Analysis of water governance in Malawi: towards a favourable enabling environment?
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ABSTRACT
This paper examines the enabling environment for effective water governance in Malawi by specifically determining the extent to which the water acts and policies of Malawi reflect international water governance principles of participation, accountability and transparency. It is argued that governance issues determine the extent to which sound and equitable water sharing is achieved among competing uses. Despite the fact that Malawi has vast freshwater resources, the country experiences chronic water shortages in some parts; this is due to disparities in water distribution to the extent that the country has been classified to be going towards water stress by 2025. In this study, it was found that the Water Resources Act of 1969, which is currently being used by the country has not clearly set the scene for good water governance. This is despite a number of treaties on water resources management that the country has ratified. However, despite the failure to update the archaic Act of 1969, the country has taken some important strides such as the development of the National Water Policy of 2005. This policy attempts to espouse key governance prerequisites required to improve the country’s capacity to deal with the impending water crisis situation.

Key words | enabling environment, governance principles, IWRM, water governance, water laws, water policy

INTRODUCTION
The importance of water for economic growth and poverty alleviation in developing economies like Malawi has been recognised the world over. Apart from the role that water plays in the everyday life of human beings, water has the capacity to stir economic development particularly through its influence in agriculture and industrial sectors (Wasambo 2011). The World Water Assessment Programme (2006) stresses this point by stating that the prospects of poverty reduction and economic growth are highly dependent on water resources. It is, therefore, not surprising that developing countries like Malawi, whose major economic activity is agriculture, are perceived to be so vulnerable to the variability of water availability both in time and space.

Unlike other natural resources such as minerals, water resources are renewable by nature through the process of the water cycle. The world is, however, faced with increasing challenges of dwindling availability, due to compromised quality and climate change, and with intensifying competition among users (Tropp 2007; McGee & Gaventa 2011; Wasambo 2011). As such, it is believed that about 40% of the world’s population is expected to experience water shortages by 2050 (Ward 2007). These challenges have made water users in different sectors to develop novel solutions to enable them to tap into the limited water resources, thereby creating chaos in the water sector. In an attempt to address these challenges, the world embraced a new paradigm in water resources management called the Integrated Water Resources Management (IWRM) in 1992 (Global Water Partnership 2000b).

The IWRM concept has been deemed important in the water management literature. The Global Water Partnership (2000b) points out that the IWRM approach does not only promote cross-sectoral cooperation, but also coordinated management and development of land, surface and
This gap according to the World Water Assessment Programme continued to grow between the rich and the poor in society. The access to water supply and sanitation services has constricted the distribution of water resources. Undermining the government’s powers to the local level structures, the gap in the distribution of water resources has become widespread. The local population participates in decision-making and devolution of water resources in an unequal manner. The distribution of water resources is not equitable, and this has led to significant disparities between different communities. Therefore, the concept of human rights should guide its scope, content and implementation. While most developed countries have institutionalised the human rights criteria (availability, quality, accessibility and affordability) and principles (non-discrimination, access to information, participation, accountability and sustainability) into their constitutions, the pace is rather not the same in most developing countries like Malawi where water supply and sanitation services are still confined to urban populations and stifled by poor investments.

As nations started realigning their water management efforts with the new paradigm, the Global Water Partnership identified the need for an enabling environment as a crucial area of change to achieve improved water governance alongside institutional roles and management instruments, critically needing attention (Global Water Partnership 2000b). An enabling environment here refers to a set of related conditions in which the relevant legislation and policies instituted at local or national level enable stakeholders to effectively play their roles in the development and management of water resources. Included in such an environment is the availability of a forum and mechanisms that cater for information sharing and capacity building to facilitate stakeholder participation (Rodgers & Hall 2003). Consequently, Ward (2007) highlights that as demand for freshwater sources increase worldwide, the need to satisfy the growing human demands for water while protecting the aquatic ecosystems on whose products and services economies and life itself depend has emerged to be a significant challenge for 21st century water policy.

Amidst the calls to level the platform where stakeholders participate in decision-making and devolution of government powers to the local level structures, the gap in the access to water supply and sanitation services has continued to grow between the rich and the poor in society. This gap according to the World Water Assessment Programme (2012) can be managed by recognising safe drinking water and sanitation as a human right as adopted by the United Nations Human Rights Council in 2010. In order to ascertain the availability of the human right to water, the United Nations (2010) emphasises that the human rights criteria (availability, quality, accessibility and affordability) and principles (non-discrimination, access to information, participation, accountability and sustainability) should guide its scope, content and implementation. While significant strides have been made in some countries like South Africa and Venezuela to include water as a human right in their constitutions, the pace is rather not the same in most developing countries like Malawi where water supply and sanitation services are still confined to urban populations and stifled by poor investments.

The purpose of this paper is to provide a review of the progress that has been made in the water sector of Malawi in creating an enabling environment for effective water governance. Specifically, the paper examines the enabling environment for effective water governance in the country by determining the extent to which the water acts and policies of Malawi reflect international water governance principles (participation, accountability and transparency). In so doing, this review aims to contribute to an understanding of how the water sector can embrace an effective water governance system to achieve sustainable water management. However, in order to advance this aim, an understanding of governance principles and the legal frameworks that govern water resources management is required. It has to be pointed out at this stage that although most scholars agree that good governance would ensure equitable access to water supply and sanitation services by embracing the human right to water concept, this paper will not discuss it in greater detail as it has been well covered in our forthcoming article.

The rest of the paper has been organised in the following manner: following hereafter is a background of water governance concepts including the principles being studied in this paper. An overview of the legal water frameworks and their role in ensuring a favourable water governance environment is discussed next followed by a brief background of the water sector in the study country, Malawi. This section is followed by the methods used to carry out the study, while the results and discussion are presented in the section that follows. The paper concludes by drawing some recommendations in the final section.

**Water governance**

The term water governance has been defined differently by different scholars around the world. According to Rodgers & Hall (2003), water governance refers to ‘the range of political, social, economic and administrative systems that are
in place to develop and manage water resources, and the delivery of water services, at different levels of society’. Alternatively, the World Water Assessment Programme (2006) defines water governance as the manner in which power and authority are exercised and distributed in society, how decisions are made and the extent to which citizens participate in decision-making processes concerning water. These definitions entail that water governance is inclined to questions about how a society governs access and control over water resources. Despite the differences in the way the term is defined, there is general consensus among scholars in the literature that an effective water governance system entails having a system that is open and transparent, inclusive and participatory, equitable, accountable and ethical in its approach (Tropp 2007; Ward 2007; Biswas & Tortajada 2010; Linton & Brooks 2011; van der Valk & Keenan 2011).

In addition, it has also been agreed among scholars that the concept of governance plays a significant role in management of water resources due to the following features as outlined by Linton & Brooks (2011) and Tropp (2007):

- It is seen as a process of interactions rather than as a formal institution/regime.
- The concept is based on accommodation rather than domination; such that decision-making is based on negotiations, dialogue and networking.
- It also provides alternatives to top-down hierarchy like the recognition of inter-sectoral and departmental interactions i.e., both private and public, and civil society.
- Collective action towards resource use and allocation is achieved through relationships and networks.
- Governance looks to flexibility and informal institutions that often escape formal government structures, for example networks.

The need for good water governance

The importance of governance in the water sector cannot be overemphasised. In a paper presented at the Second World Water Forum at the Hague in Netherlands in 2000, the Global Water Partnership (2000a) stated in the strongest terms that the current water crisis facing the world is ultimately a governance crisis – failures in the governance systems of water resources. While asserting that governance issues influence the extent of sound and equitable water sharing among competing uses and management worldwide, Tropp (2007) suggests that an enabling environment and appropriate institutional structures be put in place in order to achieve this. However, Ward (2007) laments that governance in many developing countries lags behind on the water management agenda; citing lack of necessary institutional frameworks, corruption and institutional resistance to change. In addition to that, it has also been contended that although there has been some realisation of internal pressures on the water resources due to growing population and climate change, the rate of water governance and policy reforms remains patchy and slow and our capacity to monitor the evolution of good governance remains deficient (Biswas & Tortajada 2010). The same writers continue to point out that the current governance systems will become complicated by changes and dynamics in the water using sectors, such that improving the environment that enables effective water governance will pose the challenge of the century. Creating an enabling environment for effective water governance entails the extent to which the concepts that allows for good decision-making processes are in place i.e., embracing the principles of good water governance within the legal frameworks for water resources management (Lautze et al. 2011). However, Roos (2008) argues that instituting the legal frameworks alone without investing in the personnel responsible for implementing it is half the solution. The personnel responsible for the decision-making in the water sector should be capacitated to understand, interpret and apply the legal framework appropriately for a good governance environment to prevail.

Principles of good water governance

There are a number of principles that have been developed and used to assess the state of water governance in a particular context. As pointed out by Lautze et al. (2011) and Rodgers & Hall (2003) in their reports, there is no single model that guarantees an effective water governance system. However, Rodgers & Hall (2003) suggest that there are some basic principles that are considered to be essential ingredients of an effective water governance system. Below is a look at some of the basic principles that have been considered in this paper.
Participation in governance

Participation as a concept of governance entails that affected and interested citizens should have a voice, directly or indirectly, in the process of policy and decision-making (K’Akumu 2007; Grigg 2011). According to Rodgers & Hall (2003), water users and other stakeholders need to be involved in the development and implementation of water policies and strategies; however, van der Valk & Keenan (2011) claim that this can only happen if the water laws have provided for such processes to take place. Huitema et al. (2009) point out that participation is an important theme in governance of water resources literature as it improves the quality of decision-making. In addition, Huitema and his colleagues state that participation would also lead to improved understanding of management issues by the public and stimulate the leading agencies to be effective in delivering their services to society. It is important to note that successful water governance and policy reforms derive from government actions and public participation (Grigg 2011), such that the poor water governance situation therefore would easily be attributed to lack of political will by state governments as well as poor involvement of the stakeholders.

Accountability in governance

As defined by Hood (2010), accountability denotes how an individual or organisation is answerable as regards the way they have conducted the affairs of their office. Put in the context of water governance therefore, accountability entails that the government, private sector and civil society organisations (and their subjects) are answerable to the water using public or more precisely the interests they represent (World Water Assessment Programme 2006; K’Akumu 2007; Grigg 2011). In addition, McGee & Gaventa (2011) emphasise that being answerable to society entails providing information and justification about the progress in their office and conduct of duty. This should mostly involve laying down sanctions to those in charge for failing to fulfil their duties and providing a platform where decision-makers can present the plans and progress of their work. In order to achieve this, governments and water managing organisations should ensure that their actions are done openly in order to minimise corruption. Moreover, it has been attested that a governance system in any sector requires proper allocation and management of resources for it to be accountable to its society (Biswas & Tortajada 2010).

Transparency in governance

The concept of transparency has quite often gone together with accountability in the governance literature (Hood 2010). While accountability focuses on the duty that individuals and organisations have, transparency has been defined generally as the ‘conduct of business in a fashion that makes decisions, rules and other information visible from outside’ (Hood 2010). As pointed out by the Global Water Partnership (2000a), it is not easy to implement the principles of the IWRM in a situation where the society does not enjoy transparent water allocation and management. Transparent water governance should, therefore, allow flow of information within the society if IWRM objectives are to be met. Lack of transparency by higher water authorities (in government) has quite often led to corruption, thereby stifling investment efforts in the water sector as well as weakening the relationship between water users and service providers (Hoekstra 2006; World Water Assessment Programme 2006; Tropp 2007).

Water legal frameworks and policy

Two important frameworks that govern the management and utilisation of water resources are the water law and water policy. Frequently, there is confusion among water stakeholders and scholars across the globe about the difference between the two frameworks (FAO 2009). While most countries often ignore the water laws and prefer instituting the water policy alone as reported by Cullet (2012), FAO (2009) states that water policy documents are quite often non-binding and do not create any specific obligations; they rather spell out the goals and aspirations of governments as regards the way business is conducted in the water sector. In contrast, water laws are set to be well drafted and binding. They have specific standards that are set, procedures and principles that must be complied with, and more importantly, have provisions that may hold persons accountable for their actions.
It is worth noting that the absence of favourable water laws and policies has greater repercussions on water resources management in low- and middle-income countries than in high-income countries (Wouters & Rieu-Clarke 2004). As pointed out by FAO (2009), the legal framework has the capacity to provide an enabling environment for good water governance when properly drafted and implemented; on the other hand, it can create obstacles and obscure the roles that other actors play in water management when poorly implemented and enforced. Supporting this idea, FAO (2009) and Cullet (2012) associate the water crisis facing the world with the failure to institute proper policies, legislation and regulations towards the management of water resources. To this end, good water laws and policies in place would thus enhance an enabling environment for water governance, thereby improving people’s livelihoods and ultimately sustainable water resource utilisation and management. However, it is appalling to note that although a number of policies and legislations have been developed, reviewed and revised to cope with the growing and changing demands for water across the globe (Grigg 2011), the pace is not the same in most developing countries like Malawi. It has to be acknowledged that instituting water policies without proper implementation strategies is one of the greatest challenges facing water governance across the globe. Good water laws and policies cannot achieve the intended objectives if they are not backed up by necessary strategies that can translate them into actions.

**Water sector of Malawi**

Malawi is a landlocked country situated between latitudes 9°22’S and 17°03’S and longitudes 32° and 35°55’E in southern Africa. It has a total area of 118,480 km². The country is considered to be rich in freshwater resources, with the presence of Lake Malawi, wetlands and several rivers which represent 21% of the land area covered by water. Despite the fact that Malawi has vast freshwater resources, the country experiences water shortages in some parts due to the disparities in its distribution, to the extent that the country has been classified to be going towards water stress by 2025. This calls for improved and collaborative efforts in water resources management if the country is to improve delivery of water supply and sanitation services especially as the available water resources continue to dwindle. Figure 1 is a map of Malawi showing the distribution of water resources.

The country’s water resources are managed by the Department of Water Resources Development under the Ministry of Irrigation and Water Development. Under this body, the Water Resources Board was established by an Act of Parliament in 1969 to oversee the issue of water utilisation i.e., water abstractions and discharge of effluents mainly among irrigation farmers at that time. Basically, there are three main instruments that are used in the management of the resource in the country: the Water Resources Act of 1969, Water Works Act of 1995 and National Water Policy of 2005. In addition to these instruments, the irrigation sector, which is one of the major water consuming sectors, has developed the Irrigation Act of 2001 which provides guiding principles on irrigation water management in the country. It is worth pointing out here that since democratic dispensation, Malawi has enacted a number of policies governing the utilisation of water. However, as noted by Ferguson & Mulwafu (2005), most of these policies have been developed and enacted on a sector-by-sector basis thereby creating some fragmentation in the water sector with little consideration on the interaction these policies have. This paper will therefore focus on the Water Resources Act of 1969 and National Water Policy of 2005 as they are the major frameworks in the country.

The Water Resources Act of 1969 was enacted into law governing water resources in Malawi in November 1969 by the Malawi Parliament. It is the key instrument for the regulation of water resources management in the country by generally making provision for the control, conservation, apportionment and use of the water resources of Malawi (Government of Malawi 1969). The Act consists of six parts which include: ownership of water resources and the right to the use of water; recording of water rights that existed before the current Act; granting of water rights; revision, variation, determination and diminution of water rights, pollution of public water; miscellaneous powers vested in the Act; and various schedules including the schedules for the establishment and composition of the Water Resources Board. It has a total of 26 sections. In addition, the
The Government of Malawi passed the Water Works Act of 1995 into law under which all water boards and utility suppliers were established. The Act essentially provides the legal framework for implementing the strategies in the provision of water supply and water sanitation services in the country.

**METHODS**

This paper is the product of a desk study conducted on Malawi’s legal framework for water management and its water sector policy. The study was conducted by doing a review that included going through previous studies on water governance and law and policy reforms in Malawi and across the world. Literature on Malawi’s water laws, policies, white papers, unpublished government reports and draft bills was reviewed. A concern has been raised that evaluating water governance still poses a challenge as there are no specific indicators agreed upon in the water sector (Biswa & Tortajada 2010). However, it has been reported that policy and decision-makers may evaluate laws and policies towards effective governance by looking at the three principles of governance: participation, transparency and accountability (World Water Assessment Programme 2006; Biswas & Tortajada 2010). The frameworks were thus reviewed in this study using these principles to see the extent to which they are gazetted (see Table 1) in the water law and implemented to ensure fertile ground for an effective water governance system.

**RESULTS AND DISCUSSION**

The water resources act of 1969

**Participation**

It was pointed out earlier that the success of any governance system depends largely on the extent to which non-state actors and other stakeholders including water users are involved in the decision-making process regarding the utilisation and management of water resources. In the Water

**Figure 1** Map of Malawi showing distribution of water resources.
Resources Act of 1969, the Government of Malawi through the Minister responsible for Water Resources Development is a public trustee and custodian of Malawi’s waters. In our study, it was found that the Act gives the Minister the responsibility to grant water use rights to water users among many other responsibilities without considering the involvement of the society either by way of soliciting comments on issues of public interest or indeed by engaging the society by means of media. In addition, the Act does not stipulate whether and how the society would be involved in most important decisions regarding the management of water resources. For example, while granting some forms of water use rights e.g., for bulk storage may be of public interest, there would be need to involve the public in the decision-making process. However, the Act in Section 10(1) does not provide for consulting public opinion when granting such kind of rights thereby undermining one of the most important principles of governance (participation).

Moreover, the Minister is not obliged to consult public opinion when designating some sections of water and natural resources as controlled areas. As for instance, the Act in Section 22(1) gives the minister the powers to declare any area a controlled area. Although it is said that this is for the interest of the public, the public is not involved in decision-making of the said scheme. This may jeopardise the benefits that would be expected from the scheme as society feels side-lined and does not own the initiative irrespective of how beneficial it may be. Quite often, this leads to overexploitation of the resource and monitoring may become expensive by the central water governing body, the Water Resources Board. As reported by the World Water Assessment Programme (2006), involving stakeholders (and non-state actors) in water resources management has greater impacts in achieving sustainable development as well as ensuring equitable access to water services among disadvantaged groups of people in the society.

### Transparency and accountability

As mentioned earlier, a good enabling environment for effective water governance requires that the legal frameworks guarding the decision-making process regarding water management and utilisation provide for openness and transparency. In order to achieve this, the laws should encourage free flow and access of information (Rodgers & Hall 2003; K’Akumu 2007). However, our assessment found that the Water Resources Act of 1969 does not provide for the free flow of information to the public despite the fact that the country’s Constitution has provided for it. This is exacerbated by the fact that since the introduction of the new Constitution in Malawi in 1994 after the democratic dispensation, the country has not yet enacted the Access to Information Bill (Sentala 2008) despite pressure from civil society groups. Failure to enact the laws on accessibility of important information undermines the commitment that the government has towards enabling a good environment for good governance let alone in the water sector. The present situation makes it difficult for the water governing council (the Water Resources Board) to be taken to task over certain important issues like quality of services in water supply and sanitation sectors. As if that is not enough, there are no provisions for establishment of institutions, such as water user associations, catchment management agencies and water tribunal, among others, in the Act other than the central Water Resources Board that should foster delegation of responsibility from central government to the local level and foster ownership of decisions by society. In addition, the Act does not require the Minister to consult with stakeholders and local

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**Table 1** | Framework for legislative analysis of water governance (World Water Assessment Programme 2006), own presentation

<table>
<thead>
<tr>
<th>Governance principle</th>
<th>Legislative analysis</th>
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<tbody>
<tr>
<td>Participation</td>
<td>Does the legislation provide for and encourage participation of stakeholders and citizens in decision-making for water?</td>
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<tr>
<td>Transparency</td>
<td>Does the legislation provide for transparency in decision-making towards the implementation of water management activities and does it prescribe mechanisms for public scrutiny?</td>
</tr>
<tr>
<td>Accountability</td>
<td>Does the legislation provide for accountability of water institutions (governmental or non-governmental) to the public in the implementation of water management activities?</td>
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communities regarding the appointment of the Water Resources Board office bearers. With this status, the Minis-
ter and the Board cannot be taken to task easily for failing
their duties as there are no clear and independent monitor-
ing mechanisms in place.

On another note, the Act refers repeatedly to sanctions: offenders may be liable to having fines imposed. However, there is no provision in the Act that sets up a jury respon-
sible for hearing and prosecuting water-related cases and conflicts. This jeopardises freedom to fair trial and justice in water cases. As such, most water resources in Malawi
have been over-used and degraded without the Water Resources Board taking any necessary action. This was con-

confirmed by Wasambo (2011) in his study on Irrigation Policy
Reform where he noted that although water users were encroaching onto the river systems and causing damage to the water resources, nothing was done by the Water
Resources Board despite the fact that other users who have
the rights to use the water resource were unable to meet their water demands for irrigation.

Conspicuously missing in the National Water Resources
Act of 1969 are the provisions for water supply and sani-
tation services. This is despite the global efforts to declare
water and sanitation as human rights. Of course, the
absence of human right to water in the Water Act can be
attributed to the fact that the Act was developed at a time
when such issues did not matter at all. However, the dawn
of democratic dispensation saw the development of the
Water Works Act of 1995 which was aimed at aiding
the development of water supply and sanitation services in the country. As pointed out by Chipofya et al. (2009), the
Act also falls short of meeting expectations as it does not
provide for involvement of various stakeholders in the
implementation of water supply and sanitation services in
the country. In addition, the Government of Malawi estab-
lished the Malawi Growth and Development Strategy in
2006, which was reviewed in 2012, as an overarching stra-

gy for prioritising development efforts in the country.
Through this strategy, there is increased commitment to
increase access to safe drinking water and sanitation even
though this document, like the National Water Act, is also
silent on recognising water as a human right. Although the
Government of Malawi has indeed shown some commit-
ment in ensuring that the population has access to safe
drinking water, it is appalling to note that a large percentage
of rural Malawians still drink from unprotected water
sources.

The national water policy of 2005

The National Water Policy of Malawi was framed at a time
when the critical dependency of Malawi’s economy on
water resources was reaffirmed and that water resources
have a greater impact on poverty reduction. This policy
thus serves as a guideline for proper implementation of vari-

ous activities like drinking water supply and sanitation
(Government of Malawi 2005). It outlines the strategies on
how to solve the problems and challenges that have been
faced in the Water Sector of the country in an integrated
manner in order to effectively contribute towards achieving
the national development. On the other hand, the policy
recognises that the sector has opportunities, such as the
availability of relatively abundant water resources, political
will, active women and youth, donor support, willingness
of private and public sectors’ participation and the existence
of regional and international initiatives and their ratification
such as the Johannesburg Declaration of the World Summit
on Sustainable Development of 2002 and Southern African
Development Community Protocol on Shared Watercourses
(Government of Malawi 2005). However, as stated by the
World Water Assessment Programme (2006), any water
policy reform is only as strong as its weakest link, which
usually is the implementation of the policy. For instance,
although many good policies have been developed in
southern Africa, such as in South Africa and Zimbabwe, it
still remains to be seen how much implementation this has
led to in support of improving water governance issues.

Unlike the Water Resources Act of 1969, the National
Water Policy of 2005 makes a dedication towards pro-
motion of equitable access to safe and potable water. In
addition, it has stressed the need for participation of non-
state actors and other stakeholders in the management
and utilisation of water resources. The policy has also
echoed the call for transparency and accountability of
office bearers in the water sector and organisations render-
ing water supply services like Water Boards. However, the
major bottlenecks in the implementation of this policy
have been inadequate organisational capacity and the poor
legislation (the archaic water law). Furthermore, Chipofya et al. (2012) have pointed out that the current policy has been found inadequate citing lack of complementarity with other instruments like the Water Resources Act and other related sector-specific policies. For example, the departments of Irrigation, Forestry, Public Health, Environmental Management and Agriculture have developed policies which in most cases do not speak the same language as the National Water Policy. In addition, Chipofya and his colleagues agree with Wasambo (2011) that the current policy lacks stringent punitive measures against those who violate the law.

One other important challenge facing the implementation of this policy is the lack of capacity in the Ministry of Irrigation and Water Development. The Ministry is one of the most lean ministries in the country. Created in the mid-1990s in response to the growing need for increased efforts in water resources management (Chipofya et al. 2009), the Ministry does not have adequate management structures at regional and district levels and has large numbers of vacancies as do most government departments in Malawi. This challenge has also been exacerbated by lack of adequate funding to the ministry which receives less than 3% of the national budget with less than 0.2% allocated for local level management structures (Government of Malawi 2012). This, according to Roos (2008), jeopardises the extent to which decision-makers ensure that they effectively implement their activities and can often be used as a scapegoat in failing to be transparent and accountable.

The policy also spells out the establishment of Catchment Management Authorities (CMA) in the country as one of its priority areas. Surprisingly, no single CMA has been established eight years down the line. This can easily be explained by lack of specific funding arrangements for the CMAs to be established despite the fact that an ambitious target of 17 CMAs was set by the policy (Ferguson & Mulwafu 2005). The desire to establish catchment level governance structures has also raised resistance from some political and administrative circles citing confusion with the current structures under the decentralisation system. It is felt that these structures may create the basis for a power struggle with the District Assemblies which are responsible for local management of government business. It can also be argued that the performance of the CMAs would be easily stifled by poor funding mechanisms. In addition, the failure to make any progress on the planned CMAs establishment would seem to follow from the fact that the National Water Resources Act of 1969 is silent on the matter. Although progress on CMA establishment has been insignificant over the past eight years, the Ministry of Water Development has embarked on establishment of Water User Associations (WUAs) especially in irrigation schemes across the country. This has been a good development in an effort to ensure that water users participate in decision-making. However, the absence of the CMAs makes it difficult for the WUAs to be effective.

All this would suggest that lack of subscription to the basic governance principles in the water law (Water Resources Act of 1969) means there is no proper enforcement and follow up on the implementation of the said policy strategies and the extent to which this policy would be adhered to still remains a paradox. This entails that although the policy has tried to indeed incorporate the issues in favour of good governance environment in the framework, realising the highly sought favourable environment still remains a nightmare in the country.

CONCLUSION AND RECOMMENDATIONS

This paper set out to provide a review of the progress that has been made in the water sector of Malawi in creating an enabling environment for effective water governance. The review suggests that the enabling environment for governance in the water sector in Malawi still faces a number of hurdles despite the introduction of the National Water Policy of 2005, as the current law does not necessarily capture it in its entirety. Although the new policy on water management does capture most aspects of good water governance, there is not much to celebrate as most legal instruments in Malawi fail to deliver due to lack of relevant institutions. For example, while the policy advocates for devolution of the Ministry’s power to catchment level agencies, there has been some laxity in this pursuit. Until this day, the Ministry depends on its lean and understaffed Water Resources Board responsible for most of water management issues seated at Capitol Hill. Evidence provided by lack of proper progress in the implementation of the
National Water Policy suggests that improving governance in the country still remains a work in progress.

As acknowledged by Grigg (2011), governance has strong links with the institutional framework from which it operates due to its political nature. The design of these frameworks – the water law and water policy – have therefore greater repercussions on the environment created towards good water governance. The new policy on water management is, however, a better milestone as it has adequately considered involvement of other stakeholders in its implementation. Above all, the political will behind incorporation of international obligations on water management can be better enhanced by a new Water Resources Act that can ably articulate governance issues. All this can be complemented by development of a monitoring framework that can aid the ease of flow of information between water resource users and managers.

It is recommended that other than providing for a Water Resources Board alone at national level, the water law should have included the establishment of other water management institutions at different governance levels, such as at catchment level and local user level as does the National Water policy. These would ensure the creation of platforms where users and stakeholders would participate in decision-making activities. In addition, this would mean easing the pressure from the Water Resources Board as functions would be delegated to the local institutions. In addition, it would be necessary for the loopholes in the water law to be patched up so that the policy and the law speak to each other. The new water policy cannot achieve the intended objectives if the legal framework within which it operates still lags behind.

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