

**REFLECTIONS ON THE IMPLEMENTATION OF SECTION 11 OF THE
GENDER EQUALITY ACT (2013) IN MALAWI'S PUBLIC SERVICE**

MASTER OF PUBLIC ADMINISTRATION AND MANAGEMENT THESIS

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UNIVERSITY OF MALAWI

SEPTEMBER 2021



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GENDER EQUALITY ACT (2013) IN MALAWI'S PUBLIC SERVICE

M.A. (PUBLIC ADMINISTRATION AND MANAGEMENT) THESIS

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Submitted to the Department of Political and Administrative Studies, Faculty of
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Public Administration and Management

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SEPTEMBER, 2021

DECLARATION

I, the undersigned hereby declare that this thesis/dissertation is my own original work which has not been submitted to any other institution for similar purposes. Where other people's work has been used, acknowledgements have been made.

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DEDICATION

To my father, Dr. Mtafu A.Z Manda. Your support throughout my studies does not go unnoticed. I am grateful. To my Mother, thank you. And to my son, Nathanael, you are my light.

ACKNOWLEDGMENTS

Firstly, let me thank my Heavenly Father, for getting me where I am, who would have thought? Let me express my gratitude to my supervisors, Prof. H Kayuni and Prof. D. Banik, you have been patient with me throughout the process, I do not take that for granted. My parents, thank you for every effort you have put into my studies, not just this time but throughout, I am really grateful. I hope I make you proud. My siblings, Vincent, Tamia, Ireen, Chawa and Zenga, you show me the true meaning of family every passing day, thank you. I would like to thank my friends: Foster Gondwe, as usual, you are there when I call, I am grateful. Charles Banda Jnr, thank you for all the assistance, I really appreciate. All my MPAM classmates, with a special mention to Fred Kalonga, Ruth Bonga and Bester Chilombo, thank you for the motivation. Christina Maseko, I owe you. Chisomo Phiri, Gift Chimodzi, Charity Kayuni and Victor Mhango, thank you for sparing me when I needed to be spared, you are good bad company. A special thank you to Cynthia Kamulete, my stay in Zomba was made easy because of you, your investment towards my studies has not gone unnoticed. Madalitso Chipiko and Martha Frank, thank you for showing me I can count on you even if it's last minute. And Raphael Kapalamula. words can't even express how grateful I am for you, your push got me here. Martin Ndovi, this document owes you the utmost gratitude. Thank you for much for coming through for me. So many people have been of great help to me in different ways through-out my studies and I do not take that for granted. Your names may not have been mentioned here but that does not mean I do not recognise your effort, thank you for everything. I thank God for you all.

ABSTRACT

This study assessed the implementation of section 11 of the Gender Equality Act in the public sector which provides for a 60-40 gender quota in recruiting staff to the public service. Thus the study's objectives were examining the awareness of recruiters in the public service, evaluating the measures taken in incorporating the section in recruitment processes and discussing the challenges that public servants are experiencing with the implementation of the section. The study used a mixed method study design to explore the issues and analyse the findings. The study found that implementation of the section is being done in a haphazard manner as laws and policies guiding the recruitment process in the public service have not been updated to explicitly incorporate the provisions, leaving the process to human interpretation. Some of the notable challenges included outdated policies, lack of political will, unavailability of gender focal point officers, lack of gender mainstreaming initiatives and vacancies. The study thus concluded that there is little effort being put in place to ensure the implementation of the section. The study's conclusion entails the need to re-strategize as far as implementation of the section is concerned.

Keywords: Gender equality, Gender quota, Public policy, Implementation

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COMMON ABBREVIATION USED IN TEXT

CCAM	Chitukuko Cha Amaim'Malawi
CEDAW	Convention of the Elimination of Discrimination Against Women
DHRMD	Department of Human Resources, Management and Development
GEA	Gender Equality Act
IEC	Information, Education and Communication
MACRA	Malawi Communications Regulatory Authority
MDAs	Ministries, Departments and Agencies
MEC	Malawi Electoral Commission
MHRC	Malawi Human Rights Commission
MPSR	Malawi Public Service Regulations
NGO	Non-Governmental Organisation
PSA	Public Service Act

CHAPTER ONE

INTRODUCTION

1.0. Introduction

This chapter provides a general introduction to the study by among others presenting the background to the study, it provides for the problem statement that the study sought to address as well as the research questions and objectives of the study. The justification for conducting the study is also offered in this chapter and finally the chapter offers an overview of the thesis as a whole.

Public Administration is defined as the organisational structures, managerial practices, and institutionalised values which officials employ in the pursuit of policy implementation and to endorse the will of governments (Carey and Friel, 2015). The main function for public administrators is policy implementation. As Edwards (2017:1) puts it, “public administration is the implementation of government policy.” This is the carrying out of basic policy decisions, usually incorporated in a statute but which can also take the form of important executive orders or court decisions. Policy decisions identify a problem or situation to be addressed, stipulate objectives to be pursued and structure the implementation process.

Government agencies begin the job of policy making by establishing procedures, writing guidance documents or issuing grants in aid to other governments. Public policy can be defined as “courses of action, regulatory measures, laws, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives.” (Edwards, 2017:67) Public policy is commonly embodied in constitutions, legislative acts, and judicial decisions.

Policy implementation, the main function of public administration, involves public servants putting selected policy option into practice. This could entail creating new regulations or removing existing regulations, creating a new government program or service, creating a new subsidy or grant, etc. In those lines, the Malawi National Assembly, in 2013, enacted the Gender Equality Bill which was later assented to by the President to become the Gender Equality Act of 2013 (GOM, 2013). The aim of the Act is to take action and address the inequalities that exist between men and women. The Act seeks to promote equal integration, influence, empowerment, dignity, and opportunities for men and women in all functions; to redress for gender discrimination, harmful practices and sexual harassment, and to provide public awareness on the promotion of gender equality in Malawi (Mesikano-Malonda, 2016).

As a way of promoting gender equality through gender mainstreaming in the public sector, the act in Section 11 provides for a quota in the percentage of each gender in the sector. The section provides that;

“(1) notwithstanding anything contained in the Public Service Act, an appointing or recruiting authority in the public service shall appoint no less than forty per cent (40 per cent) and no more than sixty per cent (60 per cent) of either sex in any department in the public service.

(2) subsection (1) shall not apply where any of the following three conditions prevail:

(a) a member of either sex does not hold the minimum relevant educational qualifications or experience for the post; (b) a member of either sex offered the post has not accepted the offer; or (c) a member of either sex with the relevant educational qualifications or experience required for the post was not available or could not be identified for the post.” (GOM, 2013:6)

As pointed out in the *Malawi Public Service Management Policy 2018-2022*, Malawi tends to have laws and policies that are gaining dust in office shelves due to lack of implementation (GOM, 2018). This study was designed to assess the extent to which implementation is a challenge in Malawi despite the existence of progressive laws and policies. The study used the Gender Equality Act as the case study to discuss the extent of this implementation challenge. This was done by checking what specific government ministries, departments and agencies are doing to ensure the implementation of the section, exploring what challenges the agencies are experiencing and discussing these challenges.

1.1 Background

Since Malawi attained its political independence from Britain in 1964, Malawi's public service has experienced various changes. In the early 1960s and the end of the 1970s, focus was on economic growth (Duravell, 2001). In the period between 1980 and 1994 there were a lot of imbalances including poor fiscal discipline and an increase in human rights violations which led to aid retrenchment. From 1994, Malawi switched to a pluralistic government and introduced structural adjustment programs aimed at promoting human rights and revamping the Malawi economy (Duravell, 2001).

Many current dynamics of gender relations in Malawi have roots in pre-colonial and colonial times (Chanika, Lwanda and Muula, 2013). As a British colony, from a governance perspective, gender issues reflected those in other colonies, but had an added complication of local cultural factors. The colonial-era gender agenda was one of "agriculture, community development, and also education [...], home economics [...], needlecraft, [...] home care skills, cookery and nutrition" (Ngwira, 2010: 1). During the nationalist phase, women played a significant role in the struggle for independence (Chanika, Lwanda and Muula, 2013). After independence, the then state president Dr Hastings Kamuzu Banda created a movement for women with gender rights dependent on him as their protector. His idea of gender liberation was translating the individual, uncle relationship from the personal to the state level, with him as the national uncle, rather than pushing for individual and national gender equality (Green and Baden, 1994). This was a vision he had spelt out in *Our African Way of Life* in 1946. English common law, constitutional law (enacted in 1966 and amended in

December 1993) and a court system based on customary law comprised the basis of the legal system in Malawi (Green and Baden, 1994).

The overall policy orientation of the Government of Malawi in relation to women was to pursue their integration into all development sectors (Green and Baden 1994). To this end, sections and or programmes focusing on women were set up in many ministries and government departments. The Ministry of Community Services operated a Home Economics programme (focused primarily on income generation since the early 1980s); the Ministry of Agriculture operated a women's programme; the Ministry of Health had a Maternal and Child Care Programme, and both concerned with overseeing the implementation of local development projects, the Ministry of Forestry, and the Local Government Department had a specific focus on women (Green and Baden 1994). The national machinery for women was the National Council for Women in Development (NCWID), it operated under the Ministry of Community Services, and was set up in 1984 with the following priorities: (a) assist in the establishment of institutions to formulate, implement and monitor women's programs; (b) coordinate all women in development (WID) programs; (c) promote awareness of opportunities provided by the government to women; (d) evaluate the contribution that women make to development.

Malawi became party to the CEDAW in 1987, two years after the follow-up Nairobi UN Women's Conference. Dr Banda's first major Malawian Statement of Development Policies: 1971– 1986 “did not mention gender or women's issues” (Ngwira, 2010: 1). It was not until the early 1980s, that the Women in Development (WID) movement

started to influence the Ministry of Agriculture's extension programmes towards empowering women with access to strategic resources and skills such as credit and farm inputs (Ngwira, 2010). Representatives of ministries, universities, NGOs, statutory corporations and CCAM sat on the seven committees of NCWID, which were the committee of Small and Medium-Scale Industries; Education and Training; Family Health and Welfare; Employment; Agriculture and Resources; the Legal committee; and Planning, Research and Evaluation. Various research projects were initiated by these committees (e.g. research into decision-making related to family health; women's psychiatric problems; gender differentials in attendance and drop-out rates at secondary school level). Contributions to the UN Committee for the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) were made by the Legal Committee and the latter body pursued and won the right to three months paid maternity leave for female public sector workers (UNIDO, 1993:3 cited in Ngwira, 2010: 47).

There were a lot of constraints to political participation by women in Malawi prior to the decision to pursue multi-party system in 1993 (Green and Baden, 1994). The Beijing Conference in 1995, which took place soon after Malawi's multiparty elections of 1994, was more influential in attitudinal changes, as government's policy on gender and liberating and empowering the girl child became a key area of policy (Ngwira, 2010). Despite these gains, however, gender activists lost opportunities or were thwarted by the male dominated administration of Bakili Muluzi, which sought to keep women on the periphery as supporters without acting to significantly improve their status. Despite

the aspirations of the Vision 2020 exercise in 1997/1998, which officially began in 2000, no legislative steps of note occurred (Chanika, Lwanda and Muula, 2013). Thus even though one of the aspects of vision 2020 was promoting gender equality, there were no legislative steps taken to put gender equality as a priority for the country. At this point one will note that the 1990s had a gender imbalance as it was male-dominated. Despite the fact that following the shift towards a democratic system of government, Section 20 (2) of the Constitution of Malawi (1995) provided for non-discrimination based on many grounds including gender. Section 24 (1) provides for rights of women to be equal to those of men and Section. 24 (2) provides for the passing of legislation to address discrimination against women. This remains the case to date as indicated in the Constitution of Malawi (2016).

In the quest to pass legislation aimed at addressing inequalities in society and discrimination against women, many laws have been passed. One of those laws is the Gender Equality Act (GEA) of 2013, whose aim is to “promote gender equality, equal integration, influence, empowerment, dignity and opportunities for men and women in all functions of the society, to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment, to provide for public awareness on promotion of gender equality, and to provide for connected matters,” (GOM 2013: 2). The GEA of 2013 came about as a recommendation from the Special Law Commission which was established to further fulfil Malawi’s Commitments to international Laws and Policies on Gender equality (Malawi Law Commission, 2011). One of the issues relating to gender equality that the commission looked at was participation of women

in decision making in the public service. As a guiding international treaty, the commission reiterated the position of the CEDAW Committee which Recommended that “In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so that they may make their contribution to the goals of equality, development and the achievement of peace” (Office of the Human Rights Commission 1997, paragraph 17 as cited in Malawi Law Commission, 2011). The Malawi Law Commission report further points out that a gender perspective is critical if these goals are to be met and if true democracy is to be assured. For these reasons, it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfil the guarantee that the enjoyment of human rights is for all people regardless of gender. Women’s full participation is essential not only for their empowerment, but also for the advancement of society as a whole.

Processes to promote women in the Malawi Public Sector were underway even as of 2007 with the Office of the President and Cabinet engaging a Gender Equality Officer in its Human Resources Department under the CIDA Gender Equality Support Programme. Additionally, women were appointed to various leadership positions in the public sector including the clerk of parliament, heads of foreign missions, judges and chief executive officers in the parastatal organizations. However, as Law Commission (2011) observed the initiatives that had seen a rise in the number of female appointments are based on the political will of the Government of the day. As such there

was need for “a clear and definitive policy to ensure consistency in the promotion of the participation of women. A more systematic approach, backed by clear guidelines in law or policy, is necessary to ensure that Government efforts to promote female representation are more consistent and enduring” (Law Commission, 2011:44) and thus Section 11 of the GEA.

Norway was the first country in the world to introduce mandatory gender quotas on corporate boards, doing so in 2003. With regard to legislative actions targeted on private (non-state-owned) companies, Spain was the first EU country that introduced, in 2007, a quota to secure the presence of women on corporate boards. Belgium, France, Italy, and the Netherlands followed in 2011. Germany passed a similar legislation, which is in force as of 2016 (Comi, Grasseni, Origo and Pagani, 2019.) Italy and the Netherlands have temporary gender quotas with the latter having a target of only 30%. (Mensi-Klarbach and Seierstad, 2020). In Spain, a gender quota on corporate boards was introduced within a wider law on equal opportunities (the 2007 Ley de Igualdad). The law (Article 75) establishes a quota of at least 40% of each gender on the boards of all publicly limited companies with more than 250 employees. Companies were expected to reach that quota by 2015. The law does not establish sanctions to punish non-compliers, but it states that gender diversity in the boardroom will be positively evaluated by the public administration when awarding public contracts (Comiet. *al*, 2019). In the African context, most countries, such as Rwanda, Uganda and Namibia introduced gender quotas as well, however, those quotas are for elected positions and not necessarily in the employment sector.

1.2 Problem Statement

Most policies and provisions in Acts that are implemented by public servants focus on public service provision, such as health care and education; and in that line, policies formulated for implementation are mainly focused on public service delivery. Similarly, the Gender Equality Act, which was designed to “promote gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society, to prohibit and provide redress for sex discrimination, harmful practices (cultural practices that are harmful in nature such as initiation ceremonies that involve children sleeping with older men as a way of entering adulthood.) and sexual harassment, to provide for public awareness and promotion of gender equality, and to provide for connected matters” clearly shows that most of its focus is on the general public. However, section 11 of the GEA which provides for a quota for each gender in the public services specifically targets the public servants themselves, with the aim of better serving the public. The section aims at addressing gender disparities that the policy implementers themselves are experiencing in their profession. Considering that the issue of poor implementation irrespective of good policies in the public service focuses on service provision to the general public, one would wonder if the same can be said when the policy at hand is targeting the public servants themselves and not the general public. The study, taking note of the challenges that implementation of policies faces in the country, sought to analyse the extent to which efforts are being made to implement the gender quota in the public service, five years after the enactment of the Act. The study looked at selected sectors of the public sector including the constitutional bodies, statutory corporations, Ministries, Departments and Agencies (MDAs) to discuss these challenges. The selected institutions were Malawi Human

Rights Commission, the Civil Service Commission, the Judiciary Service Commission, the Parliamentary Service, Department of Human Resources and Development (DHRMD).

Section 8 of the GEA identifies and mandates the Malawi Human Rights Commission (MHRC) as an enforcement agency of the Act. Section 9 of the Act provides the Commission with the power to “(a) monitor and evaluate the policies and practices of Government Organs and the Private Sector; (b) carry out investigations and conduct searches in relation to any gender issues on receipt of a complaint or on its own accord; (c) consider, deliberate on and make recommendations to the Minister. Section 10 allows it to (a) collaborate with the Minister in establishing mechanisms aimed at progressively realizing gender equality and (b) develop working relationships with international parties, civil society organisations, non-governmental organisations devoted to protecting and promoting gender issues” (GEA, 2013: 5)

However, appointments into decision making structures made after the enactment of the GEA continued to be oblivious of the requirements of gender (effectively, women’s) inclusion. For example, in August 2015, President Peter Mutharika, exercising powers conferred on his office under the Constitution and the Malawi Human Rights Commission Act, appointed the 6th cohort of Human Rights Commissioners. Out of seven commissioners, only one woman had been appointed. This was the case up until 2018 (Mwale, 2019). As of August 2019 MHRC still did not have commissioners with the ones that were appointed in April 2019 still unconfirmed. It was only in March 2020

that commissioners were appointed to MHRC who now formed a 60-40 gender composition. This realisation makes one wonder if the institution mandated to oversee the implementation of the section faced such challenges, how would it champion change in other institutions? Additionally, what could be the explanation to these challenges?

It is important to note that similar trends in the recruitment and appointment processes were evident in the Judiciary where in October 2016 four judicial officers who were appointed, two of each sex (Sangala, 2016) portraying a 50-50 type of appointment. However, it is important to note that there is already a large number of male judges in the Judiciary, and section 11 providing a leeway for not more than 60% of one gender and not less than 40% of the other sex. This means that it was possible to nominate three women and one man, but this was not the case, showing that the section was not taken into account. The following year, two judges were appointed, both male (Kakande, 2017) adding to an already male dominated institution and since then no new appointments have been made in the Judiciary. Lee-Gosselin, Briere and Ann (2013) argue that there is usually resistance to implement gender equality policies in organisations due to the following problems: their inadequacy for the needs of public administration; an inadequate understanding of criteria and mechanisms by individuals working in the organization; the lack of clear instructions for their design; the lack of precise examples on how to implement institutionalization successfully or weighty theory that illuminates and explains the diversity of gender mainstreaming experiences; and the difficulty of assessing their real impact on the reduction of inequalities.

It is important at this point to note that the gender quotas introduced in most countries do not focus on the public service, for example, those in the European Union countries mainly focus on corporations and public limited companies. Most of the quotas introduced in Africa focus on political/elected positions such as Parliamentary and local government seats. This makes the Malawian Gender Quota a unique legislation in its own accord and the current study contributes not only to the policy implementation field but also to the study of gender quotas with a focus on the public service, an aspect that has not been focused on.

The above information on the current Malawi's experience in the implementation process before this study, one will note that this argument may also explain the implementation of the section. However, it is important to note that the above examples are positions that involve presidential appointments and not necessarily the whole recruitment process. Thus, the present study aimed at getting an understanding of the challenges that implementation of the section is facing by analysing and discussing the specific challenges pointed out by public administrators involved in the recruitment process as well as the MHRC which is entrusted with monitoring the implementation of the section. The study also discussed the potential ways of addressing these challenges. An examination of the literature revealed that most of the papers/studies written/conducted in Malawi on women inclusion in decision making positions in Malawi available focused on political positions (Kayuni, 2015; Amundsen and Kayuni, 2016) and not necessarily in the public service. Thus the study will contribute to

existing literature on gender equality, women inclusion and gender policy implementation with a focus on the public sector.

1.3 Research Questions

1.3.1 Main Research Question

How is Section 11 of the GEA being implemented?

1.3.2 Specific Questions

To what extent are recruiters aware of Section 11 of the GEA?

What are the challenges with regards to the implementation of Section 11 of the GEA?

How is the section incorporated in the public sector recruitment process?

1.4 Objectives

1.4.1 Main Objective

To assess the extent of the implementation of section 11 of the Gender Equality Act (2013).

1.4.2 Specific Objectives

The specific objectives were as follows:

- To examine public service recruiters' awareness of section 11 of the GEA
- To evaluate the measures that have been taken in the public sector to incorporate the section in the recruitment process.

- To discuss the challenges and opportunities experienced in the implementation of the section

1.5 Justification

“Despite the particular difficulties that women face in access to paid employment, more than half of women in Africa are employed” (Kolev and Sirven, 2010: 36). Thus, it is equally important to examine the nature and conditions of employment in the country and to explore how they may be influenced by gender (Kolev and Sirven, 2010). The Public Sector being the largest employer in Malawi means it should also be the driver of gender equality in the employment sector. This is to say, it should be the model for women/gender inclusion in the employment sector. Section 11 of the GEA is an opportunity for the sector to achieve that. However as indicated earlier, as of 2015 implementation of the section was still a challenge. Noting that that was just two years after its introduction and that some agencies were still not acquainted with the section, the study is relevant because it comes in five years after the section was introduced to recruiting agencies in the public sector. It is important to note that understanding the challenges of public policy by elaborating on factors affecting them helps to draw the attention of policy makers and implementers to study the processes that influence and establish the outcome of public policy (Bempa and Kanmiki, 2017). Hence, discussing the implementation challenges that section 11 is facing is important because it will give one a picture of the state of gender mainstreaming in the public sector and it can be a starting point for further interventions aimed at promoting gender equality in the Malawi public sector as well as other sectors in Malawi as a whole.

1.6 Overview of Thesis

The remainder of the thesis is arranged as follows: Chapter two reviews the relevant literature and a theoretical framework for the thesis. Chapter three presents the methodology of the study providing for the research methods that were used for the study, particularly the study sample, data collection methods and how data was analysed. Chapter four provides the analysis and discussion of the findings. Finally, chapter five provides a summary of the findings, a conclusion and suggestions for future studies.

1.7 Summary of Chapter

The chapter has introduced the study on the implementation of section 11 of the gender equality Act in the Malawi public sector. The chapter has also presented the background to the study on gender equality in Malawi, the problem statement, the objectives, research questions, the rationale for the study, the structure of the study and summary of the chapter. The next chapter presents what other scholars and authors have researched and reported on the topic as well as the theoretical framework that guided the study.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.0 Introduction

This chapter offers the theoretical framework that guided the study, it defines concepts that appear throughout the study and it reviews the relevant literature used in the study. As such, the Chapter is divided into two parts: 1) the theoretical Framework; and 2) the conceptual framework and review of related literature. Major conclusions of the chapter are made at the end. The theoretical framework looks at various implementation theories and settles for the path dependency theory to policy implementation, the conceptual framework and literature review section looks at the concepts that have been used in the thesis as well as a review of the literature which focuses on the review of literature and studies on public policy implementation in general and within the Malawi public sector, it also examines how gender quotas similar to that of section 11 of the GEA have been implemented in other countries.

2.1 Literature Review

A conceptual framework is a structure, which the researcher believes can best explain the natural progression of the phenomenon to be studied. It is linked with the concepts, empirical research and important theories used in promoting and

systemizing the knowledge espoused by the researcher and it is the researcher's explanation of how the research problem would be explored. The conceptual framework presents an integrated way of looking at a problem under study (Adom, Hussein and Agyem, 2015). In this section, some concepts that keep appearing throughout the study are defined in line with how they have been used in the study.

2.1.1 Public Sector/ Public Administration

The public sector consists of governments and all publicly controlled or publicly funded agencies, enterprises, and other entities that deliver public programs, goods, or services (Dube and Danescu, 2011). It is widely defined as the body of economic and administrative life that deals with the delivery of public goods and services by and on behalf of the government, often comprising several organizations that rely on hierarchical links and operations. At the political level, there are political institutions that formulate policies and make (major) decisions. At the administrative level, there is the public sector administration, which is in charge of implementing these policies and decisions. This implementing level is also called the public service or state administration or bureaucracy. Carey and Friel (2015) define public administration as the organisational structures, managerial practices, and institutionalised values, which officials enact in the pursuit of policy implementation and to enact the will of governments. Broadly, public administration is concerned with how to effectively pursue policy goals through layered administrative systems composed of government and non-government actors. Carey and Friel (2015) argue that public administration does not sit separately from questions of politics but is, forged in the smithy of politics.

In their observation, ‘policy’ emerges out of politics but is largely static; the ‘action’ of policy emerges through its administration and implementation, and involves negotiation and bargaining between those seeking to put policy into effect and those upon whom action depends. This, they state involves engagement with, and interference from, the political processes – particularly when considering complex and often ideologically challenging issues such as a fairer distribution of resources for social and health equity goals. Tambulasi and Kayuni (2006) defined the public service as the implementing agency of the state or an institution responsible for delivery of goods and services by and for the state. They further summarised the public sector as any institution or organization that is accountable and responsible to a political authority and functions within the three branches of government.

In Malawi, the public sector includes Civil Service (Central Government Ministries Departments and Agencies (MDAs)), Parastatals, the Judicial Service, Parliamentary Service, The Malawi Defense Forces, the Malawi Police Service, Immigration and Prison Services, and the Constitutional Bodies (such as The Malawi Human Rights Commission and Law Commission), Local Government Councils, Regulatory Agencies such as Malawi Energy Regulatory Authority, and Malawi Bureau of Standards (Government of Malawi, 2016).

2.1.2 Public Policy

Public Policy is defined broadly as governments action or inaction (Dye, 1987). It refers to a relatively stable, purposeful course of action taken by Government of Public actors in addressing social problems (Chinsinga, 2007). Public policy includes the process of making choices and the outcomes or actions of particular decisions; that what makes public policy “public” is that these choices or actions are backed by the coercive powers of the state; and that at its core, public policy is a response to a perceived problem (Smith and Larimer, 2009). The Government of Malawi defines public policy as a decision or a position taken by government to address a particular public issue and it guides the translation of government aspirations into actions (Malawi Government, 2015). Further, a public policy provides courses of action aimed at achieving the objectives of the government. Policies can take a range of different forms, including formal policy documents; presidential decrees; non-intervention; regulation for instance by licensing; or the direct public service provision. Thus, in the case of section 11 of the GEA the social problem can be said to be gender imbalance in the public sector. Achieving desired policy outcomes is dependent on the organizational capacity to support task demands linked to required performance levels and aligning the intent of a policy to actual practices developed within the agency context that influences service delivery system (Smith and Larimer, 2009).

2.1.3 Gender and Gender Equality

Gender is defined as a range of socially constructed roles and relationships, responsibilities, attitudes, behaviours, values, status, privileges that society ascribes to

men and women (GOM 2015). The United Nations Populations Fund (UNFPA 2009:1) defines gender as “the economic, social and cultural attributes and opportunities associated with being male or female.” The current study defined gender as a range of socially constructed roles and relationships be it in the economic, social or cultural context that society ascribed to one by virtue of being male or female. It is important to note that these roles differ depending on the society and they tend to change over time (UNFPA 2009). Gender Equality thus entails the concept that all human beings, both men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles, or prejudices (GOM 2015). It means the full and equal enjoyment of rights and freedoms and equal access to resources, opportunities and outcomes, by women, men, girls and boys (MWCPD, 2013)

2.1.4 Gender Quotas

A quota policy is a form of affirmative action to help any marginalized group overcome obstacles that prevent them from participating and attaining certain opportunities. An affirmative policy can be defined as a policy, which is introduced by the government in order to ensure positive steps taken to increase the representation of minority groups in areas of employment, education, decision making and any other areas which have traces of discrimination and exclusion historically.

The approach of a quota policy can be a fast track or an incremental track; it also aims to ensure that women constitute a certain number or percentage of decision-making positions. It was found that most of the countries that implement a quota policy use 30% as the minimum percentage for women to participate in decision-making positions (Syahirah, Ms and Hussein, 2016). This observation tallies with the choice of theories in the theoretical framework especially the path dependency approach which points out that it is generally difficult to change policies because institutions are sticky and actors protect existing model even if it is sub optimal.

2.1.5 The Implementation Function of the Public Sector

The principal activity of public administration is implementing laws (Peters and Pierre, 2012). Nakamura and Smallwood (1980:1) defined public policy implementation as “the stage of policymaking between the establishment of a policy-such as the passage of a legislative act, the issuing of an executive order, the handing down of a judicial decision, or the promulgation of a regulatory rule-and the consequences of the policy for the people whom it affects.” (Muhammad 2014) regards the process of policy implementation as a social action designed to effect a change. Thus the implementation of the section is indeed a role of the public sector. According to Alvarez (2016), The policy implementation process involves managing interrelated factors that include drafting policy, policy implementation design, legislative and stakeholder support, accountability requirements, the diffusion of power and responsibility, collaboration and coordination of activities across the inter-organizational network, and the structural capacity of the agency to support new policy within the service delivery system. Thus

a smooth policy implementation process is facilitated by unambiguous policy components, sufficient resources, and appropriate authority structures. Thus looking at the implementation of the Section, one will note that provisions are provided for as indicated earlier where authority structures are pointed out as MHRC and recruiting agencies.

Peters and Pierre (2012) note that there is a massive amount of activity involved in translating laws and decrees made by politicians into action, and in delivering public programs to citizens. That work is often less visible, but is crucial for making things happen in government. Legislatures and political executives may pass all the laws they wish, but unless those laws are administered effectively by the public bureaucracy, little or nothing would happen. Smith and Larimer (2009) further support this notion by pointing out that the duty to transform and translate policies into actions is assigned to executive branch agencies, which in the case of Malawi are Ministries, Departments and Agencies (MDAs).

2.1.6 Implementation Challenges

There are various challenges that tend to come with implementation of policies in the public sector. Smith and Larimer (2009) point out that policy implementation process involves processes whose machinery mirrors the broader legislative process; hearings are held, lobbying is conducted, and there is give and take among interested parties with competing agendas. Assuming the rules are realistic and practical enough guidelines

for line-level bureaucrats to follow, and that these same bureaucrats are committed to putting them into action, there still remain coordination issues. Different units within agencies may interpret the rules differently, and even the most detailed set of rules cannot cover all contingencies likely to arise in the running of public programs of policies. Muhammad (2014) argues that leadership challenges and poor governance account for persistent failure in public policy implementation and development irrespective of the good administrative/management practices adopted. This is in line with arguments put forth by Rahman, Naz and Nand (2013) who pointed out that one of the utmost important elements of the implementation of public policies is the role of leadership. This is because leaders spearhead participatory development of a vision for public sector reform; motivate and bring out the best in staff; and they encourage more direct involvement of stakeholders in the implementation of reform and thereby promoting greater responsiveness and accountability of public servants to the needs and concerns of citizens and clients in society.

Rahman, Naz and Nand (2013) further point out that there are various challenges that arise with implementation of public policies. These challenges come when certain factors are not implemented. The first factor is capacity building which is a central success factor to policy reform, making government capable in partnering with the private sector, creating an efficient market economy, and delivering goods and services to citizens. Policy coordination in which the primary role is to ensure that any particular policy initiative is broadly aligned with the explicit and implicit objectives of the government, is the other factor. Thus if there is no policy coordination implementation

becomes difficult since the policy is not aligned to the objectives leaving implementers a bit confused.

Monitoring process and impact of policy change, the third element, requires mechanisms both for periodic review and evaluation and for tracking policies across multiple agencies. Among the most common problems in the policy implementation process is setting targets or time frames for achieving certain policy outcomes” (Rahman, Naz and Nand, 2013: 984). The fourth factor is participation or consultation, which brings key stakeholders together for policy dialogue and problem solving and increases the sustainability of policy. Periodic consultation between implementers and beneficiaries also increases efficiency by generating timely inputs and greater cooperation so that delays are reduced. They quote Alesina (1994), Stewart and Ayres (1998: 26) who pointed out that “the single greatest cause of policy break-down is failure to consult key interests.” On policy legitimization, Rahman, Naz and Nand (2013) argue that it is necessary and vital that a policy have a champion in the early stages of implementation process to ensure a degree of ownership for change. Thus in the case of the Gender Equality Act, the Champion is MHRC.

Resource accumulation which is a process whereby the initial funding and assurance of government’s budget allocation for a policy are secured is another factor. Additionally, human, technical and material resources should also be assigned to the policy. Thus in the case of the section, the study looked at issues of whether institutions had gender focal officers who would offer the technical expertise in the process of implementing

the section. The last factor that they pointed out is organizational design and modification. This is the fact that bureaucracies tend to have inertia tendencies which basically involves a resistance to change. The change they point out usually involves internal arrangements and may call for new structures and procedures. For example, implementing the section would in most instances mean that agencies need to put in place necessary arrangements to ensure that in sections where there is a less composition of one gender, the recruitment process should favour qualifying candidates of that particular gender.

Smith and Larimer, (2009) observe that, under ideal circumstances, agencies have a two-stage challenge in implementing the policy intentions of the legislative branch of government. First, they have to figure out exactly what the elected branch wants to do. Second, they have to figure out a way to do it. Even under these ideal circumstances, implementation is not easy. “Even a law that is fairly unambiguous about what should be done tends to be light on the specifics of how to do it. Agencies formally fill in these details through the process of formulating rules. Rules state the specific actions government will take, and formulating them involves a quasi-legislative” (Smith and Larimer, 2009: 156).

The other challenge that kept appearing in literature was lack of political will. This is the the extent of committed support among key decision-makers for a particular policy solution to a particular problem. Thus the leadership and personal investment on the part of individual actors contributes to the generation and maintenance of political will

at the collective level. Kapoutsis, Papalexandris, Treadway and Bentley (2015) viewed political will as the primary motivator for mobilizing personal and organizational resources to achieve political goals. Thus the absence of political will in implementing policies poses a challenge as it can reduce motivation among implementers for the same.

These challenges show that if elements, such as the ones mentioned above, are not taken into account, it is indeed difficult to implement policies and sometimes a policy may end up not being implemented at all. This study looks at the implementation of the section with these challenges in mind checking if the same are being experienced in the implementation process.

2.1.7 Experiences in implementing the gender quotas from other countries

The most widely known example of corporate board quotas is in **Norway**, where a 40% gender quota for public limited, state-owned and inter-municipality companies was introduced in December 2003 (Pande and Ford 2011). The Norwegian quota law requires all public (limited) companies listed at the Norwegian Stock Exchange as well as state-owned, municipal, inter-municipal and cooperative companies to appoint at least 40% women on their boards by 2008. The law led to a dramatic and fast increase from 6% women on boards of public limited companies in 2002 to 36% in 2008 (European Commission's Network to Promote Women in Decision-making in Politics and the Economy 2011). The Norwegian legislated gender quota has become an

example for other countries that strive to increase female representation on corporate boards. Legislated board quotas have since been introduced in Spain (2007), and France, Iceland, and the Netherlands (2010) (Pande and Ford 2011). However, compliance with the targets remains low. France aims to follow a tight schedule with two deadlines (20% target to be reached in 2013 and 40% target to be reached in 2016), and plans to nullify all board appointments in violation of the quota. Meanwhile, the Netherlands has not set a target date for compliance and simply requires noncompliance to be explained in a company's annual report. Spain has set 2015 as the target date for compliance. Quotas for public limited companies are also being discussed in Belgium, Canada and Italy, where laws are pending at different stages of the ratification process.

The European Commission's Network to Promote Women in Decision-making in Politics and the Economy (2011) observed that The 'Norwegian quota tradition' to address inequality by using the tool of quota created willingness by politicians to go this route after having given companies ample opportunity to correct the imbalance themselves. It lists out the following measures that were taken in implementing the gender quota: professional preparation (identification, mentoring and training) of a large pool of qualified female candidates to take up board responsibility. Cooperation between all stakeholders (like government, employers, companies, unions, women's organizations) to create the necessary support systems, availability of female role models in society since more than 40% of the senior positions in government and state owned companies had already been taken by women; and implementation of legal sanctions in case of breach of the quota law, ranging from official warnings and

financial penalties to ultimately delisting of the company from the Stock Exchange (The European Commission's Network to Promote Women in Decision-making in Politics and the Economy, 2011)).

Noting that the above information was when some of the countries were just starting out in their implementation plan for the gender quotas, the study looked at a study by Mensi-Klarbach and Seierstad (2020). In their study, Mensi-Klarbach and Seierstad (2020) utilised data from the World Economic Forum (2017) rankings, in which Iceland and Norway scored high on equality rankings. France, Germany, Spain score medium while Portugal, Belgium and the Netherlands score low followed by Austria and Italy scoring very low. Countries were ranked for their level of female labour force participation, and the group was led by Iceland followed by Norway and the Netherlands. As such, Iceland and Norway were clustered together as forming a group with high gender equality. Spain, France, and Germany were deemed to have medium gender equality; Belgium, Portugal, the Netherlands, and Austria, medium-low gender equality; and Italy, low gender equality (Mensi-Klarbach and Seierstad, 2020).

This shows how these other countries are implementing gender quotas. However, as stated, these quotas are in corporate boards and not necessarily in the whole public sector. It is however important to note that the countries set targets and dates so as to ensure that the quotas are implemented. Thus, in looking at measures put in place to implement the section, the study will also check if there are specific dates put in place as deadlines.

Syahirah, Ms and Hussein (2016) examined the current status of women empowerment in Malaysia after the implementation of the at least 30% of women in decision making positions in public sector policy. In order to fulfil CEDAW provisions, the Malaysian government introduced at Least 30% of women in decision making positions in public sector policy in 2004. This policy adduced the importance of at least 30% of decision makers in public sectors being women in order to achieve a critical mass for women's voice and perspective in public sectors. The policy is being implemented in five different sectors, namely, Legislative 1 (Parliament), Legislative 2 (State Legislative, EXCOs, Local Councils), Executive 1 (Ministries), Executive 2 (Statutory Bodies, Universities), and Judiciary (Civil Court, *Shari'ah* Court, and Native Court) and each sector has a different approach.

However, their study only focused on the executive sector, which is the ministries level. The ministries level has short, medium, and long term action plans for the three interdependent elements (laws, structural, and cultural). With structural elements including; recruitment (balance gender composition, provide training on good gender practices, rectify the imbalance in high decision-making positions); training (coaching and counselling for women officers on the importance of training and further education, counselling sessions for male officers on the importance of supporting their spouses to further study); promotion (inculcate a more just, transparent, and objective promotion process); and Networking and mentoring for women (to fortify more women to hold decision-making positions). The cultural element covers gender sensitisation programmes in the workplace whilst the laws looked at issues of sexual harassment.

In their study on resistance to gender mainstreaming in organisations in Canada and Morocco, Lee-Gosselin, Briere and Ann (2013) pointed out a couple of reasons why implementation of gender equality policies and laws are a challenge in organisations. They pointed out such reasons as understanding how to implement the policies, leadership responsibility in ensuring that the implementation is carried out efficiently, knowledge on how to measure the impact of these equality policies, organizational culture not allowing the gender equality policies to be carried out efficiently, clear guidelines of what is expected, and gender equality not being part of the organization. It is important to note that most of these reasons are similar to those pointed out by Rahman, Naz and Nand (2013), particularly leadership. Additionally, it has been pointed out that there is a view that gender equality programmes conflict with career management policies that emphasize merit and individual progression and there is a shallowness, poor application and fragmentation of gender policies (Kossek and Buzzanell, 2018). These are also reasons for implementation failures when it comes to gender equality policies. This shows that in spite of there being general implementation challenges when it comes to public policies, implementation of gender equality policies has also been a challenge with additional challenges.

The current study will not only look the executive branch of government but rather selected sectors of the public sector. In fact, the study will mainly look at recruiting agencies in the sector. This is to say that the study will also look at service commissions in the Malawi public sector. Additionally, it will just like their study look at the implementation processes and procedures put in place.

2.1.8 Gender Mainstreaming in Malawi

The Constitution section 20 provides for non-discrimination based on many grounds including gender. ss. 24 (1) provides for rights of women equal to those of men and section. 24 (2) provides for the passing of legislation to address discrimination against women. This can be said to be what informed the Gender Equality Act of 2013 whose aim is to promote gender equality, equal integration, influence, empowerment, dignity and opportunities for men and women in all functions of the society, to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment, to provide for public awareness on promotion of gender equality, and to provide for connected matters. Looking at this aim and linking it to the definition of gender mainstreaming, one will note that the Act aims at achieving gender equality with gender mainstreaming as one of its strategies. Malawi also has a National Gender Policy which provides guidelines for mainstreaming gender in various sectors of the economy and whose aim is to strengthen gender mainstreaming and women empowerment at all levels in order to facilitate the attainment of gender equality and equity in Malawi (GoM 2015a).

Apart from the local statutes, Malawi is party to international and regional agreements including; at international the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1987) and its addendum (1999); the Vienna declaration on Human Rights and Rights of Women (1993); the Beijing Declaration and Platform for Action (1995); and the Millennium Development Goals (MDGs) (2000). At regional level, Malawi acceded to the Southern Africa Development Community

(SADC) Protocol on Gender and Development (2008); the African Union Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2005); African Union Solemn Declaration on Gender Equality in Africa (2000); and SADC Declaration on Gender and Development (1997) and its addendum (1999) (Chingaipe 2015). One will note that all these documents aim at promoting gender equality and gender mainstreaming, especially after the Beijing Declaration and Platform for Action which was the offset of an in-depth discussion of gender mainstream as noted by the study in the introduction.

A study conducted by Chingaipe (2015) observed that a year after the enactment of the GEA, there was little progress in the Malawi public service with only 24% of women in positions from chief officer level to head of public service level and the majority of these women are at the chief officer level. Additionally, in boards of parastatals where only 12% were women. Oversight institutions such as MHRC, MEC, Parliamentary Service Commission and MACRA were also assessed and he noted that 22% of the members were women.

In checking the causes of such low levels, he noted that deeply seated social inequalities against women and gender blind, gender neutral or gender insensitive mechanisms and processes for recruiting and appointing people into decision making structures. This study will focus on the mechanisms and processes for recruiting and appointing people into decision making position structures and general recruitment of people into the public sector from professional officer level. The selection of professional officer level

is based on the fact that these are positions that are appointed by Service Commissions (Malawi Law Commission, 2011).

Chingaipe (2015) also noted that there were no clear guidelines for the implementation of the section and the extant rule frameworks governing recruitment and appointments vary across sections. He pointed out that there were reservations among senior bureaucrats on the practicality of instant and full compliance with provision of the section. He also pointed out that there was evident lack of knowledge or understanding about gender equality generally and specifically principles that underlie affirmative action such as quotas for marginalized groups and how best to implement them.

However, one will note that the Chingaipe's (2015) study was conducted when the GEA was still in its early stages. Thus, one would anticipate that the findings of the current study would be different. However, as will be shown in the findings chapter, the current study learnt that some of the reasons cited as the cause for the slow (if not lack of) implementation of the section, seem to be in line with the ones put out by the above authors. The current study will thus seek to check if 4 years later, the situation is still the same or there have been some changes. The study will do this by looking at institutions such as MHRC which is entrusted with implementing the section and selected service committees in the country.

2.1.9 Public Policy Analysis

Public policy analysis involves giving meaning to what, in the absence of background knowledge, is indeed an empty word. How people define their self-interest (their assumptive worlds) depends on culture and history. How people, in turn, act to further that self-interest will depend on the institutions within which they operate. And the definitions, and the way in which they are translated into practice, will vary and evolve over time as the intellectual, social and economic environment changes (Klein and Marmor 2006). “The logic is that achieving policy success resides in good policy design, evaluating the *ex-ante* likely impact of proposed policies, rather than relying simply on *ex post* evaluation to produce a stamp of success or failure, or something in between that is followed by policy refinement, change or even termination” (Mconnell, 2010: 347). Thus, policy analysis plays a critical role in the policymaking process (Smith and Larimer, 2009). Looking at the Gender Equality Act (2013) one will note that understand the implementation process itself and understanding the challenges together with analysing these as intended by the current study is a process of analysing policy and it is critical in the implementation of the section.

2.2 Theoretical Framework

A theoretical framework is derived from the orientation that a researcher brings to their study. It is the structure, the scaffolding, the frame of one’s study. In other words, a theoretical framework is the body of literature, the disciplinary orientation, one draws upon in their study” (Merriam, 1998). It is a framework based on an existing theory in a field of inquiry that is related and/or reflects the hypothesis of a study. It is a blueprint

that is often ‘borrowed’ by the researcher to build his/her own house or research inquiry. It assists researchers in situating and contextualizing formal theories into their studies as a guide (Adom, Hussein and Agyem, 2018). In order to choose the proper theory for the research the study looked at various theories that look at public policy implementation, particularly, the challenges.

The study explored at the problem driven approach under the Political Economy Analysis approach. Political economy observes that actual policies are often quite different from “optimal” policies, the latter defined as being subject to technical and informational, but not political, constraints. The political constraints, in turn, arise from conflicts among competing interests and the need to make collective choices in the face of these conflicts (Bruce and Torentino 2010). The authors point out that “Implementation of economic and development policy is a complex, fragmented, multi-dimensional and highly unpredictable process, as well as an opportunistic one. A political economy lens broadens the operational view beyond technical solutions to include an emphasis on stakeholders, institutions and processes by which reform is negotiated and played out in the policy arena.” (Bruce and Torentino 2010:5). Thus this theory can work more if one were analysing implementation of policies in a comparative manner which is not the case for this particular study. Additionally, even though the study’s target group were various agencies in the public sector, this theory would require looking at stakeholders even outside the public sector and this too was not part of the current study.

The study also looked at the top-down and bottom-up approaches to policy implementation. The top-down approach which sees policy designers as central actors and concentrate their attention on factors that can be manipulated at the central level. The theory proposes six conditions needed for effective implementation from clear objectives, causal theory, legal structure of the implementation process, committed officials, supportive interest groups to no undermining of changing socio-economic conditions (Cerna 2013). For this study, that would mean finding out reasons for including the gender quota in the GEA. However clearly this would mean one is actually looking at the implementation of the whole GEA and not just Section 11.

In the end, the study thus utilised the Path Dependence theory of Policy Change. This is a model argues that it is generally difficult to change policies because institutions are sticky and actors protect existing model even if it is sub optimal (Cerna 2013). Path dependency is broadly defined as “history Matters” (Stuteville and Jumara, 2010). Public administration reform has many elements of path dependent-process. Path-dependency may be used to explain the nature of administrative reform (Stuteville and Jumara, 2010). This is to say that “the objectives and concrete design of administrative reform mirror the historical, political, and societal roles of public administration as well as its internal culture. Such reforms are path-dependent, probably to a much greater extent than we generally realize” (Ibid: 8). This is to say that policy makers faced with a new problem tend to draw on an established repertory of tools. This reinforces the bias of public policy against radical innovation, as does dependence on existing organizations for delivery (Klein and Marmor, 2006). Thus, Reform strategies are embedded in systems of norms and administrative practices and therefore reform

strategies are shaped more by what already exists than by the desired model of public administration (Stuteville and Jumara, 2010). This, one can argue is why the implementation stage of the policy process tend to be a challenge. It is important to note at this point the fact that. Public policies and formal institutions are usually designed to be difficult to change so past decisions encourage policy continuity (Cerna 2013). In his argument, Cerna (2013) further states that the main strength of the theory is that it is able to explain why policy continuity is more likely than policy change. “Once a country has set on a certain policy path, it remains difficult to change this path because actors and policies are unwilling to change.” This can explain why implementation of new policies such as Section 11 of the GEA becomes a challenge.

Green and Collins (2008) argue that early decisions in a policy area result in a policy trajectory that is locked onto a set course albeit one that might be particular to a certain type of policy regime. Thus path dependency explains not only why policies may be difficult to reform but also why they become more complex overtime. Additionally, Smith and Larimer (2009:197) point out that the “nature of public policy is worsened by the path-dependent nature of social constructions. Social constructions become embedded in society, rarely questioned and rarely subject to change.” They also point out that “there is no guarantee that policymakers will make decisions on the basis of what is good public policy. And even though it may be more practical and logical to design policy that redistributes benefits to groups that are rationally justified as suffering from societal problems, political risks often dissuade rational officials from pursuing such action” (Smith and Larimer 2009: 198). Noting the challenges already

pointed out in the first chapter of this study, the path dependency theory was utilized to help better assess the state of the implementation of section 11.

Thus, in analysing the implementation of section 11 the study checked if the theory of path dependency is playing a role in the process considering the acknowledgement that the section is facing implementation challenges. As pointed out by Kay (2005:11) “Individuals act within institutional arrangements, the present structure and functioning of which are understood only partially if not embedded in a historical perspective.” This is to say that the path dependency approach to policy change is necessary as it helps not only understand policy failure on a broad level but on an individual level as well.

Cerna (2013:4) points out that “path dependence is established only when it can be shown that policy change was considered and rejected for reasons that cannot be explained without reference to the structure of costs and incentives created by the original policy choice’. In addition, to introduce a major change, policy-makers have to wait for a critical juncture or a window of exceptional opportunity called conjuncture.”

2.3 Summary of Chapter

This Chapter has defined common concepts that appear in the study including public policy, public sector, gender equality, gender quotas and public policy implementation. The chapter has also critically analysed what the implementation function of the public

sector, the challenges that implementation of policies face both in Malawi and in other countries, it has looked at how other countries have implemented gender quotas in their public service. The chapter has also critically analysed theories used in implementation studies and has utilised the path dependency approach to policy analysis. The next chapter presents the methodology that the study has used in collecting and analysing its data.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This chapter provides for the research design of the study. The study utilised a mixed methods design. The chapter also presents the study population and study sample. Sampling methods used in the study are also presented in this chapter. The chapter also offers the data collection methods for both primary and secondary data and how this data was analysed. In the end the chapter presents the ethical considerations that were addressed during the process of collecting data as well as the limitations of the study.

3.1 Research Design

A research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure. The current study adopted a Mixed Method study that is analytical in nature in which the researcher tends to base knowledge claims on pragmatic grounds (Cresswell, 2003). This strategy employs strategies of inquiry that involve collecting data either simultaneously or sequentially to best understand research problems.

An Explanatory/Analytical research design involves the process of understanding the why of a situation. Thus, in this case, the study aimed at analysing the implementation of section 11 of the GEA, discussing the challenges that are being experienced in the implementation process and exploring possible means of addressing the challenges. Additionally, the study also tried to gauge numbers whilst checking the public sector's understanding of the section and thus incorporated quantitative study in its pursuit.

3.2 Study Population and Sample

A study population is the target being studied, this is to say that all the members who meet the particular criterion specified for a research investigation (Alvi 2016). They are a unit of the studies analysis on which conclusion of the research question will be made. Thus, in this case Public Sector institutions are the population of the study. A sample is a group of relatively smaller number of people selected from a population for investigation purpose (Alvi 2016). In this study, the sample included the Malawi Human Rights Commission, the Civil Service Commission, the Judiciary Service Commission, the Parliamentary Service, Department of Human Resources and Development (DHRMD), and Human Resources departments in the selected sectors. The sectors were selected purposively, based on their role in policy implementation among other factors. The Civil Service Commission for example, is one of the commissions that employs a large number of employees in the country whilst DHRMD is the agency mandated with Human resource planning, training and development; and even more related to the study, recruitment and promotion policy. This basically means that the Department is in charge of whether Gender equality is to be mainstreamed in

the public service or not. Respondents in the study included senior officials from human resources departments, people working directly on gender related issues in the agencies that had that, like DHRMD and MHRC.

Additionally, at DHRMD, Individuals in the policy planning department were included because they are the ones directly involved with coming up with policies that guide the public service. An introductory letter was sent to the principle secretaries specifying the purpose of the study together with sample questionnaire. A total of five respondents in each institution following the above criteria formed the number of respondents. It is important to note that in most institutions, this number meant all members of staff in the selected departments, for example there was only one human resources officer at MHRC. All institutions that were contacted responded and accepted to respond to the questionnaires. The study also specifically stated which sections of the institutions the respondents should come from. A contact person was assigned by the controlling officers who assisted in identifying the other respondents in the institutions. This assisted in making it easy to access the respondents.

3.3 Sampling Procedure/Methods

Sampling Methods are methods used in choosing a sample. The study used Non-Probability Sampling methods which are basically a method where the selection of the sample is made on the basis of subjective judgment of the investigator (Alvi, 2016)

In this method, purposive sampling was used in choosing which sectors to include in the research. A purposive sample is a non-probability sample that is selected based on characteristics of a population and the objective of the study (Kothari 2004). Thus, the study included the Malawi Human Rights Commission because it is the enforcer of the Gender Equality Act, the Civil Service Commission, because it is the main employer in the public service, the Judiciary Service Commission, based on the fact that the judiciary has the function of interpreting laws and thus checking how it implements the laws it interprets can be educational. The Parliamentary Service Commission based on the fact that Parliament is the one that makes laws with its other duty being oversight. Last but not least the study also looked at how the Department of Human Resources and Development (DHRMD) under the Office of the President and Cabinet which has the functions of formulating recruitment and promotion policies is implementing the section.5 participants were targeted in each institutions targeting specific departments, particularly human resources departments. To select specific individuals, the study maintained purposive sampling techniques by pointing out the departments that would be needed for the study. The study engaged human resource departments in the selected commissions to check if they have taken any measures to ensure the implementation of the study.

3.4 Data Collection Methods

3.4.1 Secondary Data

Secondary data refers to data that was collected by someone other than the user. Common sources of secondary data for social science include censuses, information

collected by government departments, organisational records and data that was originally collected for other research purposes. For the study, the secondary data was collected through an analysis of documents. Some of the documents that were assembled for analysis as part of secondary data included Acts of Parliament; National Policies that touch on issues of gender mainstreaming e.g. the National Gender Policy (2015), The Malawi Public Service Management Policy (2018-2022); Institutional guiding policies such as Conditions of Service, Human Resources Manuals and The handbook on the implementation of the GEA. Thus the study assessed different documents in relation to the implementation of the section. For example, the study looked at Conditions of Service from some of the study sample. It also looked at Human Resources Manuals in the agencies. The study analysed employment Laws including the Public Service Act, The Malawi Employment Act and the Malawi Public Service Regulations. This was aimed at check if the laws are in line with the GEA or not.

3.4.2 Primary Data

3.4.2.1 Self-Administered Questionnaires

As part of primary data gathering, the study used self-administered questionnaires. These comprised of open-ended questions and close-ended questions. The open-ended questions focused on probing the understanding of the section by respondents and what the respondents felt are the reasons why the implementation of the section is at the stage that it is, whilst the close ended questions were mainly for collecting quantifiable data such as how many agencies know about section 11 of the GEA (refer the reader to the appendices)

3.4.2.2 Key Informant Interviews

Key informant interviews were interviews conducted to gain direct information from technocrats and experts working in the field of gender mainstreaming who were not necessarily in the sample agencies. These included experts from ministries, civil society and academia. In the study, key informant interviews were conducted with the aim of getting detailed information of what is happening in the process of implementing the section. This is to say that the aim was to understand the extent of the implementation challenges faced in the implementation of the section. Five Key informants were approached and of these 3 responded and offered their knowledge on the subject matter. Two were unavailable to render assistance due to various reasons including time constraints. The ones that offered assistance included the Head of Gender Section at MHRC, A Gender Development expert from the NGO Sector and an Official from the Ministry of Gender.

3.5 Data Analysis

Data analysis for the study was done qualitatively through thematic analysis within grounded theory. This is a form of analysis where one allows the data to ‘speak for itself’, with themes emerging from the discussions and conversations (Kvale, 1996).. The interviews were coded into semantically meaningful units comprising of words, phrases and sentences. In this study, the interview extracts are used to emphasize points that were observed from the study.

Analysis was also done quantitatively using *Statistical Package for the Social Sciences* (SPSS) software. The data collected from questionnaires was entered into SPSS which is used for interactive, and statistical analysis. The analyses mostly involved checking correlation among variables as well as frequencies. These were also used to emphasize issues that were emerging from the study findings.

3.6 Ethical Consideration

The study posed no likelihood of causing any harm neither to the people who will be studied nor to those who were interviewed. The respondents were told all about the research so that they participate in it with informed consent. When they chose to remain anonymous assurance was provided verbally letting them know that confidentiality would be carried out during and after the research. Participants were also aware of the fact that they can withdraw at any time that they wished to. It was clearly pointed out that it was their right to do so if they felt like withdrawing from participating.

3.7 Limitations of the Study

The study though thorough had its limitations. One of the limitations was the fact that gender issues tend to cover a wide range of areas some of which could not be addressed in this study. For example, one of the questions a study looking at challenges of implementation of the GEA would revolve around attitudes of implementers towards gender equality. Though very important, the study failed to tackle this in detail as it was not easy to measure attitudes.

3.8 Summary of the Chapter

This chapter has presented the mixed method study design as the design used in the study. It has provided for the study population and sampling procedures. The chapter has also presented the data collection methods including primary (questionnaires and key informant interviews) and secondary data. The study has also presented the form of data analysis that the study used as well as the ethical considerations that were taken into account. Lastly, the chapter presented the limitations and delimitations of the study.

CHAPTER FOUR

FINDINGS AND DISCUSSIONS

4.0 Introduction

This chapter presents and discusses the field findings from Malawi Human Rights Commission, Civil Service Commission, Department of Human Resources Management and Development, The Judicial Service Commission and The Parliamentary Service Commission. The study aimed at understanding the extent of the implementation of section 11 of the Gender Equality Act that was enacted in 2013. The background of the study being that Malawi Public Sector has been known to have good policy documents but a bad implementation background. The study findings focus on Awareness of Section 11 of the Gender Equality Act (2013), the state of the implementation process of the Act and the challenges and opportunities that surround the implementation process.

This Chapter is divided into three main subsections. The first subsection looks at public sector awareness of section 11 of the GEA, the second subsection discusses the state of implementation of the section in the public sector and finally the last subsection discusses the challenges and opportunities surrounding the implementation of the section.

4.1 Public Sector Awareness of Section 11 Of The GEA

One of the objectives of the study was to look at the awareness of the Gender Equality Act (2013) and specifically Section 11 of the Act by recruiters in the public sector. To achieve this, one of the questions asked aimed at finding out if the respondents had been introduced to the GEA and if they knew about the Gender quota provision in the Act.

Table I below, shows the responses that were given by the respondents in the study.

Table I: Knowledge of the Section 11 of the GEA

Do you know about the 60-40 Gender quota in the GEA	Percent
Yes	75.0
No	25.0
Total	100

75% of the respondents, that is 15 of the 20 respondents indicated that they were aware of the provision. Additionally, during the process of data collection, the researcher noted that 90% of the MDAs at Capital Hill, had Information Educational and Communication (IEC) Materials raising awareness of the need to recruit using the 60-

40 gender quota. It is interesting to note that at the start of the study, the researcher was of the view that implementation of the section is a challenge because the public service is unaware of the provision in the section. The study found that in spite of the awareness of the existence of the section, out of the 12 that said they were aware of it, 5 said it was not being practiced in their agency.

Table II below, shows the results of the relationship between respondents who were aware of the section and whether it was being practiced in their section. Despite the fact that the respondents stated that it was being practiced, the study found that recruitment procedures had not been changed. This is shown later in this study with additional evidence being that the vacancies that were filled whilst the section was in place do not depict a 60-40 type of recruitment.

Table II: Awareness of Section 11 of GEA

Do you know about the 60-40 gender quota in the Act		Is it being practiced in your recruitment process		Total
		Yes	No	
	Yes	7	5	12
	No	2	3	5
Total		9	8	17

4.2 State of Implementation Process of Section 11

To check the state at which the implementation of the section was at, the study explored the measures that the public sector has undertaken in incorporating the Section in their recruitment process. To achieve this, respondents were asked about the instruments that guide their recruitment processes. Among the most notable instruments were the Constitution, The Institutional Service Acts, the Malawi Public Service Regulations (MPSR) and the Malawi Employment Act. Less than 50% of the respondents mentioned the GEA as one of the instruments that guide their recruitment processes. One of the respondents even pointed out that the main guiding Laws are the Malawi Employment Act and the Public Service Act (1994) both of which promote recruitment on merit and do not mention Gender Mainstreaming. For example, section (4) of the Public Service Act states that:

“Entry into and advancement within the public service shall be determined solely on the basis of merit, namely, relative ability, knowledge, skill and aptitude after fair and open competition which assures that all citizens receive equal opportunity.”

Looking at this section and the fact that it was one of the main guiding laws in the public service one can clearly see that irrespective of the provision in the GEA recruiting agencies are still using merit recruitment with little consideration for gender mainstreaming. It is important to note that at first glance this sounds like a plausible argument for not utilizing section 1. However, if one were to look at the section in the GEA, one will notice that the act does not discredit merit recruitment but rather encourages taking issues of gender into account.

It was also found, from the study, that some steps have been taken to incorporate the section in the public service. For example, MHRC and DHRMD have produced an implementation and monitoring plan where it states that DHRMD shall be responsible for ensuring that “an appointing or recruiting authority in the public service shall appoint no less than forty percent (40%) and no more than sixty percent (60%) of either sex in any department in the public service” (GOM 2016) However, as stated earlier, findings from this study have shown that no such measures have started taking place in the other institutions other than DHRMD and MHRC. It is also important to note that throughout the Implementation and Monitoring Plan document, the issue of 60/40 composition in the public sector is only mentioned in the above clause. This shows that even now, issues of gender mainstreaming in the public sector are not being given much attention and irrespective of the fact that the section targets public servants, it still falls into the trap of path dependency in policy implementation in Malawi.

Asked if there had been any appointments in their agencies, respondents indicated that there had indeed been appointments between 2015 and 2018 and below is the sex disaggregated data of how the appointments have been. Appointments in this case are looked at as the number of people employed in the agencies.

Table III: Sex Disaggregated Data of Recent Recruitments in Sample Agencies

AGENCY	MEN	WOMEN
Judiciary	98	36
Parliament	49	27
DHRMD	0	0
Civil Service	3	2
MHRC	3	2
TOTAL	153	67

The above table clearly shows 70% men vs 30% women recruited in the targeted agencies in the three years (2015-2018) which is also within the period that the implementation and monitoring plan was in place.

4.3 Challenges and Opportunities in Implementing the Section

As pointed out by Fritz, Kaiser and Levy (2009) when looking at policy implementation, one also looks at the political economy drivers where one is trying to understand why are things the way they are, why policies or institutions arrangements

are not being improved. Bearing in mind the path dependency theory of policy implementation the study discussed the challenges that the public service is experiencing in the implementation process. This informed the opportunities and possible ways to address these challenges.

4.3.1 Outdated Policies and Laws

This challenge was also supported by the document analyses conducted in the study. First, the study noted that the Public Service Act which is one of the main legal instruments for the Public Service is dated 2004 and has been under review since 2017. Thus the act being one of the main guiding laws for the public service does not in its current form recognise section 11 of the GEA. Another example is the Malawi Public Service Regulations, which have not been reviewed since the 1990s. It is important at this point to note that like the Public Service Act, the MPSR guides the recruitment of staff in the public sector and it stipulates that recruitment, appointments and promotions shall be based on merit. This, respondents argued, is in conflict with the GEA which emphasizes the need to take gender into consideration. However, as one of the Key informants pointed out:

“the GEA is not an instrument of undermining merit... rather merit is an issue that is invoked to reinforce the marginalisation but it is a condescending narrative because it suggests that women lack the qualifications and are only brought to the table by virtue of being women which is wrong.” (Key Informant 2, 2019)

This is supported by firstly subsection 1 which points out that the gender quota is put in place notwithstanding anything in the Public Service Act (MOG, 2013: 6) and subsection 2 (a) of the section 11 clearly states that the gender quota shall not apply where:

“a member applying for the post does not hold the minimum relevant educational qualifications or experience for the post.”

This can also be seen in the Malawi Employment Act 2000 section 5 which provides for non-discrimination among employees but acknowledges that initiatives taken to reduce inequalities shall not be undermined by the non-discriminatory clause as below:

- (1) “No person shall discriminate against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.
- (2) Subsection (1) does not preclude any provision, programme or activity that has its object the improvement of conditions of disadvantaged person, including those who are disadvantaged on the grounds enumerated in subsection (1)”

Merit recruitment in its pure form is grounded in competition based on merit rules, which entail “recruiting, selecting and advancing employees on the basis of their abilities, knowledge and skill....” (Berkley and Rouse, 2004:130) However, as pointed

out by McCourt (2007), no administration functions on pure merit system because of exceptions such as affirmative action aimed at hastening the advancement of disadvantaged group such as women or certain ethnic minorities by giving preference to that group. Another exception is that of political appointments, as well as internal appointments and transfers. The section is one of the ways in which affirmative action was employed.

It is important to note at this stage that even before the introduction of the section merit recruitment was not in its pure form. As such, the argument that organisations in the public sector are unable to incorporate the section in their recruitment procedures because previous laws, which take precedence over the GEA, demand for merit recruitment is nothing more than an excuse to maintain the status quo. Data gathered in the study showed that newly employed members of staff in the institutions visited had majority of male employees, irrespective of the fact that the institutions already had large numbers of male employees. Thus, it is clear that most of the public sector institutions are not incorporating the section in their recruitment process on the basis that other laws conflict with the section.

4.3.2 Political Will

The other challenge was lack of political will/guidance. Political will in this case is defined as the extent of committed support among key decision-makers for a particular policy solution to a particular problem (Kapoutsiset. *al*, 2015). Taking into account this

definition of political will, the study noted that most respondents indicated that they lacked direction from their superiors to incorporate the section in their recruitment procedures. One respondent even pointed that if they were told by their supervisors to incorporate the section, they would.

The lack of political will was also noted by the study in chapter one, by pointing out how presidential appointments did not depict a 60-40 gender quota. This clearly shows that the people conducting the recruitment are not being guided by the responsible parties as to how to recruit in the presence of the GEA. As pointed out in Bempa and Kanmiki's (2017:7) paper, "The presence of supporting executives with the right kind of skills and capacity to influence positively the implementation of public policies cannot be taken for granted. The right kind of executive is needed to provide a clear picture of the new policy, to ensure compatibility between the new policy and local level prioritized agenda, to train staff, to secure the needed resources, and to promote willingness to implement the policy by providing incentives and support."

Thus looking at the history of appointments in the country and as evidenced from the MHRC and Judicial appointments, one will note that there is indeed minimal political will in the implementation of section 11.

Broad reforms are possible when there is sufficient political will and when changes to a sector are designed and implemented by capable planners and managers. It is further pointed out that reforms are political in nature because they represents a selection of

values that express a particular view of society; Reform has distinct distributional consequences in the allocation of benefits and costs; Reform promotes competition among groups that seek to influence consequences; Enactment or non-enactment of reform is often associated with regular political events or political crises; Reform can have significant consequences for a regime's political stability. Thus looking at this, particularly the last point, one notes the importance of political will in implementing policies. For example, one will note that the time that the GEA was being assented to, the president of the country was female. This may have contributed to the Act getting assented to. This, according to the path dependency theory, was what is called a critical juncture, as it offered an opportunity for policy change. Thus, in this case, it may have contributed to the Act getting assented to. One can also argue that it is the absence of that political will that has led to the derailment in the implementation process especially for positions that only need political appointments

From the data collected, it was noted that one reason that kept coming out was lack of women with the necessary qualifications for posts. Now at first glance, one would find this to be a plausible reason for the failure to implement the section. However, looking at how Malawi has strived to promote girl child education and the fact that Malawi was said to have made substantial progress in terms of gender equality from a legal prospective (Kayuni, 2015), such an argument can be argued to step from lack of willingness that has developed into excuses. This observation was also pointed out by one of the key informant respondents who stated that women have the expertise and

described this argument as one that is invoked to reinforce the marginalisation of women

“if you look across people get into positions not on the basis of any merit and the merit will come up when the appointed candidate is a woman” (Key Informant 2, 2019).

Bempa and Kanmiki (2017) explored the assertion that, a tall organizational hierarchy makes policy implementation difficult. This is premised on the fact that those at the lower level may attempt to protect their locality whilst those at the upper echelon might also seek the opportunity to exercise enormous control over the lower level. They cited Williams (1975) who pointed out that management has considerable influence in determining the success or failure of policy implementation and that the attitude of staff and agency heads had an influence implementation outcome. Thus if the policy implementers keep pointing out the outdated reason that women lack qualifications then implementation of section 11 is likely to fail.

4.3.3 Unavailability of Gender Focal Point Officers

Another challenge that the study found was that there are no gender focal point offices in most public sector institutions. Findings from the study showed that, only two institutions had a focal gender person and these are institutions mandated, one (DHRMD) by the Public Service Act to ensure proper management and administration in the public service whilst the other by the GEA to spearhead the implementation of the GEA. Thus one would argue that it was inevitable for these institutions to have a

gender focal office as their coverage is broad. Using this line of thought, the study concluded that institutions with no direct link to issues of gender mainstreaming do not have Gender focal point offices. This can be seen as both a challenge and an opportunity. It is a challenge in the sense that five years after the law was put in place institutions have not taken the initiative to have an officer who can assist in the process of gender mainstreaming. According to the job description that is ascribed to gender focal point officers, their work involves supporting gender mainstreaming by advocating, advising and supporting professional staff and monitoring and reporting on progress - if necessary through the use of support from consultants or external specialists. They can also disseminate information and develop competence, through trainings and seminars this shows that a focal point officer is important in any institution and particularly in the Public sector is section 11 is to be achieved.

The respondents were also asked if they thought there was need for their institution to have a gender focal person. The table below shows the results of the responses that were collected.

Table IV: Need for Focal Point Officers in Institutions

		Frequency	Percent	Valid Percent
Valid	yes	14	66.7	70.0
	No	6	28.6	30.0
	Total	20	95.2	100.0

From the table, one will note that 70% of the respondents are of the view that gender focal point officers are important. This can be seen as an opportunity because even though there are no focal point officers, people feel there is need to have them. Additionally, the absence of the officers is also an opportunity because it means there is an opening in the system that can be filled.

4.3.4 Lack of Gender Mainstreaming Initiatives

The study also noted that most of the respondents highlighted that they have not received any training on issues of gender mainstreaming. Out of the 20 respondents only 2 had attended a gender related training of any sort. This is a challenge as per the study because the respondents are the people responsible for coming up with recruitment policies, they are the people involved in the recruitment process including shortlisting of candidates and yet they do not have in-depth knowledge of gender

mainstreaming issues. As pointed earlier, Rahman, Naz and Nand (2013) view lack the technical expertise and capacity building as some of the challenges that befalls the implementation of public policies as is the case with section 11 of the GEA. Upon inquiring, it was further noted that there is little or no budget from the government aimed at developing the capacity of public officers in terms of gender mainstreaming. Most of the institutions have managed to conduct such trainings with the aid of development partners. It was also pointed out that the Ministry of Gender, which is supposed to champion gender mainstreaming in the public sector has not taken up the role leaving the public sector weak in mainstreaming gender. This is a challenge because even though MHRC was entrusted with monitoring the implementation of the section, the institutions powers are limited as compared to those of the Ministry of Gender. As pointed out by one of the key informant, MHRC can only act as a watch dog by probably naming and shaming institutions that fail to implement the gender quota provision but that is where its powers may end.

4.3.5 Vacancies

Irrespective of all the above challenges there is one opportunity that should be emphasized. All the agencies visited admitted that there are a number of vacancies in their institutions. Thus there is still a possibility that gender mainstreaming using Section 11 of the GEA can still be achieved. This, the study observed to be an opportunity in-spite of the path dependent trend that implementation of the section seems to be taking, because the fact that there are reminders in notice boards on the need to utilise the 60/40 gender quota when recruiting people in the public service, there

is a chance that some of the people involved will have this at the back of their mind. As Mahapatra (2014) points out, IEC materials are essential to changing people's attitudes.

The above challenges are also in line with the challenges that were found to have engulfed the public sector when it comes to policy implementation by The *Malawi Public Service Management Policy 2018-2022*. The policy pointed out inadequate understanding of the vision and responsibilities of the public service among most public servants and various stakeholders which has led to abuse of public office and resources and failure to fully discharge public service responsibilities to achieve the strategic objectives in the national development agenda. This can also be traced in the primary data that was collected for the study. For example, respondents' acceptance of having knowledge of the section but offering reasons such as outdated laws as the reason for lack of implementation can easily be construed as a result of inadequate understanding of responsibility. The same goes for the reason pointed out earlier that public servants argued that if their superiors were to instruct them to incorporate the section in their recruitment process they would do so.

As one may recall one of the objectives of the current study was to check awareness of the section thus the fact that most of the respondents showed awareness of the section means that there is an opportunity for the section to get implemented better; Inadequate alignment of the public service and resources to service delivery requirements and imperatives of the medium term development strategies. This has led to the public

service having a structure and size that is not fit for purpose and has also led to under-resourcing of core government programmes;

The policy also pointed out that political impetus for populist programmes or projects, which are not all in line with the national development agenda and divert resources from priority interventions, as a challenge. This is so because it undermines the implementation of priority programmes and achievement of the priority national outcomes. At a glance, the section in the GEA can be said to have a level of popularity as the majority of the respondents in the study showed a willingness to have the section implemented. However, from the other responses to why it is not being implemented such as women lacking the necessary qualifications and outdated laws, one will note that the section has not been treated as a priority.

Inadequate inter-sectoral and multi-sectoral collaboration and involvement of non-state actors in the formulation, implementation, monitoring and evaluation of national policies, programmes, projects and initiatives. This deepens the silo working approach and undermines efficiency and effectiveness in addressing complex and intertwined development challenges that require multi-stakeholder involvement. The only stakeholders that the study discovered to be involved in the implementation of the section have been MHRC and the DHRMD both of which are stakeholders that were assigned the responsibility by the Act itself. However, the section specifically did not assign the ministry of gender which is the driver of gender equality initiatives in the country, any responsibilities.

Another challenge that was pointed out in the policy was inadequate capacity of public servants to effectively design, implement, monitor and evaluate projects and programmes due to a number of factors including lack of systematic and comprehensive in service training that is aligned to the capacity demands of the public service. This can be seen as one of the critical junctures for the path dependency theory in the case of the current study. This is so, because as pointed out by respondents from most of the institutions that were visited, there are few gender focal point officers in the public service. Thus, it is highly likely that failure of implementation can be traced to the inadequate capacity of public servants to effectively design, implement, monitor and evaluate projects and programmes due to a number of factors including lack of systematic and comprehensive in service training that is aligned to gender mainstreaming which has led to poor implementation of the same. Additionally, a limited number of respondents indicated having undergone any gender related trainings. This clearly shows that implementing the same fate that has befallen most of the policies in the country is highly likely to befall the section since the implementers lack the capacity to implement it.

The policy also pointed out Politicisation of the public service which is contributing to politicisation of appointment of senior officers to the public service and undermining the capacity of Controlling Officers to provide professional advice and engender a professional public service; Slow modernisation of the public service in line with global trends and changing demands of the citizenry and the public; Weak human resource management infrastructure as evidenced by lack of strategic human resource planning

and development and poor implementation of human resource policies and procedures; Increased number of non-strategic employees while there are high vacancy rates for strategic technical and professional staff who are key to programme implementation and service delivery; and Out-dated policies and legislation guiding public service institutions which hampers their ability to modernise and improve their operations and conflicting policies which undermines adherence to policies (GOM, 2018) as part of the challenges.

From the above, one will note that the evidence gathered through collection of primary data is similar to that that was available as secondary data. This is why, whilst analysing secondary data in the form of documents that were accessed during the study, it was found that most institutions have not incorporated the section in their internal policies. For example, the strategic plans from two institutions only mentioned the issue of gender mainstreaming once in a single paragraph that note the challenges these challenges are to be mitigated.

4.4 Summary of Chapter

This chapter analysed and discussed the findings of the study. This was done following the objectives of the study which included checking the awareness of section 11 by recruiters in the public sector, the state of implementation of the section and the challenges that the implementation of the section is facing. The next chapter which is

also the last chapter of the study presents the summary of the findings, the conclusions and the implications of the findings.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND IMPLICATIONS

5.0 Introduction

This Chapter focuses on offering concluding arguments of the study. The chapter gives a summary of all the elements that were covered in the chapters of the study. The chapter states what the study sort to achieve, what theoretical framework the study used in doing so, the form of data collected and the finding and discussions drawn from the data together with the stand the study takes based on the discussed findings.

5.1 Summary of Findings

5.1.1 Awareness of Section 11 of GEA

Initially, the study assumed that one of the challenges in the implementation process was lack of awareness of the section by implementers. However, through the study findings, it was found that recruiters are actually aware of the section and that implementation of the section is not being practiced in the institutions in spite of the implementers' knowledge of its existence. The institutions that are at least taking the

section into consideration do so without clear mechanisms and on a case by case basis.

5.1.2 Challenges in Implementing Section 11 of GEA

The study discussed the extent of the challenges that implementation of Section 11 of the Gender Equality Act (2013) is facing. This was based on the premise that Malawi has been known to have good policies that fail at the implementation stage. Thus last part of the study focused on discussing the challenges and opportunities surrounding the implementation of the section. There were a number of challenges that were found including lack of capacity by recruiting staff, lack of political will, outdated policies and laws governing the public sector and unavailability of staff with the technical know-how for the efficient implementation of the Act. Noting the above, the study argued that the section is slowly falling into the same predicament by analysing the challenges facing the implementation process of the section.

Through the study, it was observed that some of the challenges pointed out by respondents depicted elements of the fact that the public sector is conducting business as usual in as far as the implementation of Section 11 of the gender quota is concerned. This is to say that irrespective of opportunities that are there for the effective implementation of the section such as availability of vacancies and a leeway offered in the section, most respondents still pointed out the challenges as main blockers for the implementation. This fuses in with the path dependency theory that guided the study as it clearly shows that change is not easily embraced by policy implementers. This is seen

in this case by the fact that after over five years of the act being in place, not much has been done to ensure the successful implementation of the section.

5.1.3 Incorporation of the Section in Public Sector Recruitment Process

The study also traced the measures that have been taken in the public sector to incorporate the section in the recruitment process. So far, some steps have been taken to incorporate the section in the public service. For example, MHRC and DHRMD have produced an implementation and monitoring plan where it states that DHRMD shall be responsible for ensuring that “an appointing or recruiting authority in the public service shall appoint no less than forty percent (40%) and no more than sixty percent (60%) of either sex in any department in the public service” (GOM 2016).

However, as stated earlier, findings from this study have shown that no such measures have started taking place in the other institutions other than DHRMD and MHRC. The study found that most institutions refer to the fact that the main guiding documents for recruitment, specifically the Public Service Act (1998) and the Malawi Employment Act (2000) state that recruitment shall be based on merit as the reason as to why they have not institutionalized the gender quota requirement of the GEA. This, the study showed is merely an excuse as the section does not invalidate merit recruitment and the laws cited recognise the need for laws addressing inequalities which in turn supports the presence of the 60-40 gender quota. Thus this means that there has been no systematic effort to incorporate the section in organisational guiding policies with gender mainstreaming mostly being mentioned in passing.

5.2 Conclusion and Implications

In the end, with the above in mind, the study concluded that Section 11 of the Gender Equality Act (2013) is on the verge of facing the same fate as faced by most of the policies in Malawi. This is the state of policy confusion where the policy document itself has outstanding provisions but the implementation on the ground is not impressive. This conclusion was reached after noting the challenges that implementation of the section is facing and the reasons cited for some of the challenges by respondents. The study noted that most of the challenges expressed are an external factor with underlying reasons that usually tend to come with resistance to change. This resistance to change was explained by the path dependent tendency of public policies as well as the resistance that gender mainstreaming initiatives generally face.

5.2.1 Implications and Recommendations

The study has observed that if the challenges that the implementation process for the section is facing were to be addressed and were looked at as opportunities for the same, the section stands a chance of successful implementation. In other words, some of the challenges such as vacancies and lack of gender focal point officers can also be looked at as opportunities. Additionally, the main opportunity of the 60-40 gender quota is the provision in the section itself. Thus, since the provision is provided for in an Act of parliament, enforcement is possible. However, to achieve this, there is need to clearly stipulate measures that will be taken should public institutions fail to take the provision on board. These measures can be developed by the chief justice who is mandated with developing rules for the purpose of regulating the practice and procedure of the court

in proceedings under the GEA. However, there is also need to add powers of the Minister of gender, whose current powers are mostly focused on programmes in relation to the act, to include penalties for non-compliance as far as the section is concerned. If the above implications were addressed, they can enhance the presence of the 60-40 gender quota in public institutions which would lead to the promotion of gender equality in the public sector.

5.2.2. Areas for Further Study

The study has managed to contribute to the field of public policy implementation by offering an angle on how the policies targeting public policies face the same implementation challenges as those faced by policies that target the general public. The study has also contributed to the field of gender mainstreaming particularly in the public service where initially, the main focus was on leadership positions and political leadership. The study, recommends that for further studies, there will be need to engage in an in-depth study of possible solutions to implementation challenges that have been discussed in this study. The study also noted that there is need to take a look at how cultural believes and attitudes towards gender mainstreaming can be a cause for the slow process of implementation of the section. Additionally, one can actually study whether gender quotas actually do work and look at whether they can work in Malawi with Malawi's cultural and traditional beliefs and disposition.

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APPENDICES

APPENDIX I: Questionnaire for Public Servants

PUBLIC ADMINISTRATION AS AN IMPLEMENTER OF POLICIES: REFLECTIONS ON THE IMPLEMENTATION OF SECTION 11 OF THE GENDER EQUALITY ACT

I am student at chancellor College Pursuing a Master's Degree in Public Administration and Management and I am currently conducting a study entitled: *"Public Administration as an Implementer of Policies: Reflections on the Implementation of Section 11 of the Gender Equality Act"*. You have been identified through a Purposive Sampling based on the functions of your agency in the public sector and the implementation of the GEA 2013 as one of the prospective participants hence you are kindly requested to respond to the attached questionnaire. This study is being conducted as part of research to be submitted to the university in partial fulfilment for the award of the MA Public Administration and Management (MPAM)

The information obtained will only be used for this study and will be kept with strict confidentiality. Data collected will be analysed as a whole and no single respondent will be identified in the study.

I thank you in advance for taking the time to fill out this questionnaire. Please answer the questions truthfully to the best of your knowledge.

Yours Faithfully,

Vanessa Manda

MA/PAM/07/16

**PUBLIC ADMINISTRATION AS AN IMPLEMENTER OF POLICIES:
REFLECTIONS ON THE IMPLEMENTATION OF SECTION 11 OF THE
GENDER EQUALITY ACT**

QUESTIONNAIRE

Section A. BioData

1. What is the Name of your Agency/Organisation

2. What Is Your Age

3. What is your sex? a. Male ☐ b. Female ☐

Section B. Awareness of Section 11 of Gender Equality Act

4. Do you have guidelines for recruitment in your agency?

A. Yes ☐ B. No ☐

5. What legal structures guide your recruitment (e.g. Acts, Policies)

(a)

(b)

(c)

(d)

(e)

(f)

(g)

6. How often do you review your recruitment guidelines

i. Quarterly ☐ ii. Biannually ☐ . Annually ☐

iv. After 3-5years ☐ v. After 5yrs above ☐

7. When was the last time it was reviewed

8. Have you been introduces to the gender equality Act

A. Yes ☐ B. No ☐

9. When were you introduced to it

10. Do you know about the 60-40 gender quota in the Act

A. Yes ☐ B. No ☐

11. Is this being practiced in your recruitment process

A. Yes ☐ B. No ☐

Section C. Measures Taken in Incorporating the Section in Recruitment Process

12. Have you employed new staff in the past 3 years

A. Yes ☐ B. No ☐

13. How many men and how many women

Men _____ Women _____

14. What is the composition of your commission by sex at the moment

Men _____ Women _____

15. How are you applying section 11 of the GEA in your recruitment process

Section D. Challenges and Opportunities

16. Do you have a gender focal point officer in your
agency/organisation/department

A. Yes ☐ B. No ☐

17. Do you believe there is need for one

A. Yes ☐ B. No ☐

18. Do you have gender trainings in your agency/organisation/department

A. Yes ☐ B. No ☐

19. Has anyone in the recruitment team undergone any gender related training

A. Yes ☐ B. No ☐

20. Do you have vacant posts in your agency/organisation/department

A. Yes ☐ B. No ☐

21. In your opinion, what are some of the challenges being faced in implementing section 11

22. Do you see any opportunities to implementing the section (what are they)

End of Questionnaire!

Thank you for your responses

APPENDIX II: Questionnaire for Commissioners

PUBLIC ADMINISTRATION AS AN IMPLEMENTER OF POLICIES: REFLECTIONS ON THE IMPLEMENTATION OF SECTION 11 OF THE GENDER EQUALITY ACT

I am student at chancellor College Pursuing a Master's Degree in Public Administration and Management and I am currently conducting a study entitled: *“Public Administration as an Implementer of Policies: Reflections on the Implementation of Section 11 of the Gender Equality Act”*. You have been identified through a Purposive Sampling based on the functions of your agency in the public sector and the implementation of the GEA 2013 as one of the prospective participants hence you are kindly requested to respond to the attached questionnaire. This study is being conducted as part of research to be submitted to the university in partial fulfilment for the award of the MA Public Administration and Management (MPAM)

The information obtained will only be used for this study and will be kept with strict confidentiality. Data collected will be analysed as a whole and no single respondent will be identified in the study.

I thank you in advance for taking the time to fill out this questionnaire. Please answer the questions truthfully to the best of your knowledge.

Yours Faithfully,

Vanessa Manda

MA/PAM/07/16

**PUBLIC ADMINISTRATION AS AN IMPLEMENTER OF POLICIES:
REFLECTIONS ON THE IMPLEMENTATION OF SECTION 11 OF THE
GENDER EQUALITY ACT**

QUESTIONNAIRE

Section A. BioData

23. What is the Name of your Agency/Organisation

24. What Is Your Age

25. What is your sex? a. Male b. Female ☐ ☐

Section B. Awareness of Section 11 of Gender Equality Act

26. Do you have guidelines for recruitment in your agency

B. Yes ☐ B. No ☐

27. What legal structures guide your recruitment (e.g. Acts, Policies)

(h)

(i)

(j)

(k)

(l)

(m)

(n)

28. How often do you review your recruitment guidelines

i. Quarterly ☐ ii. Biannually ☐ . Annually ☐

iv. After 3-5years ☐ v. After 5yrs above ☐

29. When was the last time it was reviewed

30. Have you been introduces to the gender equality Act

B. Yes ☐ B. No ☐

31. When were you introduced to it

32. Do you know about the 60-40 gender quota in the Act

B. Yes ☐ B. No ☐

33. Is this being practiced in your recruitment process

B. Yes ☐ B. No ☐

Section C. Measures Taken in Incorporating the Section in Recruitment Process

34. Have you employed new staff in the past 3 years

B. Yes ☐ B. No ☐

35. How many men and how many women

Men _____ Women _____

36. What is the composition of your commission by sex at the moment

Men _____ Women _____

37. How are you applying section 11 of the GEA in your recruitment process

Section D. Challenges and Opportunities

38. Do you have a gender focal point officer in your
agency/organisation/department

B. Yes ☐ B. No ☐

39. Do you believe there is need for one

B. Yes ☐ B. No ☐

40. Do you have gender trainings in your agency/organisation/department

B. Yes ☐ B. No ☐

41. Has anyone in the recruitment team undergone any gender related training

B. Yes ☐ B. No ☐

42. Do you have vacant posts in your agency/organisation/department

B. Yes ☐ B. No ☐

43. In your opinion, what are some of the challenges being faced in implementing
section 11

44. Do you see any opportunities to implementing the section (what are they)

End of Questionnaire!

Thank you for your responses

APPENDIX III: Key Informants Interview Questions Guide

PUBLIC ADMINISTRATION AS AN IMPLEMENTER OF POLICIES: REFLECTIONS ON THE IMPLEMENTATION OF SECTION 11 OF THE GENDER EQUALITY ACT

I am student at chancellor College Pursuing a Master's Degree in Public Administration and Management and I am currently conducting a study entitled: *“Public Administration as an Implementer of Policies: Reflections on the Implementation of Section 11 of the Gender Equality Act”*. You have been identified through a Purposive Sampling as one of the key informants in issues of the implementation of the GEA 2013 hence you are kindly requested to respond to the attached questions. This study is being conducted as part of research to be submitted to the university in partial fulfilment for the award of the MA Public Administration and Management (MPAM)

The information obtained will only be used for this study and will be kept with strict confidentiality. Data collected will be analysed as a whole and no single respondent will be identified in the study.

I thank you in advance for taking the time to fill out this questionnaire. Please answer the questions truthfully to the best of your knowledge.

Yours Faithfully,

Vanessa Manda

MA/PAM/07/16

KEY INFORMANT INTERVIEW QUESTIONS GUIDE

Bio Data of Respondent

What Is Your Name?

What is your Field of Expertise?

Extent of Implementation

In your Knowledge, is the public sector implementing section 11 of the GEA?

Which agency has a bigger role between the public agencies and the Malawi Human Rights Commission in the implementation of the GEA

Do you think the public sector is doing enough in implementing the section?

Is the Malawi human rights commission doing enough to ensure public agencies are utilising the section during recruitment?

Challenges and Opportunities

Where do you think is it lacking?

What do you think can be done differently?

Are there opportunities you can think of that can enhance the implementation of the section.

Does the Public service have the necessary expertise to implement the section?

End of Interview.

Thank you