of ensuring alignment of legislation with national targets and enforcement of regulations.

The **performance monitoring of WSS functions** is generally done at a departmental level. On a national scale, the Joint Water Sector Review (JWSR) is used to assess the performance of sectoral legislation, regulation, and programs. The review offers a stakeholder-inclusive and transparent sector performance monitoring platform. However, the convening of the JWSR has been inconsistent. According to interviewed respondents, the technical working groups established to support the undertakings from the JWSR have failed to execute their assignments.

In assessing the adequacy of **financial performance monitoring**, interviewees indicated that all Government agencies are required to consolidate financial reports and submit them to the Ministry of Finance. The Ministry of Finance uses the integrated financial management system as a performance monitoring tool to ensure transparency and accountability in utilising public finances. As a **corrective measure**, controlling officers and financial departments have to submit financial and accounting reports to the office of the Accountant General for auditing.

To ensure transparency, the office of the Auditor General publishes annual audit reports of all Ministries, departments, and agencies. These reports present an opportunity to highlight irregularities while proposing recommendations on how public finances can be efficiently utilised.

*If mismanagement is observed, those involved are subject to fiscal criminal charges under the Corrupt Practices Act. (Department of Finance, MoWS, September)*

The Board of Directors is the tool set out in the legislation to monitor the performance of **regulatory authorities**. NWRA and EAD generate annual monitoring reports on their activities, which are submitted to their respective Boards for review. These reports include activities, records of issued water abstraction and discharge permits, and water supply and sanitation infrastructure registrations. In addition, the controlling officers of all regulating bodies submit annual financial and technical reports to their Boards for review. In theory, the Board of Directors is responsible for overseeing NWRA's performance and guiding action for improvement. However, in practice, the Board has not been proactive in the process to make the NWRA fully operational.

Nevertheless, additional reporting and review measures are in place to ensure the effectiveness of regulations. Regulatory authorities ensure the assessment of regulations and provision of recommendations through consultation with relevant stakeholders. The resulting assessment reports are submitted to parliament by Ministers to enact changes if required.

The implementation of **corrective measures for licensing** is guided by the WRR 2018 and the Environment Management (Waste Management and Sanitation) Regulations 2008. When there is an offence relating to water supply and sanitation regulations, the relevant authority issues warnings, fines, or in extreme cases, revokes licenses. However, respondents lamented the lack of transparency and stakeholder involvement in **performance monitoring of the implementation of enforcement of regulations**. Respondents reported duty bearers are often reluctant to share records of compliance enforcement with the public.

*Most officers are afraid of losing their jobs. Hence unwilling to share information. We never know if the information will be used for a good cause or against duty bearers, sometimes, it is politicised to critique the government. (WESNET, Lilongwe, September 2022)*

In addition, respondents indicated that **sanctions** are too weak to enforce compliance, and that political patronage can interfere with sanctioning.

*Despite non-compliance resulting in administrative penalties, these sanctions are inadequate. People breaking the law prefer to pay the fines than to address the issue. For instance, illegal connections made to Water Board pipelines are still taking place and culprits do not face harsh consequences or are let off easily if they are politically connected. (Blantyre Water Board, Blantyre, September 2022)*

Prioritisation of **customer relations** has become part of the strategic goal for WSS service delivery. For example, to improve customer engagement, the Water Boards have included the promotion of customer satisfaction and a reputation for excellent service as a goal in their strategic plans. These strategic plans are monitored and evaluated by planning divisions to assess progress made toward customer engagement and satisfaction. Quarterly monitoring and evaluation reports are compiled into an annual report that is submitted to the Board of Directors or Ministers.

To supplement existing performance monitoring efforts, the Government introduced the Public Service Charter as a framework to measure the performance of public service delivery. The charter allows customers to participate through consultations to provide insights on how public service providers can manage or improve service delivery. However, citizens consulted have complained that service providers are slow to respond and address issues, mainly due to a low number of staff. A good example is that city councils take a long time to address issues of sanitation within public centres, such as markets.

There are institutions that ensure that service delivery is effective and efficient. The Malawi Bureau of Standards enforces adherence to set out drinking water standards that water boards must satisfy. The Bureau has the power to handle and investigate customer complaints if satisfied that the service or product is below set standards. The Bureau can ban the use of such services or products. In addition, the office of the Ombudsman takes legal sanctions against those failing to offer quality service.

### **3.3.3 Underlying issues**

The de facto analysis identified underlying factors restricting the implementation of WSS functions. These are as follows:

- 1- **NWRA was not fully operational at the time of the study.** However, since then a new CEO was appointed and the authority has noted vacant positions are being filled. This process is in its infancy and therefore will benefit from the monitoring and support of partners.
- 2- Regulating authorities such as NWRA and EAD remain understaffed, which has affected their ability to conduct inspections and investigate reported cases of infringement.
- 3- Political interference can restrict authorities' ability to effect sanctions for non-compliance with the law on companies which are politically connected.

## 4. Insights from the literature

Insights have been drawn from the following documents; Malawi Water Resources Master Plan Existing Report 2017 and the National Sanitation and Hygiene Strategy 2018 – 2024, Malawi Collaborative Behaviour Profile report 2020, Malawi National WASH Building Blocks Assessment 2020, National Sanitation and Hygiene strategy 2018 – 2024, Water, Sanitation and Hygiene (WASH) sector Joint Review Meeting Report 2019,

The insights generated are set out below. Overall, they indicate that responsibilities and duties among sanitation sector agencies are provided for, with responsibilities assigned to relevant institutions.

### 4.1 Rules and responsibilities

<i>Accountability issue</i>	<i>Detail</i>
<b>Institutional challenges</b>	<p>1. The <b>Malawi Water Resources Master Plan Existing Report (2017)</b> observed that according to the National Sanitation Policy (2008), the responsibility of the management of waterborne sanitation or wastewater in the country is mandated to the Water Boards. However, wastewater management remains with the city councils headed by the Chief Executive. The report highlights the need to transfer these responsibilities from the City Councils to the Water Boards. In addition, for sanitation, the report recommends the need to prioritise the establishment of an institutional framework for sewage management in the urban areas in Malawi. Secondly, there is a lack of clarification on who leads rural sanitation. Currently, the promotion of on-site sewage treatment, such as the construction of pit latrines and septic tanks, is carried out by the District Councils jointly with the Ministry of Health and MoAIWD (Sanitation and Hygiene Department). These institutions should strengthen coordination to increase the rate of sanitation supply in rural areas.</p> <p><b>The Malawi Collaborative Behaviour Profile (2020)</b> report by Sanitation and Water for All indicates the need to enhance government leadership of sector planning processes as currently there is poor participation in national coordination with data missing on how sector players align with national strategy.</p>

	<p>Several WASH-related challenges are presented in <b>the Malawi National WASH Building Blocks Assessment (2020)</b> study by Bawi consultants. The study observes that:</p> <ol style="list-style-type: none"> <li>1. Several documents, including the Local Government Act of 1998, outline the roles and responsibilities of national and decentralised bodies. The lengthy debate between the Ministry of Health and the Ministry responsible for WASH over where to house the Sanitation and Hygiene policy was cited as an example of a lack of clarity of roles and responsibilities.</li> <li>2. The implementation of the decentralisation policy has been difficult for the MoWS, resulting in confusion about how district-level staff working for the Water Department should operate. The framework for performance reviews is available at all levels, but it is unhelpful and not used for promotions. Although there is some training offered by civil society organisations, the mechanisms in place to motivate the performance of national and decentralised institutions are insufficient.</li> <li>3. Strong political will is required for the delivery of WASH services. The current incentives and rewards are weak at all levels. Many District Water Development Officers at the MoWS have remained in the districts for more than ten years without being promoted or receiving any training, even though training plans are prepared annually.</li> <li>4. WASH performance targets are not consistent at the national and district levels. The sector must adopt the SDGs indicators and targets, and the localisation process, which is being led by the Planning Section in the Ministry responsible for WASH, must be completed.</li> </ol>
<p><b>Regulatory oversight and support delivery of national targets</b></p>	<p><b>The National Sanitation and Hygiene strategy 2018 – 2024.</b> The strategy reported that currently, there is an absence of a formally established institutional mechanism to promote vertical and horizontal collaboration at the district level relating to sanitation and hygiene functions and regulation.</p> <p>Bawi consultants acknowledged the following in their <b>Malawi National WASH Building Blocks Assessment (2020)</b> report:</p>

	<ol style="list-style-type: none"> <li>1. The legal framework requires service providers of infrastructure to be legally registered and legally accountable to National Construction Industry Council. However, implementation has been a challenge, as some are registered but are not held legally accountable. They take advantage of the beneficial communities' ignorance. There is no water supply regulator, and efforts have been made to obtain one, but to no avail.</li> <li>2. There is no effective regulatory mechanism in place to protect consumer rights, regulate tariffs, and regulate service levels. National Construction Industry Council is responsible for technical registration, NWRA is responsible for water resource management. Still, it currently lacks capacity, and WASAMA is responsible for performance indicators for the water board but does not have the authority to regulate tariffs.</li> <li>3. There is no regulatory entity that uses monitoring data on service levels, tariffs, and customer protection to guide performance management and apply effective enforcement, which includes incentives and penalties that are not used. NWRA is not fully functional and is unable to carry out its mandate in terms of standard enforcement.</li> </ol>
<p><b>Ensuring legislation, regulations and policy support delivery of national targets</b></p>	<p><b>The National Sanitation and Hygiene strategy 2018 – 2024:</b> Malawi will need to ensure a multidisciplinary and multi-sectoral approach to achieve the SDG target to achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations by 2030. This includes ensuring effective integration of sanitation and hygiene issues in other relevant strategies and programmes.</p>

## 4.2 Performance monitoring and corrective action

<i>Accountability issue</i>	<i>Detail</i>
<p><b>Setting and reviewing of fees and charges, Collecting of fees and charges</b></p>	<p>According to the Malawi National WASH Building Blocks Assessment (2020) report by Bawi consultants, there are service level standards and performance targets in place in the sector covering urban water supply but not rural areas under the Water Services Association of Malawi.</p>

<p><b><i>Financing of sanitation infrastructure</i></b></p>	<p><b>The Malawi Collaborative Behaviour Profile (2020)</b> report by Sanitation and Water for All establishes the need to strengthen current financial systems. The report suggests the performance of public financial management is weak for procurement methods, public access to information and Supreme Audit institution independence.</p> <p><b>The Supporting institutional sustainability to deliver permanent WASH services in Malawi (Boulenouar <i>et al.</i> no date)</b> report states that the Government of Malawi struggles to prioritise the provision of the financial and human resources necessary to maintain infrastructure and to create an enabling environment for the Community-Based Management model to work. This also leads to an over-prioritisation of projects that fund new infrastructure and capacity training in rural areas rather than the day-to-day work of operation and maintenance support. Many projects still involve government superficially without considering how the human and financial capacity gap will affect the institutional ability to support the projects in the long term.</p>
<p><b><i>Design, commissioning, operation and maintenance of sanitation infrastructure.</i></b></p>	<p><b>The National Sanitation and Hygiene strategy 2018 – 2024.</b> The strategy highlighted the need for improvement of sanitation in Malawi. The maintenance of existing facilities needs to be improved to fulfil the Malawian standard on effluent discharges. A National Urban and Rural Sewage Development and Management Master Plan are highly recommended to protect the water resources of the country.</p>

## 5. Conclusions and Recommendations

For most functions for WSS provision, Malawi’s legal and policy framework performs well across the accountability cycle. However, there are essential areas for strengthening both water supply and sanitation. Weaknesses in any step of the accountability cycle can profoundly impact the performance of the functions and the Government’s ability to meet development and service goals.

In water supply, some limitations in terms of accountability in the legal framework were not reflected in practice. For example, the *de jure* assessment suggested the WWA 1995 lacked guidance on how complaints related to water supply should be addressed. However, interviews revealed the existence and implementation of a procedural guideline outlining



how complaints are handled. In addition, de jure findings observed issues on the lead role for planning and service delivery, where the WRA 2013 and the NWP 2005 identify the NWRA and MoWS as leads, respectively. In practice, the MoWS leads planning, by developing the National Water Resources Master Plan, and oversees service delivery.

The de facto analysis also highlighted weaknesses uniquely related to implementation. Delays in the NWRA becoming operational have caused issues with the performance of responsibilities linked to monitoring and regulatory oversight and enforcement of regulations. However, when invited to comment the NWRA stated a process of revitalisation has started to allow the authority to fulfil its functions.

A key issue in accountability for water supply is the lack of regulations or a regulator body for the monitoring and oversight of water supply services delivery. Currently the department of water supply and sanitation oversees this function but lacks guiding documents. In addition, there is no separation of the regulatory functions from executive functions within the water supply and sanitation sector.

The de jure and de facto assessment found generally strong accountability for sanitation functions. However, a few areas for improvement were identified, both in theory and in practice. For example, the de jure analysis found that two different policies assign the lead role on the design, commissioning, operation and maintenance of sanitation infrastructure to two different organisations. In fact, the NSP 2008 assigns the lead role to water utilities organisations, such as Water Boards, while the NWP 2005 gives the same to the MoWS. This overlap creates confusion in the implementation of the function and should be addressed with procedural guidelines on coordination and mutual accountability mechanisms.

Initially, de jure findings for sanitation indicated a lack of rules to guide institutional collaboration and coordination in enforcing good sanitation practices within districts. However, the de facto findings outlined an integrated approach to ensuring relevant stakeholders are coordinated through district technical committees. On the other hand, the legislation clearly defines roles and responsibilities for sanitation service delivery. However, in practice city councils manage sewage treatment plants while the law establishes water boards should be responsible.

The de facto assessment also highlighted common challenges impacting performance review and customer engagement for both water supply and sanitation. The inactive JWSR process is a missed opportunity to implement a transparent and stakeholder-inclusive tool to review public services performance. For example, without a functioning JWSR, it is difficult to ensure that the sector legislative framework and its implementation align with national and international targets. In addition, lack of transparency on compliance activities impacts the ability of civil society to hold regulators to account for their performance. Finally, slow or in-existent follow-up on customer complaints, due to low staff numbers, weakens the ability of citizens to hold service providers to account for the quality of services.

Based on the findings summarised above, the following recommendations are made for the Government and other stakeholders in the Malawi water sector:

1. Through dynamic **Government leadership, the NWRA needs to be given the powers** to implement crucial water supply and water management functions. On being invited to comment on the report, NWRA has noted that a process of revitalisation has started to achieve this. The process is in its infancy and therefore requires monitoring and support from partners.
2. **The annual JWSR process needs to be strengthened as a performance reporting mechanism** under the leadership of the MoW with the support of the water sector stakeholders (e.g. Government bodies, CSOs, development partners, private sector).
3. Through **Government leadership**, delivery of key WSS functions should be strengthened, through the transfer of **the management of sewage treatment works** to water boards and through the **clear definition of regulation, roles and responsibilities** for water supply service delivery.
4. **Bottom-up processes for monitoring** the quality of service delivery and infrastructure projects must be supported by CSOs to ensure these necessary participatory processes function.
5. **Clarification of the legislation describing rules and leading roles for monitoring and oversight, planning and service delivery** are needed through review of legislation by the Government.

Finally, when considering the findings of this study, it's important to consider some limitations to its approach and implementation. Firstly, only eleven people were interviewed for the de facto component. All of them were from Government and in senior positions. This meant they were well aware of policies, but possibly not as aware of on-the-ground challenges with implementation. In addition, senior officials may be biased towards politically acceptable answers. Secondly, this research focused on accountability issues related to the five steps of the accountability cycle. However, other limitations may impact the delivery of water supply and sanitation services, such as climate change impacts, pandemics and economic growth.

While accountability was found to be strong across several functions in this study, the rates of access to water supply and sanitation services suggest important challenges still impact universal access ambitions. Despite great steps forward, the increase in household access to safely managed drinking water and sanitation in Malawi is too slow to meet SDG6 by 2030 (WHP/UNICEF 2020a). In 2020, in rural areas, three in five households lacked access to drinking water and more than half of the households lacked access to safely managed sanitation (WHP/UNICEF 2020b). The recommendations included in this report support the Government's efforts, facilitating the achievement of the Malawi Vision 2063 and SDG targets.

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