Website: http: jebhpme.ssu.ac.ir
EBHPME 2023; 7(1): 25-37
EISSN: 2538-4716

Evidence Based Health Policy, Management & Economics

ORIGINAL ARTICLE

A Situational Analysis of the Legal Framework of Public Hospital Governance in Malawi

Andrew Munthopa Lipunga

Department of Accountancy, School of Business and Economic Sciences, Malawi Unversity of Business and Applied Sciences, Blantyre, Malawi

ABSTRACT

Background: Sound organizational governance is critical to the health sector. The condition of the legal framework that is in place, plays a key role in institutionalizing sound governance. The present paper examines the condition of the legal framework that facilitates the implementation of robust public hospital governance in Malawi.

Methods: The paper employed document analysis utilizing Clarke's situational thinking to examine the legal framework pertaining to the governance of central and district hospitals.

Results: The findings suggest that the current legal framework does not prescribe a specific organizational governance system for central and district hospitals. Governance of the hospitals relies on the governance framework of their parent entities, namely the Ministry of Health and District Councils respectively. This setup presents serious challenges that include undermining the uniqueness of the hospital governance system and obscuring the organizational visibility of public hospitals. Consequently, it has detrimental effects on the implementation of sound organizational governance principles including responsibility, transparency, and accountability.

Conclusion: The paper demonstrates the need for policymakers to examine the condition of the specific elements of the legal framework in order to identify those areas that require attention toward reforming the state of organizational governance of the public hospitals under study.

Keywords: Hospital governance, Legal framework, Public hospitals (in Malawi), Situational analysis

Introduction

Sound governance is key in the health sector due to,its ability to shape the sector's capacity to cope with day-to-day challenges, new policies and problems (1). Accordingly, organizational governance needs to be espoused as a strategy for safeguarding the standard of clinical care. It is a key facilitator towards improving the population health, and also towards achieving the goal of Universal Health Coverage (2, 3, 4). It has also been pointed out that governance contributes towards enhancing organizational efficiency in terms of the use of resources; improving and developing the capabilities of administrative staff; facilitating better strategic decision-making, and providing a comprehensive system of control (5). Accordingly, countries worldwide are undertaking reforms to strengthen governance in the health sector. These reforms are particularly crucial in developing countries, where the health systems are often characterized by crippling deficiencies that hamper the health sector (6).

Malawi is one of the developing countries that is undertaking governance reforms. The country has prominently incorporated reform aspirations in its plans for the health sector. One of the strategic

Corresponding Author:Andrew Munthopa Lipunga
Email: alipunga@mubas.ac. mw
Tel: +265 999 694 031
Department of Accountancy, School of Business and Economic Sciences, Malawi University of Business and Applied Sciences, Blantyre, Malawi

Copyright: ©2023 The Author(s); Published by ShahidSadoughi University of Medical Sciences. This is an open-access article distributed under the terms of
the Creative Commons Attribution License (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

objectives in its current health sector strategic plan for 2017 to 2022 was to "improve leadership and governance across the health sector and at all levels of the health care system" (7). The planned actions for reforms include adopting a private sector style of governance in the reorganization of public hospitals, as well as revising the supporting legislative instruments. These reforms are envisaged with the recognition that context (especially the institutional structure) is central to the effective implementation of these reforms that aim to impact health programs and policies positively (4, 8, 9).

This paper examines the legal framework of public hospital governance, which is considered as a precondition for the effective development of a sound governance system and its implementation (10, 11). Essentially, the central facets of governance are rulemaking and implementation (12). Furthermore, these rules provide the basis for governance by regulating social and economic relationships among the various actors in the sector (4, 13, 14). Rules prescribe oversight, control and incentive mechanisms; rules also pertain to the allocation of roles and responsibilities that shape the principal–agent relationships among the actors (15, 16). It follows that, depending on its condition, the legal framework can either "facilitate the success of regulatory initiatives and promote good corporate governance or constitute barriers to the implementation of good governance principles" (17).

Despite the salience of a sound legal framework in the health sector, this topic has received little analytical attention. As a result, the condition of its soundness is grossly ignored. This is problematic, particularly to public hospitals, because the legal framework is not only the governing legislation (as the Companies Act is to companies); but also, the Constitution that must be strictly followed in every detail. In this regard, Cripps et al. (18) recommended the need to establish an enabling legal framework as one of the preconditions for the effective implementation of public hospital governance reforms in Malawi. This recommendation was made despite there being an existing legal framework in the country. The study by Cripps et al. (18), however, falls short of identifying the particular deficiencies in the extant legal framework. This paper, therefore, undertakes a situational analysis of the existing legal framework with the view to identifying the gaps that may impede the implementation of a well-functioning governance system in the Malawian health sector, particularly the hospitals under study. The paper provides an empirical analysis that can support the governance reforms in harmony with the call for the implementation of an evidence-based governance system in the health sector (3, 19). Based on Clarke's situational thinking (20), the paper examines the legal status and comprehensiveness of present legal provisions towards institutionalizing sound organizational governance systems for public hospitals. The key research question that the paper addresses is: what sort of organizational governance framework is provided for in the legal framework of public hospitals in Malawi; and secondly, how is it aligned to best practices?

Materials and Methods

Context of the study

The public hospital system of Malawi is organized into three levels: primary, secondary and tertiary levels, which are linked to each other by a referral system (7, 21, 22). The primary healthcare level comprises the health centers and operates as units of district health offices, while the secondary healthcare level is made up of a chain of district hospitals in most political districts of the country (7, 21, 22). Due to decentralization reforms, the primary and secondary healthcare levels were devolved to the district councils (7); and accordingly, their parent ministry is the Ministry of Local Government. The tertiary healthcare level is the final tier, which is made up of the five central hospitals. Unlike district hospitals, central hospitals were not decentralized, and as such, their parent ministry is still the Ministry of Health.

In terms of the extant legal framework, Malawi has

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

single health legislation – the Public Health Act. However, due to decentralization, the Local Government Act has a significant bearing on the governance of district hospitals. The key legislation of the central hospitals is the Public Health Act; on the other hand, district hospitals have two: Public Health Act and Local Government Act. The expectation was that the Public Health Act, being the primary health legislation, would contain the necessary provisions and guidelines towards institutionalizing sound health system governance and public hospital governance; and that the provisions outlined in the Local Government Act would either complement or take precedent over that provided in the Public Health Act, about district hospitals. Figure 1 summarizes salient aspects of the present public health system of Malawi.

Data collection and analysis

The paper employed a qualitative method using document analysis. The process involved perusing relevant legislation that constitutes the legal framework for organizational governance of public hospitals in Malawi. Furthermore, the paper adopted a situational analysis logic propagated by Clarke (20) in undertaking the document analysis.

Clarke's approach was adopted, because it recognizes the primacy of conditions elements by focusing on context. It assumes that "the conditions of the situation are in the situation" (20). Thus, this approach requires the researcher to probe the context and focus on examining the particular condition of the elements of the situation, because these elements "are constitutive of it, not merely surrounding it or framing it or contributing to it [the context]" (20). The approach uses a situational matrix that comprises the following elements or situational variables: local to global elements, major contested issues elements, organizational/institutional elements, discursive constructions of actors elements, political economic elements, non-human elements, human (individual and collective) elements, spatial and temporal elements, symbolic elements, popular and other discourses elements, sociocultural and other empirical elements (20).

In terms of the institutional theory, these elements may collectively represent the situational elements of regulative, normative, and social-cultural pillars of institutions (23). Since this paper focuses on the regulative pillar and thus examines formal governance arrangements, it used the organizational/institutional, political, economic and human elements of the situational matrix as the variables used to conduct the evaluation.

The questions that guided the analysis of the legal situation about hospitals were: (a) Does the present legislations recognize public hospitals as standalone organizations? (b) What kind of organizational governance structure is provided therein? (c) How is the principal-agent relationship expressed therein? (d) What are the conditions of elements that constitute the accountability and transparency mechanisms? and (e) Who are the specified governance actors in the operation of the central and district hospitals?

The data collection and analysis involved line-by-line perusing of extant legislation pertaining to this field in order to determine the particular legal provisions relating to elements that make up the framework of organizational governance for public hospitals. This is followed by examining the comprehensiveness of the arrangements against best practices. The analysis involved both semantic and latent thematic assessment (24). The semantic analysis involved identifying the explicit or surface meanings (24) of the legal provisions guided using relevant governance terminologies such as governance, stewardship, leadership, corporate, management, managers, financial statements, annual reports, audit, and others. Furthermore, a latent thematic analysis was undertaken to examine the underlying ideas and conceptualizations implicit in extant legislation (24).

The process was facilitated by an evaluation guide (Table 1). The evaluation guide was developed based on the provisions of the general code of corporate governance in Malawi and related empirical literature on governance (25-30). The code provides general guidance on organizational governance that is applicable to all organizations in

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

Malawi, including public sector organizations (25). The Malawian code was used because it is a context-specific instrument that prescribes generally agreed standard of corporate governance best practices in the country. On the other hand, to ensure that the evaluation guide is also in harmony with international standards relevant to public sector organizations, reference was made to the corporate governance guidelines that were jointly developed by the International Federation of Accountants and Chartered Institute for Public Finance and Accounting for the public sector organizations (13, 31). The study was ethically approved by the National Health Science Research Committee of the Ministry of Health in Malawi (NHSRC#15/03/1398).

Table 1. Evaluation guide for the regulatory framework

Assessment areas	Assessment elements
1. Governing body	1. Provisions of the roles of the governors 2. Provisions of selection criteria of governors 3. Provisions of the composition of the governing body 4. Provisions of the sub-committees of the governing body
2. Executive management	1. Provisions of the roles of the management team 2. Provisions of the appointment of the top hospital manager
3. Organizational accountability and transparency mechanisms	Provisions of mechanisms for accountability and transparency regarding: 1. Financial reporting 2. Integrated reporting 3. Internal audit 4. External audit

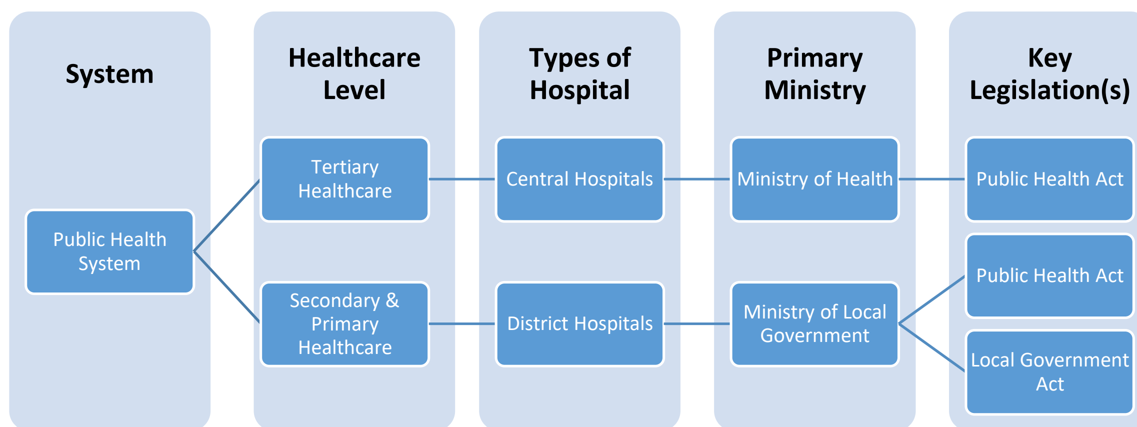

Figure 1. The public hospital system of Malawi

Results

The Public Health Act

The Act was promulgated and enacted in 1948, and it is currently under review in a process that commenced in 2012. A summary of the results of the analysis of the Act is provided in Table 2. As shown in this table, the Act does not contain provisions that regulate the organization and management of either the health system (health system governance) or of the institutions within the health system (organizational governance). Indeed, the Act contains provisions relating to the administration of technical aspects of public health only. This is contrary both to common practice on legislative contents for the other sectoral legislations within the country and public health laws of other countries.

A swift review of other sectoral legislations within the country that included the Environmental

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

Management Act, Water Resources Act, Communications Act, Rural Electrification Act, Education Act and Energy Regulation Act, showed that, apart from dealing with technical issues, these acts also prescribe both systemic and organizational governance frameworks. They explicitly provide for institutional frameworks needed for system and organizational governance. For instance, the Education Act provides the following in relation to the governance of government secondary schools and colleges:

"The management of Government secondary schools and Government colleges shall be under the control of the Minister. The Minister may, where he considers such action desirable for the improvement of education, by order published in the *Gazette*, establish a Board of Governors for any Government secondary school or college or group of Government secondary schools or Government colleges."

In the same vein, Public Health Acts of other countries with a similar legal system as Malawi such as the United Kingdom, New Zealand, South Africa and Ghana, tend to provide similar institutional frameworks of governance of the health system and public hospital organizations (32).

Paradoxically, the Malawian Act provides for an organizational governance framework for "assisted hospitals" which it defines as "hospitals which are maintained in whole or in part by grants-in-aid". In other words, these are non-governmental hospitals that receive government financial support. The Act provides as follows:

"Where, in the opinion of the Minister, it is desirable that a Board of Governors should be set up to manage an assisted hospital or a group of assisted hospitals, he shall cause proposals for that purpose to be placed before the proprietor of that hospital or group of hospitals […]The Minister may, by order published in the *Gazette* establish a Board of Governors for the hospital or group of hospitals to which such proposals relate in accordance with any agreement which may be reached between him and the proprietor."

Accordingly, the Minister decides on the appropriateness of setting up the board of governors to manage assisted hospitals. And, in consultation with the proprietor of the hospital, the Minister can set up the hospital board. The Act requires that the board must comprise of representatives from the Ministry, proprietor, and community.

Local Government Act

The Local Government Act was promulgated and enacted in 1998. One of its key objectives is to operationalize decentralization. Table 3 presents a summary of the findings from the analysis of the Local Government Act. The summary shows that, at the system level (district council level), the Act explicitly provides for all three governance areas of interest namely: governing body, executive management, and accountability and transparency mechanisms. However, it does not provide for an organizational governance framework for entities situated under the district councils. It is perhaps alarming to note that the Act mentions "hospitals" simply as one of several services provided under "other functions" of the district councils. This suggests that district hospitals are regarded as budgetary organizations of the district councils, implying that district hospital governance is embedded within the district governance system. It is therefore urgent to examine the existing framework of the district governance system. Given this state of affairs, the specific provisions for the governance structure of district councils within which the district hospital governance finds itself are perused below.

Governing body

As summarized in part A and presented in Table 4, the Act recognizes district councils as body corporates; accordingly, each district council is an autonomous organization within the public sector. In line with best practices, the Act provides for the establishment of a governing body for each district council. The governing body is comprised of four groups of local stakeholders: (1) elected members – the ward councillors as voting members; (2) Members of Parliament (MPs) as voting members;

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

(3) traditional authorities as non-voting members; and (4) five representatives from special interest groups as non-voting members. The Act provides for the following:

"For every local government area, there shall be a Council consisting of—

(a) One member elected from each ward within the local government area;

(b) Members of Parliament from the constituencies that fall within the local government area, as voting members, ex officio;

(c) Traditional Authorities from the local government area, as non-voting members, ex officio; and

(d) Five persons, as non-voting members, to be appointed by the elected members to cater for the interests of such special interest groups as the Council may determine."

As can be seen, all the other members of the governing body are non-voting, except for ward councillors and MPs. The Act further provides for the specific roles of the governing body. In this regard, it sets out the following:

"The Council shall perform the following functions—

(a) to make policies and decisions on local governance and development for the local government area;

(b) to consolidate and promote local democratic institutions and democratic participation;

(c) to promote infrastructural and economic development through the formulation, approval and execution of district development plans within its jurisdiction;

(d) to mobilize resources within the local government area for governance and development;

(e) to maintain peace and security in the local government area in conjunction with the Malawi Police Service.

(f) to make by-laws for the good governance of the local government area;

(g) to appoint, develop, promote and discipline its staff;

(h) to cooperate with other Councils in order to learn from their experiences and exchange ideas; and

(i) to perform other functions including the registration of births and deaths and participate in the delivery of essential local services."

Accordingly, these roles are strategic and speak to the provision of overall direction and oversight of the district executive management team of the council. It is worth noting that although the governing body is mandated "to appoint, develop, promote and discipline its staff", this agency is limited to staff of lower positions. As will be observed in the next subsection, the executive management team is appointed by the Minister and the Local Government Service Commission.

In terms of the appointment of the members of the governing body, the Act requires the ward councillors to be appointed through public elections, whereas MPs and traditional authorities are appointed by virtue of their positions within the districts. On the other hand, representatives of various interest groups are appointed by the elected members. Finally, the Act provides for the establishment of sub-committees for the governing body which includes finance, development, education, works, health and environment and appointments and disciplinary committees. The Act stipulates that:

"The Council shall establish the following committees— (a) the Finance Committee; (b) the Development Committee; (c) the Education Committee; (d) the Works Committee; (e) The Health and Environmental Committee; and (f) The Appointments and Disciplinary Committee."

Executive management

As summarized in part B on Table 4, the Act provides for the establishment of a secretariat for each district council responsible for the implementation of the direction provided by the

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

governing body. The secretariat is headed by the district commissioner who is responsible for:

"(a) implementing the resolutions of the Council;

(b) the day-to-day performance of the executive and administrative functions of the Council;

(c) the supervision of the departments of the Council; and

(d) the proper management and discipline of the staff of the Council."

Other members of the executive management team of the secretariat are the Director of Finance; the Director of Planning and Development; the Director of Works, the Director of Administration, the Director of Health and Social Services, and the District Education Manager (21, 33). In terms of appointments, the Act stipulates that "the District Commissioner shall be appointed by the Minister" and that "[A]ny person holding a post of Director grade in the Council shall be appointed by the Local Government Service Commission."

It is worth noting that, although the Local Government Act makes no mention of the District Health Management Teams (DHMTs) who, in practice, play a salient role. The "DHMTs are located within district hospitals … have dual responsibilities of managing both the district hospitals and wider district health services" (7). They are headed by Districts Directors of Health and Social Services. According to the health sector's strategic plan, the major challenge with the current setup is that "the functional roles and responsibilities of DHMT members are not entirely clear and there is a lack of terms of reference (TORs) and job descriptions for individual positions" (7).

Accountability and transparency mechanisms

As summarized in part C and shown in Table 4, the Act provides for the annual preparation and publication of "an annual report of its work and of the local government affairs of its area for the preceding financial year". The copies of the report are required to be:

"(a) delivered to the Minister;

(b) deposited at every public office of the Council and be made available for inspection free of charge by any interested person during normal hours of business; and

(c) supplied to any person or to the press or other news media upon application on payment of such fee, if any, as the Council may prescribe."

This provision may implicitly suggest integrated reporting; that is, reporting on the performance of both financial and non-financial information in order to provide a holistic picture of the state of things to citizens (34). With regards to financial reporting, the Act requires councils to "keep proper books of accounts and other records …" and to "produce statements of final accounts …" However, the Act makes no mention of the preparation and presentation of the reports and financial statements for individual entities within the councils such as district hospitals. In addition, the Act does not provide guidance on the nature and minimum content of financial statements and the nature and extent of the annual report.

In satisfying the principle of accountability, the Act provides for an upward submission process of financial statements, which facilitates two-staged scrutiny. The financial statements are first submitted to the Local Government Finance Committee (LGFC), which then forwards them to the Auditor General for external auditing. The Act provides as follows: "The Council shall submit the final accounts to the Local Government Finance Committee which shall forward a copy to the Auditor General". The LGFC was established by the Act as a high-level ministry-wide entity responsible for ensuring sound financial governance in local authorities. It has its permanent secretariat, and it is empowered to take appropriate corrective and disciplinary measures to any non-compliant local authority.

The Act further provides that the produced financial statements must be audited by the Auditor General (AG) or by an auditor appointed by him/her. The AG is charged with carrying out not only the normal

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

annual audits, but also surprise audits and investigations as may be seen fit. Of course, external auditing is an essential aspect of organizational governance, because the "auditors … serve as an added layer of governance by subjecting outputs of accounting to independent verification, investigation, and evaluation." (30). The Act also requires the AG to submit the audit report to the Minister, LGFC and the respective councils. In this regard, the Act provides as follows:

"The accounts of the Council shall be audited by the Auditor General or an auditor appointed by him. The Auditor General may carry out surprise audit, investigations or any other audit considered necessary. The Auditor General shall give his report of the audited accounts to— (a) the Minister; (b) the Local Government Finance Committee; and (c) the Council."

Apart from external audits, the Act requires the establishment of an internal audit function within the district councils; however, it provides no details on the nature and scope of the function. Instead, the Act simply states that "[T]he Council shall have an Internal Audit Department". This provides a perhaps too great degree of discretion in deciding the nature and scope of the function. Internal auditing is an internal mechanism that assists executive management as well as the governing body to manage the risk of organizational failure effectively by not only identifying areas that need management intervention and ensuring that organizational goals are achieved but also in providing recommendations on appropriate management action (30). The internal audit function needs to be accorded sufficient authority and weight within entities in order to be effective. The best and undisputed way to achieve that is to provide for the minimum standard within the legislation with discretionary power to the authorities to upgrade its status where it is deemed necessary.

Table 2. Summary of results of analysis of the Public Health Act

Assessment areas	System level	Hospital level
Governing body	No	No
Executive management	No	No
Accountability and transparency mechanisms	No	No

Table 3. Summary of analysis of the Local Government Act

Assessment areas	System level	Hospital level
Governing body	Yes	No
Executive management	Yes	No
Accountability and transparency mechanisms	Yes	No

Table 4. Summary results of analysis of provisions of the Local Government Act on specific elements

		System level	Hospital level
(A)	**Assessment elements on governing body:**		
1.	Provisions for roles of the governors	Yes	No
2.	Provisions for selection criteria of governors	Yes	No
3.	Provisions for composition of the governing body	Yes	No
4.	Provisions for sub-committees of the governing body	Yes	No
(B)	**Assessment elements on executive management:**		
1.	Provisions of the roles of management team	Yes	No
2.	Provisions of the appointment of the top manager	Yes	No
(C)	**Assessment elements on accountability and transparency mechanisms:**		
1.	Financial reporting	Yes	No
2.	Integrated reporting	Yes	No
3.	External audit	Yes	No
4.	Internal audit	Yes	No

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

Discussion

Upon undertaking the present study, the expectation was that the primary legal instruments that regulate the health sector in Malawi would provide clear health system governance and organizational governance and guidelines for health entities, as is the practice across the globe. However, this is not the case, as there is no mention of any governance framework in the Public Health Act generally, or in the Local Government Act, in relation to district hospitals. The provisions and practices in place suggest that public hospitals in Malawi are regarded as budgetary organizations of the Ministry of Health and district councils, rather than being autonomous organizations (11, 35). As such, they do not have their own separate organizational governance framework. They, therefore, rely on the system of governance of their parent entities: the Ministry of Health, in case central hospitals, and district councils, in case of district hospitals. The problem with this kind of organizational structure is that while budgetary organizations operate separately, these hospitals are simply regarded as departments of the parent entity (35, 36). The heads of the organizations (hospitals in this case) therefore become mere administrators with limited managerial latitude, because authority is lodged in the executive management of the parent entity (35). The hospitals can therefore not have their own governance organs. This situation obscures organizational visibility, which is vitally important for effective governance – particularly in ensuring the sound implementation of the principles of responsibility, transparency and accountability.

It must be borne in mind that hospitals are unique institutions (37), that require separate, specially designed governance frameworks within the common or the overall "system's" governance framework. In fact, even within the health sector, it is argued that different entities constituting it (such as institutions dealing with insurance, financing, pharmaceutical, training and the like) require their own unique governance mechanisms to be effective (3). It is argued that the public hospitals may have governance problems that resemble those faced by other organizations; however, it has been observed that their problems are rather more extreme and complex (38). This situation necessitates working towards establishing their own governance framework. Thus, the present situation of being subject to one common governance framework undermines the natural uniqueness of public hospital governance.

Apart from the generality of the governance framework that obfuscates and disregards the peculiarity of the public hospitals, the present governance system and legal instruments that were analyzed in the present study suffer from a range of operational challenges, which are addressed below.

In terms of the governing body, the legal framework is not clear about the specific body of actors that primarily constitute the governing body of the central hospitals. Accordingly, this role may be lodged with the executive management of the Ministry of Health, the cabinet or the national assembly. If it is the executive management of MoH, it means that one is combining the health system governance, organizational governance and management functions of central hospitals. It follows that such an approach is responsible for constitutive governance – making fundamental decisions about the content of policy and organizational arrangements for its delivery. Other decisions include directive governance, which pertains to facilitating the conditions needed to realize the desired outcomes; as well as operational governance – including managing the realization process (39, 40).

Due to the significant scale of the health sector, there is high probability of failure to clearly and effectively segregate the roles in practice. The combination of managerial roles at MoH while considering hospital governance as a phenomenon that requires more autonomy may be a recipe for governance impropriety. Indeed, De Geyndt (11) observes that one of the reasons why public hospital governance tends to be disorderly is failure to properly define and separate the respective roles of MoH, hospital governance and management. On the other hand, if the governing body is the cabinet or

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

the national assembly, it is doubtful whether these entities can dedicate sufficient time to effectively direct and control the performance of each of the four central hospitals, considering their other endeavours across the entire public sector.

As regards district hospitals, the extant Malawian legal framework implies that the district councils act as the governing body. It follows that the district councils combine the governance of the district public system and the organizational governance of all the entities lodged under it. Due to the sheer size and demands of each role, it is more likely than not that organizational governance of public hospitals may get receive more attention than required as the district councils shoulder the burdens of all the sectors at the district level, including health (36). The Local Government Act lists sixteen "other functions" besides health, which the district councils are responsible for. Above all, the functions of health are far-reaching; district hospitals are one of the components of the district health system (7).

Another aspect worth noting concerns the membership of the governing body of the district councils. Although the Act stipulates the inclusion of a number of stakeholder groups, which is in line with the principles of co-governance, the councils are dominated by politicians (i.e., ward councillors and MPs) because they alone have voting power. They also appoint the representatives of interest groups. This state of affairs severely diminishes the influence of the other stakeholders in terms of making meaningful contributions to the governance of the councils, and by extension to district hospitals. The present arrangement reduces any stakeholders apart from politicians to spectator status. A further salient challenge is the constitution of the membership of the governing body. The Act does not provide mechanisms for ensuring that the membership gives the "right mix of expertise, experience, skills and knowledge" (25) as required by the code of corporate governance. The constitutional process, particularly of the voting members, is left to "natural selection" through public elections.

In terms of hospital management, the legal framework is silent about the specific executive team overseeing public hospitals. In any organizational structure, budgetary executive management powers are lodged with the executive management of the parent entities. This approach is less than optimal if one were to have sound organizational governance because executive powers are concentrated in the hands of the people who are at a safe distance from the actual provisioning of the services. Furthermore, their management duties concerning the hospitals are basically an extension of their immediate managerial duties at the parent entity; as such, they are likely to put more effort into the immediate (council level) than on "peripheral" matters (hospitals and other entities under the council). Ironically, the lack of executive power makes hospital management teams into teams of administrators (35).

Challenges about accountability and transparency mechanisms include a range of issues. The legal framework is silent on the presentation and publication of financial statements for each entity under the ministry and councils. Best practice requires that each entity should produce a complete set of financial statements that should then be consolidated at higher levels; that is, separate financial statements must be composed and integrated into consolidated financial statements. This practice ensures organizational transparency and visibility, and consequently, it enables the effective monitoring of the performance of each entity. Producing consolidated financial statements may hide an entity's actual financial state, and thus also their financial performance. However, on a positive note, the Local Government Act provides for the production of both financial and non-financial performance reports. This is in harmony with the clear purpose of the public sector, which is to satisfy the citizens' needs and to work towards the public benefit (13). There is a need to amalgamate reports into a single report in keeping with the principles of integrated reporting being advocated by the Malawi Code II (25). Balanced

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

reporting in the public sector is critical to allow for a holistic assessment of performance (34).

In terms of external auditing, the Local Government Act provides for a proper system of external auditing for financial statements. However, further assessment is needed on whether separate audit reports are provided for the individual entities (in the case of the present paper, these entities include public hospitals), over and above the consolidated audit report for the whole sector. The present consolidated audit report procedure may not be appropriate for the governance of individual entities, because it may obscure the state of things at entities level. This is because issues that could have been material on the entity level could be treated as immaterial at the consolidated level. On the other hand, with regard to the internal audit, the legal framework is silent on the nature and organizational status of this function. Proper legislative guidelines would increase the regard given to this function and its recommendations.

Conclusion

The paper set out to present a situational analysis of the legal framework for the governance of public hospitals in Malawi. The basic thrust of the analysis suggests deficiencies in the present legal framework in Malawi's health sector that need to be addressed in order to improve the governance system of the public hospitals. The paper further shows that the present legal framework does not provide any specific governance framework for the public hospitals in Malawi. This may be the case because the hospitals appear to be treated as budgetary organizations of the Ministry of Health and district councils; and thus, by implication, the hospital governance framework is entrenched, and not successfully so, within the governance framework of the parent entities. This situation undermines the uniqueness of hospital governance and contributes towards organizational invisibility with consequent adverse impacts on the implementation of sound governance principles of responsibility, transparency and accountability. Since the country seeks to adopt a private sector style towards the governing public hospitals, the enactment of a clear and stand-alone legal framework for the governance of public hospitals should top the list of urgent actions. The paper further demonstrates the importance of evaluating the condition of the elements of the legal framework in order to determine the state of governance of public hospitals. In the process of undertaking the present study, the principles of situation analysis logic in research have been useful; these principles were also extended to present contextual purposes. Limitations of the present study include that the researchers focused on an analysis of the "rules-on-paper", and further studies can complement the findings of this study with research on the "rules-in-practice". Indeed, the paper recommends further studies on extant and ideal governance practices in the health sector, particularly in Malawian hospitals.

Acknowledgements

The author would like to thank the reviewers for their comments that contributed to improving the quality of the paper.

Conflict of interests

The author declares no conflict of interests.

Authors' contributions

Lipunga AM designed research, conducted research, analyzed data, and wrote the paper. Lipunga AM had primary responsibility for the final content. Lipunga AM read and approved the final manuscript.

Funding

Non applicable.

References

1. Greer SL, Wismar M., Figueras J. Introduction: Strengthening governance amidst changing governance. Berkshire: Open University Press; 2016. p. 3-26 .
2. Delaney L. The challenges of an integrated governance process in healthcare. Clinical Governance: An International Journal. 2015; 20(2): 74-

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

81. doi: 10.1108/CGIJ-02-2015-0005.
3. Fryatt R, Bennett S, Soucat A. Health sector governance: Should we be investing more?. BMJ Glob Health. 2017; 2(2): e000343. doi: 10.1136/bmjgh-2017-000343.
4. Abimbola S, Negin J, Martiniuk AL, Jan S. Institutional analysis of health system governance. Health Policy and Planning. 2017; 32(9): 1337–44. doi: 10.1093/heapol/czx083.
5. Ayed TL, Hajlaoui RH, Ayed AH, Badr OM. Necessity of changing modes of the traditional hospital governance. Journal of Advanced Management Science. 2015; 3(1): 60-6. doi: 10.12720/joams.3.1.60-66.
6. Seitio-Kgokgwe O, Robin RDC, Hill PhC, Barnett P. Analysing the stewardship function in Botswana's health system: Reflecting on the past, looking to the future. International Journal of Health Policy and Management. 2016; 5(12): 705–13. doi: 10.15171/ijhpm.2016.67.
7. Malawi Government. Health Sector Strategic Plan II (2017-2022). Available from URL: http://www.nationalplanningcycles. org/sites/default/files/planning_ cycle_ repository/malawi/health_sector_strategic_ plan_ii_030417_smt_dps.pdf. Last access: February 8, 2018.
8. Martin W, Pauly B, MacDonald M. Situational analysis for complex systems: Methodological development in public health research. AIMS Public Health. 2016; 3(1): 94–109. doi: 10.3934/ publichealth.2016.1.94.
9. Senkubuge F, Modisenyane M, Bishaw T. Strengthening health systems by health sector reforms. Global Health Action. 2014; 7(1): 1-7. doi: 10.3402/gha.v7.23568.
10. Jie G. Corporate governance in hospital: Case of public hospital corporate governance structure reform in China [Master's thesis]. Lisbon: ISCTE Business School, Marketing, Operations and General Management; 2015.
11. De Geyndt W. Does autonomy for public hospitals in developing countries increase performance? Evidence-based case studies. Social Science & Medicine. 2017; 179: 74-80. doi: 10.1016/j.socscimed.2017.02.038.
12. Börzel TA, Risse Th. Governance without a state: Can it work?. Regulation and Governance. 2010; 4: 113–34. doi: 10.1111/j.1748-5991.2010.01076.x.
13. Matei A, Drumasu C. Corporate governance and public sector entities. Procedia Economics and Finance. 2015; 26: 495-504. doi: 10.1016/S2212-5671(15)00879-5.
14. Swanson RCh, Atun R, Best A, Betigeri A, de Campos F, Chunharas S, et al. Strengthening health systems in low-income countries by enhancing organizational capacities and improving institutions. Globalization and Health. 2015; 11(5): 1-8. doi: 10.1186/s12992-015-0090-3.
15. Huss R, Green A, Sudarshan H, Karpagam SS, Ramani KV, Tomson G, et al. Good governance and corruption in the health sector: lessons from the Karnataka experience. Health Policy and Planning. 2011; 26(6): 471–84. doi: 10.1093/heapol/czq080.
16. Brinkerhoff DW, Bossert ThJ. Health governance: Principal–agent linkages and health system strengthening. Health Policy and Planning. 2014; 29(6): 685–93. doi: 10.1093/heapol/czs132.
17. Adegbite E. Corporate governance regulation in Nigeria. Corporate Governance The International Journal of Business in Society. 2012; 12(2): 257-76. doi: 10.1108/14720701211214124.
18. Cripps G, Kress D, Olson C, Ross A. Health Reform Policy Issues in Malawi: A Rapid Assessment. Bethesda: Abt Associates Inc; 1998.
19. Chanturidze T, Obermann K. Governance in health – the need for exchange and evidence. International Journal of Health Policy and Management. 2016; 5(8): 507–10. doi: 10.15171/ijhpm.2016.60.
20. Clarke AE. Situational Analysis. In: Mills AJ, Durepos G, E. Wiebe E, editors. Encyclopedia of Case Study Research. London: SAGE Publications, Inc; 2012.
21. Leiderer S, Hodick B, Kabey E, Roll M, Schnitzer S, Ziegenbein J. Public financial management for PRSP implementation in Malawi: Formal and informal PFM institutions in a decentralising system. Bonn: German Development Institute. 2007.
22. Asbu EZ, Walker O, Kirigia JM, Zawaira F, Magombo F, Zimpita P, et al. Assessing the efficiency of hospitals in Malawi: An application of the Pabón Lasso technique. Available from URL: http://www.aho.afro.who.int/en/ahm/issue/14/reports/assessing -efficiency- hospitals- malawi- application-pab%C3%B3n- lasso-technique. Last access: March 14, 2018.
23. Scott WR. Institutions and Organisations: Ideas,

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]

Interests, and Indentities. 4th ed. Thousand Oaks: SAGE Publications, Inc; 2014.

24. Braun V, Clarke V. Using thematic analysis in psychology. Qualitative Research in Psychology. 2006; 3(2): 77-101. doi: 10.1191/ 1478088706qp063oa.
25. Institute of Directors of Malawi. The Malawi Code II Code of Best Practice for Corporate Governance in Malawi: Overarching Provisions. Institute of Directors of Malawi; 2010.
26. Selaratana S. Accountability in the Thai public sector [PhD thesis]. Glassgow: University of Glasgow; 2009.
27. Chiluwe QW, Nkhata BA. Analysis of water governance in Malawi: Towards a favourable enabling environment?. Journal of Water, Sanitation and Hygiene for Development. 2014; 4(2): 313-23. doi: 10.2166/washdev.2014.087.
28. Abor PA, Abekah-Nkrumah G, Abor J. An examination of hospital governance in Ghana. Leadership in Health Services. 2008; 21(1): 47-60. doi: 10.1108/17511870810845905.
29. Deloitte. Developing an effective governance operating model: A guide for financial services boards and management teams. Available from URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Financial-Services/dttl-fsi-US-FSI-Developinganeffectivegovernance-031913.pdf. Last access: January 9, 2018.
30. Mihret DG, Grant B. The role of internal auditing in corporate governance: A Foucauldian analysis. Accounting, Auditing & Accountability Journal. 2017; 30(3): 699-719. doi: 10.1108/AAAJ-10-2012-1134.
31. IFAC and CIPFA. International Framework: Good Governance in the Public Sector. New York and London: IFAC and CIPFA; 2014.
32. Lipunga AM, Tchereni BMH, Bakuwa RC. Emerging structural models for governance of public hospitals. International Journal of Health Governance. 2019; 24(2): 98-116. doi: 10.1108/IJHG-03-2019-0018.
33. Tostensen A. Malawi: A Political Economy Analysis. Available from URL: https://nupi.brage.unit.no/nupixmlui/bitstream/handle/11250/2461122/NUPI_rapport_Malawi_Tostensen.pdf?sequence=1. Last access: March 14, 2018.
34. Cohen S, Karatzimas S. Tracing the future of reporting in the public sector: Introducing integrated popular reporting. International Journal of Public Sector Management. 2015; 28(6): 449-60. doi: 10.1108/IJPSM-11-2014-0140.
35. Harding A, Preker AS. A Conceptual Framework for the Organizational Reforms of Hospitals. In: Preker AS, Harding A, editors. Innovations in Health Service Delivery: The Corporatization of Public Hospitals. Washington D.C.: The World Bank; 2003. p. 23 - 78.
36. Hendricksi SJ, Buchi E, Seekoe E, Bossert T, Robertsi M. Decentralisation in South Africa: Options for district health authorities in South Africa. 2014. In: Padarath A, King J, English R, editors. South African Health Review 2014/15. Durban: Health Systems Trust; 2015. P. 59-72.
37. Hunter M. Principles and Guidelines for Governance in Hospitals. Available from URL: https://www.cipearabia.org/files/pdf/Corporate_Governance/Principles_and_Guidelines_for_Governance_in_Hospitals_EN.pdf. Last access: September 17, 2017.
38. Hirigoyen G, Laouer R. Convergence of corporate and public governance: Insights from board process view. SAGE Open. 2013; 1–8. doi: 10.1177/ 2158244013494384.
39. Hill M, Hupe P. Analysing policy processes as multiple governance: Accountability in social policy. Policy and Politics. 2006; 34(3): 557-73. doi: 10.1332/ 030557306777695280.
40. Schneider H. The governance of national community health worker programmes in low-and-middle income countries: An empirically based framework for governance principles, purposes and tasks. International Journal of Health Policy Manangement. 2019; 8(1): 18-27. doi: 10.15171/ ijhpm.2018.92.

[Downloaded from jebhpme.ssu.ac.ir on 2024-06-26]

[DOI: 10.18502/jebhpme.v7i1.12352]