



# Gender Equality



*Women Aid Trust Pakistan*

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## GENDER EQUALITY

Gender equality is the focal point of all contemporary women rights movements worldwide. Starting with the struggle for women's legal, social and economic rights in the early 19<sup>th</sup> century, the movement for the freedom and liberation of women hit the highest point in the sixties. Subsequently the movement set forth a new goal-- striving for equality of both genders and elimination of stereotype roles in the society. It merits mentioning that Women rights movement had acquired global significance when in 1947 UNCSW (United Nation's Commission on the Status of Women) was established as a separate commission under the United Nation.

In 1979 the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>1</sup> coming into force as a treaty on 3<sup>rd</sup> Sep. 1981, thirty days after the twentieth member nation ratified it.<sup>2</sup> Currently, with, 186 state parties, CEDAW is one of the most ratified treaties<sup>3</sup> in the world, though having the highest number of reservations<sup>4</sup> as well. This convention actually formed the basis for advancing the status of women worldwide and served as a road map for the future direction of women rights struggle at global level.

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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination against Women, STATUS AS AT : 14-02-2011 06:02:59 EDT, available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>2</sup> In accordance with article 27(1) of CEDAW

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women, STATUS AS AT : 14-02-2011 06:02:59 EDT, available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>4</sup> By the 1969 Vienna Convention on the Law of Treaties (VCLT), a reservation is defined as a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. (*Article 2 (1)(d)*)

CEDAW focuses on gender discrimination against women<sup>5</sup> and contains a number of specific obligations on governments ensuring that state parties take all appropriate measures, including legislation, policies and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.<sup>6</sup> It also targets culture and tradition as influential forces shaping gender roles and family relations.<sup>7</sup>

Several of the countries that have ratified the treaty have made declarations or reservations that exclude or diminish the domestic applicability of CEDAW in consequent with the International Law obligations under the Law of Treaties. Article 19 of the Vienna Convention on the Law of Treaties (VCLT) permits States to make a reservation at the time of ratification or accession to a treaty.<sup>8</sup> Various states have reservations on the complaint system in case of dispute between parties i.e. article 29, others on the basis of national legislation or other economic, political or administrative factors. As far as the Muslims states are concerned, the contradictory clauses to Islamic injunctions have led to numerous reservations to the CEDAW specifically to Article 16.

Pakistan formally became signatory to this convention in 1995, with a reservation on article 29 (1),<sup>9</sup> and with the declaration<sup>10</sup> that its

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<sup>5</sup> Preamble to the convention describes it having substantive provisions against gender discrimination, Article 1 defines gender discrimination, and Article 2 condemns discrimination against women in all its forms and agrees to pursue by all appropriate means a policy of eliminating discrimination by all appropriate measures

<sup>6</sup> Article 2 describes all required measures by the state to ensure the very basic object of the convention

<sup>7</sup> Article 5 of CEDAW

<sup>8</sup> According to Article 19 of Vienna Convention On the Laws Of Treaties (VCLT), a reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."

<sup>9</sup> Article 29 (1) relates to "any dispute between two or more States Parties

provisions will be implemented within the confines of the Constitution of Pakistan.<sup>11</sup> While the Declaration was a word of caution that the Government of Pakistan's accession to CEDAW would be subject to the provisions of the Constitution of Pakistan, the Reservation on the other hand declared that the Government of Pakistan did not consider itself bound by paragraph 1 of Article 29 of the Convention.<sup>12</sup>

Being signatory to International covenant and bound for eliminating discriminations against women, it becomes imperative to get a clear view regarding the concept of gender equality in Islamic as well as Western societies.

## 1. Western Perspective of Gender Equality

If we take a deep look at the Western notions of gender equality, they

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concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration". This option is given to the State Parties under the same Article (29) clause (2), which a State Party may avail at the time of signature, ratification, or accession.

<sup>10</sup> Apart from reservations, states also make other unilateral statements in accordance with treaty terms that derogate from the terms of a particular treaty, known as declarations and understandings, Unlike reservations, declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty. However by an interpretative declaration the state purports to specify or clarify the meaning or scope of a treaty or of its certain provisions. (Guide to Practice on reservations to Treaties).

<sup>11</sup> Pakistan's initial , first, second and third combined report on CEDAW, p8, stated that the declaration by Pakistan was given as a result of the consultation with the religious scholars and some segment of the legal fraternity, who at the time, had strongly recommended the Government to ensure that the ideological basis of Pakistan as an Islamic state is not compromised as specifically highlighted through the Objectives Resolution given in its preamble.

<sup>12</sup> Huma A. Chughtai, *Domestication of CEDAW in Pakistan -- Challenges and Way Forward*, Paper

Prepared for MoWD Gender Learning and Practice Alumni Network Capacity Building – Ministry of Women Development Project, February 2010, available at: <http://www.mowdalumni.com.pk/pdf/huma.pdf>, last accessed on 22.02.2011.

seem to determine the rights as well as obligations for both the genders. Consequently, both men and women do not have any preference over each other in any sphere of life whatsoever. Both of them are expected to play an active role in the economic and social development of society with recognizable appearance in public. To endorse the desired equality and eliminate gender stereo roles, women are expected to step out of their traditional domain while men are encouraged and appreciated for domesticated roles as well. However, biological reproductive roles are recognized as being determined by sex.

It may be pointed out that feminists and women activists strongly support the belief that women should have the same rights and opportunities as men in every walk of life. However, this gender approach is not found holistic rather sounds individualistic and fragmentary, as accordingly women's problems, family solutions and other related issues are viewed in isolation with their male counterparts.

Furthermore, economic and social dependence is considered to be the cause of all gender based problems. Hence economic empowerment and political representation of women have been emphasized as basic prerequisites for the equality and development of women. What is more, traditional family is mostly regarded as the cause of women exploitation. In an effort to eliminate all sorts of discriminations against women and stereo typed roles, motherhood and domestic responsibilities are relegated to a low priority and are now claimed as social responsibility.

Additionally, in a western capitalistic or socialistic economic model, women are also expected to play an active economically productive role in the national economy. This view is based on the premise that women's contribution in the agriculture and home-engineering has no economic value, and they can become economically beneficial to the society only by becoming a part of the wage labor. Secondly, it is also presumed that major part of available male labor is already utilized and a quantitative increase due to participation of women

would accelerate economic development and production.<sup>13</sup> The idea is now phrased as economic empowerment of women to end discrimination and oppression against them.

## 2. Gender Approach in Islam

Islam has successfully dealt with the issue of gender equality and in doing so its approach is holistic and not fragmentary. It has provided basic principles, established practically by Prophet Mohammad (PBUH), which if followed, will fit the needs of both genders, meeting the demands of continuous and gradual development of any civilization as well. Equality, according to Islamic notions, is considered different from sameness and being identical. It recognizes empirical differences between both genders but never uses these differences as measuring stick for their success. It also differentiates between the roles men and women are expected to play. A detailed account of gender approach in Islam is provided in the preceding paragraphs.

The position of women in Islam has been the subject of repeated controversy with the perceived misconception that the religion somehow enforces gender inequality. On the contrary, the equality, freedom and dignity that Islam offers to women remains unparalleled in the history of mankind. Islam proclaims woman not only equal to man but in some respects gives her more importance than man.

According to Islam it is believed that man's life on this earth is deliberate, purposeful, time bound, and followed by an eternal life to be rewarded based on his performance in this life. In this life-long trial, men and women are equal participants. The role and status of vicegerency is conferred upon and shared by men and women alike. They have been given freedom of choice to accept or deny this reality. This submission is however a willful, voluntary and responsible activity, which gives justification to a meaningful human life.<sup>14</sup>

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<sup>13</sup> Anis Ahmed, *Women and Social Justice*, Institute of Policy Studies and The Islamic Foundation, Islamabad, 1991, p.90.

<sup>14</sup> Shagufta Omar, *Human Happiness, Peace and Development: an Alternate*

The Islamic model of development distinct from other models of family, society, law and development transcends the category of gender and goes beyond the debate of matriarchal or patriarchal modules. It focuses on moral excellence as the basis of superiority of one sex over the other or between the same genders. While affirming the notion of equality, Islam recognizes the presence of a complementarity between both genders and does accept a role differentiation between them. It is further to be realized that Islamic injunctions can be best understood with the help of the *Quranic* methodology and not by any foreign instruments of knowledge.

Islam recognizes equality of genders in certain crucial areas, but at the same time does not hold it as a sacrosanct notion. Rejecting all type of discrimination against women as injustice (*zulm*), Islam approaches the whole issue from a human, ethico-centric perception which finds its basis in *Tawhidi*<sup>15</sup> paradigm. This paradigm liberates humans from man made ideologies of gender, class or race and introduces new approach to equality where both genders compete and are judged in accordance with their moral excellence, sense of social responsibility, and practicing social justice within and outside family. Individual interests and collective good merge under the overarching principle of *Tawhid* in Islam. This *Tawhidi* paradigm and the socio-moral approach, forms the basis of Islamic feminism throughout the world.<sup>16</sup>

## 2.1 Equality of Status

As a general principle, in Islam both men and women are equal in their origin, created from the same soul, both making up the human race together, as equal partners. They have both been endowed with a heart, brain and adequate reasoning powers, and together they stand in

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*Approach*, paper presented in International Conference, Baku, pp 100-107, Expanding the Role of Women In Cross-Cultural Dialogue, June 10-11, 2008, Baku, Azerbaijan.

<sup>15</sup> Believing in the presence and authority of one God only.

<sup>16</sup> Ahmed, Women and Social Justice, p. 2 and onwards

need of physical and intellectual education and training. Their religion allows them access to enjoy the basic fundamental rights on equal grounds. They are both commanded by God to follow the prescribed path for which they will be equally accountable before God and will be rewarded or punished on similar grounds. In effect the superiority of one over the other is based on performance in the field of knowledge and actions based on the conception of ethical vs unethical and good vs bad. This has been explicitly stated in the following *Quranic* verses: "*O mankind, be conscious of your duty to your Lord, Who created you from a single soul created of like nature, his mate, and from the two created and spread many men and women; and be mindful of your duty to Allah in whose name you appeal to one another and to (the ties of ) the womb. Verily Allah watches over you*".<sup>17</sup> This is a clear declaration of the fact that incalculable men and women in this world are descendants of the same parents. Man is not admirable being a male nor is a woman lesser in stature for being born a female.

*"O mankind we have created you from a male and female, and made you into nations and tribes, that you may know one another. Verily the most honorable of you with Allah is that (believer) who is most pious. Verily Allah is All knowing All aware."*<sup>18</sup> Thus in the above stated verses it has been made clear that a person's gender, nationality or ethnicity can not be the basis of one's superiority over the other.

## 2.2 Equal Social Rights

In Islam men and women have equal social and cultural rights. The Holy Quran has explicitly stated this at different places: "*fear that Allah in whose name you demand your rights over one another, and abstain from violating relations between kinsfolk: note it well that Allah is watching you very closely.*"<sup>19</sup>

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<sup>17</sup> Quran, Al-Nisa 4:1

<sup>18</sup> Quran, Al Hujrat 49:13

<sup>19</sup> Quran, An Nisa 4: 1

As far as fundamental human rights in terms of gender equality are concerned the following verse provides an adequate guideline: "*Wives have the same rights as the husbands have on them in accordance with the generally known principles....*"<sup>20</sup>

In his last sermon, the Prophet Mohammad (SAW) said: "*It is incumbent upon every individual to respect the right to life, possessions, dignity and honor of each other and there is no discrimination between man and woman in this regard*".<sup>21</sup>

Following these policy statements all the social, economic and political rights are accorded to women in Islam. In fact Islam enjoys the leading position in giving woman the rights and privileges which she never enjoyed under any other religion or constitutional system.

All social rights accorded to her are enshrined in the most authentic sources namely the *Quran* and *Sunnah*, in the light of which the regulations for the protection of women revealed in the 7<sup>th</sup> century can easily be verified in the 21<sup>st</sup> century as well. These women's rights could be summed up as: the right to life; the right to protection of honor, love and respect; the right to be brought up on equal grounds (with male child); the right of maintenance (as daughter) by father, grandfather, brother, or paternal uncles and as wife by husband; the right to education/acquisition of knowledge; the right to earn a livelihood (job or entrepreneurship); right to own, manage or inherit any property; the right to have her choice in marriage; the right to dower; the right to separation and re marriage; the right to worship; the right to freedom of expression; the right to vote; the right to participate in any social activity and hold any public office; etc.<sup>22</sup>

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<sup>20</sup> Quran, Al Baqara 2:228

<sup>21</sup> Muslim, *Kitab-ul-Hajj*.

<sup>22</sup> Shagufta Omar, *Status and Role of women in Contemporary Muslim Society*, manuscript in the hand of publisher 2011, Dawah Academy International Islamic University, p 9 to 25.

### 2.3 Equality of Legal Status

Woman is at par with man in the enjoyment of legal rights, to name a few: the right to own,<sup>23</sup> manage or inherit her property;<sup>24</sup> her consent in her marriage;<sup>25</sup> right to separation from her husband;<sup>26</sup> right of child custody in case of separation;<sup>27</sup> right to remarry<sup>28</sup> etc.

Similarly considering the legal liabilities, Islamic legislation is based on justice, whether an offence is committed by a male or female makes no difference in the eye of the law. A woman guilty of crime will be inflicted with the same punishment as a man and no differentiation will be shown towards her. Quran explains this while describing punishments of some of the *huddod* crimes such as murder,<sup>29</sup> fornication,<sup>30</sup> and theft<sup>31</sup> There are however some

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<sup>23</sup> Quran, An Nisa 4:32, For men there is a reward for what they have earned, (and likewise) for women there is a reward for what they have earned.

<sup>24</sup> Quran, An Nisa 4:7. "There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large – a legal issue."

<sup>25</sup> In Islamic law consent of both partners is one of the basic condition for validity of marriage contract.

<sup>26</sup> Delegated right of divorce, Right of khula, option of puberty, and dissolution of marriage through courts are various forms through which she can exercise her right for getting out of the marriage contract.

<sup>27</sup> Considering the paramount interest of the child, under Islamic law, the mother is granted with the right of child custody in case of divorce, for boys till puberty and for girls till her getting into marriage

<sup>28</sup> Islamic law places no restriction on remarriage of women, rather it provides detailed instructions for divorce to avoid any exploitation of women placing hindrances in their remarriage.

<sup>29</sup> Quran, Al Baqara 2:178. "O You who believe! Al-Qisas (the law of Equality in Punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female."

<sup>30</sup> Quran, Al Nur 24:2. "The fornicatress and the fornicator, flog each of them with a hundred stripes"

<sup>31</sup> Quran, Al Maida 5:38. "And (as for) the male thief and the female thief, cut off (from the wrist joint) their (right) hands as a recompense for that which they committed, a punishment by way of example from Allah."

exceptions like the issue of evidence in criminal cases<sup>32</sup>, *diyah*, blood money of women,<sup>33</sup> inheritance right of women,<sup>34</sup> right to divorce,<sup>35</sup> etc which can be understood under entire *Quranic* scheme of family and social life.

## 2.4 Equality Of Moral Obligations

The *Quran* has made it clear that morally there is no discrimination between men and women. Evidently, gender is not the determining factor while obeying the commandments of God; such as offering *salah* (prayer); fasting; paying *zakat* (obligatory alms); performing *Hajj or Umra* (holy pilgrimage to *Makkah*); practicing morals or maintaining relationships in family and amongst various groups. Rather it is the submission to the will of God which matters, as enumerated in the following *Quranic* verses:

*“O mankind we have created you from a male and female, and made you into nations and tribes; that you may know one another. Verily the most honorable of you with Allah is that (believer) who is most pious. Verily Allah is All knowing All aware.”*<sup>36</sup>

*“Verily the Muslims (those who submit to Allah) men and women, the believers men and women, (who believe in Islamic monotheism), the*

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<sup>32</sup> It is important to mention here that women's responsibility for providing evidence in courts has been misjudged and negatively propagated as denial of her rights. Providing legal evidence is not a right of women rather it is a responsibility, for which she has been given relief in criminal cases

<sup>33</sup> Difference of blood money for male and female is a *fiqhi* issue which according to many jurists can be discussed in changing socio-economic realities

<sup>34</sup> Women's share differs in different situations, and is related to the economic liabilities of the family members

<sup>35</sup> In case marriage fails to accomplish its basic objectives, the husband is provided with the administrative powers to end the marriage with the right to divorce. Islam also gives woman the right to dissolve her marriage through an agreement between the husband and the wife taking the form of *khula*, *talaq-e-mubarat* or *judicial divorce*

<sup>36</sup> Quran, Al Hujrat 49:13

men and women who are obedient to (Allah), the men and women who are truthful (in their speech and deeds), the men and women who are patient (in performing all the duties which Allah has ordered and in abstaining from all that Allah has forbidden), the men and the women who are humble (before Allah), the men and women who give sadaqat (zakat and alms), the men and the women who observe saum (fast), the men and the women who guard their chastity (from illegal sexual acts) and the men and the women who remember Allah much with their hearts and tongues. Allah has prepared for them forgiveness and a great reward (i.e. Paradise).<sup>37</sup>

*“Their Lord answered their prayer, saying. “I do not let go to waste the labor of any worker from among you, whether male or female, for all of you (human beings) are the offspring of the one another, I will, therefore, forgive all the shortcomings of those who left their homes or were expelled from them for my sake or were persecuted, and of those who fought for my cause and were slain, and admit to the gardens underneath which canals flow”. This is their reward from Allah and with Allah alone is the richest reward.”<sup>38</sup>*

## 2.5 Equality in Promised Rewards

Any gender discrimination is strongly denied in terms of success in this world and hereafter:

*“Whosoever does the righteous deeds, whether male or female, provided that he is a believer, I shall surely make him live a pure life in this world, and in the hereafter I will reward such people according to their best deeds”<sup>39</sup>*

*“Whoever does evil shall be recompensed to the extent of the evil done; and whosoever does good, whether man or woman, provided that he is a believer, will enter paradise wherein they shall be*

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<sup>37</sup> Quran, Al Ahzab 33: 35

<sup>38</sup> Quran, Al-e-Imran 3: 195

<sup>39</sup> Quran, Al Nahal 16: 97

*provided without measure”.*<sup>40</sup>

*“And the one who does good deeds, whether man or woman, provided that the one is the believer, will enter paradise and they will not be wronged in the least of their rightful reward”.*<sup>41</sup>

*“As regards the true believers, men and women, they are all comrades/friends to one another; they enjoin what is good and forbid what is evil: they establish the salat (prayer), pay the zakat (poor due, alms) and obey Allah and His Messenger. It is they upon whom Allah will most surely send his blessings. Allah is Almighty, All wise. Allah has promised to the believers, both men and women, the gardens underneath which canals flow and where in they will abide for ever; there will be neat and clean dwelling places for them in those gardens of perpetual bliss; and above all they will enjoy Allah’s pleasure, this is the supreme success.”*<sup>42</sup>

### **3. Gender Equality and the Muslim Family**

When two equal human beings join together through wedlock to form a family unit, one of the two members is being designated as head of the family, as an administrative measure. In this administrative unit there appears a distinctive set of rights and responsibilities.

#### **3.1 Role Differentiation**

While Islam guarantees equal social, civil and legal rights for both men and women, it also determines diverse roles for them. The most important division amongst men and women in this regard is with respect to the institution of family. Family, the basic and most important unit of any society is considered a divine establishment since the times of the first couple of Adam and Eve. Considering its importance Islam has laid down set principles for its formation. *Nikah* (marriage contract) between a male and a female is considered

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<sup>40</sup> Quran, Al Momin 40: 40

<sup>41</sup> Quran, An Nisa 4: 124

<sup>42</sup> Quran, Al Taubah 9: 71 & 72

to be the most important prerequisite with zero tolerance for any sort of extra marital relations before or after marriage. Checks and balances are introduced to protect and secure the rights of all stakeholders; in this case the husband, the wife, and the children in particular and the society in general. For securing the sanctity of the individuals, the family and the society Islam disapproves of free mixing of the sexes.

Duties of both husband and wife have been prescribed for smooth functioning of the family. Within the family the prescribed gender roles of its members are complementary and not at par or in conflict. It is stated in the *Quran* that: "*They are Libas (apparel, dress, body cover or screen) for you and you are the same for them*".<sup>43</sup>

It is also pertinent to mention here that the relationship in the family, between all its members, and most important of all, between husband and wife, is not merely a utilitarian relationship; rather it is a spiritual association that sustains and generates love, kindness, mercy, compassion, mutual confidence, self sacrifice and solace. The dimension of this relationship is beautifully described in the *Quran*: "*And (one) of His signs is that He created for you, of yourself, spouses that you may repose in them (and find rest and tranquility in them) and He has set between you love and mercy*".<sup>44</sup>

In the boundaries of the Islamic framework; women are completely within their rights to develop their own niche in this world along with maintaining their sacred role of homemaker, wife and mother.

### **3.2 Role Distribution within the Family**

A spectrum of mutual rights and responsibilities has been evolved in such a way that balanced relationships are developed between them. The *Quran* says: "*Men are protector/maintainer of women, because Allah has made the one of them to excel the other, and because they*

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<sup>43</sup> Quran, Al Baqara 2: 187

<sup>44</sup> Quran, Al-Rome 30:21

*spend of their wealth (for supporting them and the family)....*"<sup>45</sup>

*"And they (women) have rights similar to those (of men) over them, according to what is equitable, and men have a degree (of advantage) over them, Allah is Mighty, Wise".*<sup>46</sup>

In order to effectively run family affairs and meet its goals, everyone has been assigned with different responsibilities. Man has been given the status of the caretaker, while the woman is regarded as the centre of the family. Her primary responsibility is to concentrate on the home and the family, and all that is required to operate and smoothly run this institution while the man is duty bound to take care of all of family needs and requirements.

### **3.3 Husband as Head of Family**

For the smooth running of the family affairs, it was necessary to assign an administrative leading position to any one of its members, so the man has been identified as the head of the family. In this capacity the husband has been made duty bound for the task of breadwinner and protector of the family as *Qawwam* (protector and maintainer). The Quran makes it explicitly clear that: "*Men are the protectors and maintainers (Qawwam) of women, because Allah has given the one more strength than the other, and because they support them from their means.*"<sup>47</sup>

The husband is responsible for the smooth and effective functioning of the family unit, in all physical, economic, social, and religious matters. He is required to provide respect, love and good company to his wife as well as his full support and appreciation in carrying out her conjugal and domestic responsibilities.

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<sup>45</sup> Quran, Al-Nisa 4:34

<sup>46</sup> Quran, Al Baqara 2:228

<sup>47</sup> Quran, Al-Nisa 4:34

### 3.4 Woman as Sovereign and Guardian of Her Family

Sovereign of her home, empowered with full control over it and the children, the following saying of Mohammad (SAW) enjoins upon woman the responsibility of her home and children.:

*"All of you are guardians and responsible for your wards and the things under your care; a man is guardian of his family and is responsible for them, a woman is guardian of her husband's home and the children and is responsible for them, all of you are guardians and all of you are responsible for your wards."*<sup>48</sup>

Other traditions of the same meaning with variation in words and scope of guardianship are cited in *Bukhari*, implying responsibility of women for the family, house and the household for which she will be accountable.<sup>49</sup> One of the tradition in this regard is reported as:

*"from amongst the women who ride camels (meaning the women of Arab), are the best of one from Quraish<sup>50</sup>, who are very affectionate for their children and protect the property and belongings of their husbands."*<sup>51</sup>

Thus, from an Islamic standpoint, a woman, is ordained to pay close attention to the welfare and well-being of immediate members of her family. For the satisfactory performance of this wholesome responsibility, she is even exempted from any economic liability towards family and even of herself. Furthermore, few important religious duties such as five times daily congregational prayers in mosque, Friday and funeral prayers, or jihad are not made obligatory for her. However, as her situation demands or permits, she can profitably utilize her spare time and her talent for the economic welfare of her family or spend it in useful social activities.

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<sup>48</sup> Bukhari Chapter: 566

<sup>49</sup> *Ibid.* Book of Nikah, chapter 111, hadith 172, and chapter 137, hadith 207

<sup>50</sup> An Arab tribe to which prophet (SAW) belonged

<sup>51</sup> *Bukhari* Book of Nikah, chapter 41, hadith 73.

### 3.5 Implications of Superiority Of Husband in Family System

The above quoted *hadith* stating husband and wife both as guardians in their spheres, clearly describes the wife as an equal partner of her husband in the family affairs. Only in the greater matters affecting the welfare of the family, the husband has been bestowed with more authority. On the basis of his being the head of the family man has been basically designated with the functional supremacy over his family. The wife on the other hand is free to develop her full potentials, and is entitled to all her rights on the condition that her obedience is directed towards her husband.<sup>52</sup>

Thus the best role a woman can play in keeping the marital tie intact and strong, is to recognize her husband as the one responsible for running of family affairs. She is supposed to obey him even if his judgment is not acceptable to her, in any particular matter, provided he does not go beyond the limits of Islam. In the context of marriage in Islam, this is the meaning of obedience. It is the recognition of the role of husband as the head of the family unit and the submission and loyalty of both husband and wife to a higher law, the *shariah*.<sup>53</sup> The *Quran* pronounces in this regard: "...Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard...."<sup>54</sup>

Several sayings of the prophet support this notion: "*The best wife is the one who pleases you when you see her, obeys your orders (demands), and guards your property and her own honor (chastity), when you are not at home.*"<sup>55</sup>

*One woman companion asked the Prophet, "Allah has made jihad*

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<sup>52</sup> This relationship could be understood in the perspective of any administrative unit hierarchy where head enjoys a status as well as bears the ultimate responsibility, and the subordinate has to act on the instructions, orders and guidance provided by the administrator for the smooth functioning of the institution.

<sup>53</sup> B. Aisha Lemu, *Woman in Islam*, Islamic Council of Europe, England, 1978, p. 18

<sup>54</sup> Quran, Al Nisa 4: 34

<sup>55</sup> Bukhari, *Kitab-un-Nafaqat*, also reported by An-Nasai and Bahaiqi

*obligatory on men. If they succeed they get the spoils of war, and if they are martyred they join their Lord, where they get their sustenance. What actions of ours will equal these actions? The Prophet (SAW) said, "Your obedience to your husbands and recognition of their rights."<sup>56</sup>*

It is however important to realize that this obedience is not absolute in implication as the Prophet Mohammad's (SAW) rulings gives clear verdict: "*None should be obeyed in the disobedience of Allah.*"<sup>57</sup> and that the "*Obedience is obligatory only in what is good and lawful*".<sup>58</sup>

Therefore obedience in the matters contrary to clear Islamic injunctions is not required of her nor does it suggest the constant servility on commands of husbands. It also does not mean that men have a license to exploit and abuse their authority as is seen in the behavior of many ignorant Muslims. Unfortunately the notion of being *Qawwam* has been misinterpreted by different literal translations suggesting the meaning of a "ruler"<sup>59</sup> or "incharge", thereby expecting the wife to act as a servant by the less informed Muslims. In fact this misunderstanding of absolute obedience has, to a greater extent negatively affected, the husband wife working relationships in Muslim communities and presented an ugly picture of Islamic teachings.

It should be clearly understood, at this point, that by identifying man as the head of the family, Islam has neither established nor endorsed patriarchal mind set or attitudes. Quran instructs men to be mindful and caring to the women as wife, daughter, sister and mother. In Islamic model of family, prophet (PBUH) himself is seen trying to please and comfort his wives as much as they are trying to please and

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<sup>56</sup> Al-Tarhib, vol.3, p 336

<sup>57</sup> Ahmad

<sup>58</sup> Ahmad

<sup>59</sup> Maulana Ashraf Ali Thanwi, Urdu Translation of Quran, by Taj Company Pakistan. He translates *Qawwam* as *Hakim* (ruler).

comfort him, and in doing so, he occasionally joins them in household chores in appreciation of their domestic role, as well.

It is interesting to note that though earlier as a part of marriage vows, the phrase for the commitment of obedience towards husband has been omitted from Western marriage contracts and proceedings.

#### 4. Gender Debate in Pakistan's Context

The current debate of gender equality in Pakistan is a natural outgrowth of international concerns for women's rights as well the defensive response of religious segment. There appears to be an opposite directional thought process of women activist and the religious groups. The former wishes to transplant the liberal solutions in the Muslim social reality, while the later insists on specific *fiqhi* interpretations of many initiatives suggested.

Furthermore, there are certain genuine discrepancies in Pakistani society which are attributed toward Islam, for which Islam has no tolerance leaving alone advocating it. Adding to the ignorance regarding position of women in Islam, the presence of injustice and malpractices in contemporary Muslim societies, has been taken up as a weak point of Islam by non-Muslims as well as by less informed Muslims.

More vocal advocates of women's rights, view the presence of certain teachings in the *Quran* and their consequent *fiqhi* interpretations as a preferential treatment tilted towards males. They also blame the religious scholars (*ulema*) for discrimination against women taking for granted the de-facto presence of male dominance, as if the *Quran* and *Sunnah* endorse it. *Hudood* laws, marriage and divorce laws, inheritance, evidence, *diyot* are termed as discriminatory against women. Voices are also raised to demand the right of polyandry<sup>60</sup> to equal the right of polygamy<sup>61</sup>. Hence writers, using the Western intellectual model, call for a feminist interpretation of the Islamic sources particularly the *Quran*.

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<sup>60</sup> A woman having more than one husband at a time

<sup>61</sup> A man having more than one wife at a time

#### 4.1 State of Gender Equality in Pakistan

There are two dimensions to this issue, one is legal and the other is social. Considering the legal position in Pakistan, women's rights are fully protected under the Constitution of the Islamic Republic of Pakistan. Various constitutional provisions in this regard are as under:

Article 25 provides equality of status with no discrimination on the basis of sex; article 9 protects every individual's (male and female) right to life and liberty; article 14 provides for basic right of protection of dignity; article 37 requires the government to provide primary and secondary education at the grass roots level including women without any discrimination; article 35 provides protection to the marriage, the family, the mother and the child, and declares the government to be duty bound to promote the unity of the family; article 16,17,19 secure her participation in political activities whereby article 32 requires government to provide adequate share of women in local government elected representation; article 18, 23 and 27 protect her economic rights of owing property, doing lawful business, acquiring job in any field and article 37 restricts her employment in professions not suitable for her. :<sup>62</sup>

Various laws have also been framed for the protection of these rights, still the enacted laws lack proper implementation, hence the judicial system fails to provide proper relief and justice to women. Thereby her rights are being infringed upon in gross violation of constitutional and legal provisions. Furthermore, there are many areas which require appropriate legislation such as domestic violence, job structure for domestic servants, proper detailed codification of family laws including inheritance, procedure of divorce, issue of triple divorce and others.

The other dimension of the issue is social, analysis of which is not easy due to diverse social stratification in the context of Pakistani society, where two kinds of attitudes towards women are prevalent.

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<sup>62</sup> Ghazala Ghalib, *Human Rights For Women*, Brochure, (ed. Shagufa Omar), Women Aid Trust, Islamabad, 2007

On the one hand their rights are well protected and they are given full respect in the family as well in the society, with their security and responsibility well taken care of by fathers, brothers, husbands and later on by sons. They are getting educated in leading professions and are performing in many fields. On the other hand in certain segments of the society,<sup>63</sup> women are even denied the basic human rights. The daughters are considered inferior to sons, while wives are treated as subjugated creatures. In view of this, non provision of education and proper sustenance, negation of inheritance right, physical and mental torture, bonded labor, forced or mis-matched marriages, and incidences of sexual harassment, rape, gang rape, incest, honor killing, and practice of other evil social customs are observed.<sup>64</sup>

Evidently, this duplicity creates confusion regarding the position of women in our society. The question is as to what is the reason behind this gender disparity or exploitation of women's rights in spite of clear Islamic injunctions for its provision and protection? The main factors, seems to be the lack of educational opportunities to the masses, ignorance about Islamic teachings, feudal and tribal cultural traditions, male dominated patriarchal attitudes, Poverty and unemployment; and to some extent the misinterpretation of some basic facts as described in *Quran* and *hadith*.<sup>65</sup>

## **5. Application of Western Model of Gender Equality in a Muslim Society**

As Pakistan is a signatory to the international women's rights charter CEDAW , and other covenants, efforts are afoot in the country to abide by the idea of gender equality in every walk of life. In order to meet the women empowerment targets set under the UN Millennium Development Goals (MDGs), attempts are being made for

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<sup>63</sup> Specially in rural and tribal areas of the country

<sup>64</sup> Ghalib, *Human Rights For Women*, Brochure , (ed. Shagufa Omar), Women Aid Trust, Islamabad.

<sup>65</sup> Omar, *Status and Role of women in Contemporary Muslim Society*, pp 48-49

consideration and implementation of gender equality in all the national policies, schemes and plans of action.

Signatory States to CEDAW are required to incorporate the principle of equality of men and women in their legal systems. They are required to abolish all discriminatory laws and adopt appropriate ones prohibiting gender discrimination. Establishment of tribunals and other public institutions is also stressed to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises. To achieve this purpose amendments are required in the laws, or even in the constitution.

Under CEDAW, the scope of complete gender equality is envisaged in article 2, the core provision of the convention which defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>66</sup>

Noting the interrelationship of culture and tradition and enjoyment of fundamental human rights of women, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women".<sup>67</sup> Considering this, according to Article 5, the States parties are obliged to work towards the modification of social and cultural patterns of individual conduct in an effort to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".<sup>68</sup> Finally, in article 16, the Convention returns to the issue of marriage

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<sup>66</sup> CEDAW Article 2

<sup>67</sup> CEDAW, preamble para 14, second last.

<sup>68</sup> CEDAW, Article 5

and family relations, asserting the equal rights and obligations of women and men with regard to enter into marriage, choice of spouse, same rights and responsibilities during marriage and its dissolution, same rights of parents irrespective of their marital status, personal rights and command over property issues. It also calls for setting minimum age of marriage, registration of marriage and related matters.<sup>69</sup>

In response to the reservations by many Muslim countries on article 2, 5, 7 and specially 16, many state parties have entered objections, where as the CEDAW monitoring committee also disapproves them and suggests for their withdrawal claiming equality without reservations. Though the International laws, charters or conventions are flexibly designed to adjust to indigenous laws and norms of various countries, yet the major theme is to be implemented in the body of laws once a state signs and ratifies it. It, therefore, becomes imperative to comprehend that the western concept of gender equality in its philosophy, form and content is at times inconsistent or rather in conflict with many Islamic values. Few aspects in this regard are discussed below:

### 5.1 Identical Equal Rights for Both Genders

Western perspective of gender equality denotes that man and women must have equal (same) rights in all spheres, whereas in Islam men and women have somewhat different rights in terms of division of responsibilities. For instance, woman's right of *mehar* (dower)<sup>70</sup> at the time of *nikah* (marriage contract), and *kifalat*<sup>71</sup> (economic subsistence) from her husband, are specific to her. They can not be equal for man; who is obligated to fulfill these rights of his wife and is accountable under *shariah* law in case of its noncompliance.<sup>72</sup>

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<sup>69</sup> CEDAW, Article 16

<sup>70</sup> A mandatory present given by husband to wife at the time of wedding, in the form of cash, gold or property.

<sup>71</sup> Financial maintenance of wife is the sole responsibility of husband.

<sup>72</sup> Legally she can claim these rights through court, in case husband does not comply with, she can seek judicial divorce without losing any of her rights.

In the context of worship, there are separate responsibilities for man and woman and it is not suitable to change roles. For example woman cannot offer *azzan* (call to *salat*) and lead men in prayers.<sup>73</sup> In the opinion of many Jurists, except in extra-ordinary circumstances, she cannot become Caliph or head of the state. On the other hand, men are ordered to offer *salat* in congregation five times a day, offer Friday prayers and funeral prayers, while women are exempted from these responsibilities. According to Islamic teachings, men and women both are instructed to defend their chastity, women in addition, have been obligated to wear *hijab* while men have no such requirement.

Under the global concept of gender equality, Islamic teachings regarding the law of evidence, inheritance, paying *de'yat*, appointment of guardian (*wali*), laws of marriage and divorce etc. are declared to be discriminatory against women. Most of the aforementioned matters have already been brought before the different commissions especially constituted to discuss women's rights issues at the highest level, in Pakistan, demanding an end to discrimination against women at all levels. For example, the inquiry commission for women (1994) in its report (published in 1997) came out with many recommendations in this regard such as: Inclusion of UN and Western laws in Family Laws body enforced in Pakistan; demand for provision of reproductive rights to women; payment of equal inheritance to women at all levels; giving the right of inheritance to the widow of the deceased son; declaring evidence of women and *de'yat* equal to men; declaring women *wali* (guardian) alongside men in all the matters; and giving the right to enter into marriage with non Muslims to women etc.<sup>74</sup> Leaving aside, legal and social aspects, in the context of worship, the incidence of *imamat* (leading of mixed congregational prayers) by a woman in the United

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Other than this husband will be committing a sin for which he will be accountable on the day of judgment.

<sup>73</sup> Though she can lead prayers for women if required or desired so.

<sup>74</sup> Report of Inquiry Commission of Pakistan, 1997

States<sup>75</sup> is part of the same chain of events.

It is thus, envisaged that if sustained efforts are made to implement targets set by international movement for women's rights in Islamic societies in letter and spirit, then many Islamic values and laws regarding marriage, divorce and *khula*, evidence, *qisas-o-diyat*, *hudood* laws, congregational prayers, Friday and funeral prayers, *haji* and *umra*, *jihad*, issues of *mahram*, *hijab* (veil) etc will be a target of discussion, and demanded to be changed. In other words it seems that until a Muslim completely alters his own religious values in the wake of ending discrimination against women, cannot be a true torchbearer of western notions of gender equality.

## 5.2 Same Performance in all Areas

According to Western concepts of gender equality men and women must perform in all the fields, which is practically not possible. Women have been endowed with one of the major responsibility of giving birth to subsequent generations, a biological role which obviously men cannot perform, furthering which the early childhood care and training is peculiar too, and is consistent with women's motherly nature. Also, because of specific physical characteristics there are many areas where performance and capabilities of men and women can differ. Equal status and responsibilities demand that both members should be equal heads of the institution of family. It is very clear that no institution can perform effectively with two administrative heads of the same status and power.

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<sup>75</sup> Amna Wadood, one of the American Islamic feminist scholar, lead a congregational prayer for men and women in Muslim Education Centre of Oxford, in Banbury Road. About 20 men and women joined Prof Amina Wadud, as she delivered an hour-long *khutba* — sermon — about the importance of *salat* — prayers — then led the gathering in prayer. The meeting marked the start of a two-day conference at Wolfson College on Islam and feminism, available at [http://www.oxfordmail.co.uk/news/3769513.Women\\_protest\\_over\\_prayers/](http://www.oxfordmail.co.uk/news/3769513.Women_protest_over_prayers/), last accessed on 04.02.2012

While traditionalists view women as a person half with-drawn from the human society, the feminist model considers her as a person who may perform most of the traditional male tasks. From feminist point of view it is considered important that a woman should prove her performance in all the fields where men are performing. She is appreciated for flying airplanes and space ships, fighting in the battle fields, sometimes denying her biological constraints. She is also encouraged for the menial jobs which might be against her dignity. In economic field drawing an equal salary to men is considered achieving equality. It is worth considering at this point that whether she has to prove to be like a man for the recognition of her capabilities or contribution or the society is ready to acknowledge her contribution as an individual in the capacity of a woman?

### **5.3 Economic Contribution to Society's Development**

It is repeatedly said that if half of the population is staying at home useless, a nation cannot progress. Woman's conjugal, parental and domestic role is nullified as being stereo typed and economically non productive. The question arises here as to why the woman at home should be considered non productive when she continues to be a part of the nation's human capital, even if her services are not paid in cash? Besides does equality mean that women must participate in paid labor force? Does Islam want a quantitative approach in economic development? In fact Islam rejects the narrow, biased and exploitive thinking in which only economically productive units, women working in the factories, carry value and importance.<sup>76</sup>

We should have more positive attitude towards women as human capital and make available to them the proper facilities that would enable them to play their effective role in the societies. Another important concern in this regard could be that over-due stress on her participation in economic activity could deprive the woman of her own choice for engaging in

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<sup>76</sup> Ahmed, *Women And Social Justice*, p 93

economic activity or not? It might infringe upon her right of being taken care economically by her male relatives.

#### **5.4 Western Achievements and its Adaptation**

In western civilization women have achieved the present state of social, economic, legal and political rights after seven generations of women's strenuous efforts in the most democratic ways. Thus by securing many human rights and somewhat equal status to that of men, an increasing number of women have successfully ventured into traditionally male dominated occupations, still the reality is that a large number of women are engaged in low paid jobs. Exploitation of women in media and advertisements marring her sanctity has become a norm. Women in general are shouldering dual responsibilities. The bitter results of absolute freedom and changing cultural norms have manifested in broken families, disintegration of marriage and family institution, teen age pregnancies and single mothers, illegitimate children, increased juvenile delinquency, homosexuality and Aids.

With all due regard to plans and achievements for women's rights through international forum, a concern for Muslims today, is the changing trend in women's rights movement, with the claim for reproductive rights, rights for prostitution as sex workers and rights for abortion, nudity and homosexuality, demanded in the garb of women rights in the fourth International Beijing conference in 1995. Later on in Beijing +5 conference in New York, it was suggested to change the definition of the family to pave the way for homosexuality and sex free society. Consequences to these demands are observed throughout the world, which are a serious concern to Muslim societies.

#### **Conclusion**

In the light of the above discussion it is strongly believed that supremacy and imposition of specific cultural values, traditions and a particular life style over rest of the world can never be

welcomed nor can it bring harmony and peace amongst nations and societies. The International trends of women's rights movement and conventions designed to achieve gender equality require all signatory nations to amend their laws and announce policies complying with these norms. In Muslim countries, the appropriate approach would be to adapt the desired and required measures for establishing gender equality and social justice in consonance with Islamic laws and norms, and resist the themes and legislations which are diametrically opposite to the true Islamic value system. However, compliance of CEDAW provisions with *shariah* law should be understood and established in the light of afresh understanding and interpretations from direct sources of *shariah* law.

### **Recommendations**

Following are the suggestions for developing compatibility in struggle for women's rights achievement and elimination of gender discrimination from western as well as Islamic perspective:

- Recognition of real legal, social and economic issues involving women in Pakistan.
- Realization of the situation that Pakistani women have been oppressed in the name of Muslim culture and traditional social customs as well as in the name of modernity, equality and empowerment of women.
- Opening up a meaningful dialogue between religious scholars and women activists.
- Adaptation of a tolerant and understanding attitude towards those who talk about the issue from a different perspective.
- Addressing the Western concerns seriously, and responding to the questions raised by them in an analytical manner.
- As a religious and cultural force Islam must respond to women issues in a meaningful and scientific manner.

- Persons/groups committed for establishment of an Islamic social order should be the first to respond positively and make a serious effort towards restoration of women's rights.
- Social justice should be ensured for all segments of the society.
- Legal measures should be adopted for protection of women rights accorded by *shariah*.
- Preservation and continuous protection of women's rights should be regularly monitored and methodically analyzed for betterment.
- In addition to legal measure, change of attitudes is a prerequisite to achieve the desired results. Islam's stress for men to adopt a gracious, gentle, kind and respectful attitude towards women should be the policy guideline within the family as well as in the outside social spheres.
- Women's respect should be emphasized and reflected in Government's initiatives and advocated through an effective media policy.
- Uniform educational policy for boys and girls should be formulated for mass education at primary as well as secondary level. Higher education possibilities for girls in congenial settings should also be increased.
- Indigenous economic module and conducive work environment for women at work places should be created to enhance productivity.
- Establishment of research bodies for *ijtehad*<sup>77</sup> should be promoted within the Islamic movements, Islamic Institutions and Organizations

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<sup>77</sup> *Ijtehad* means reinterpretation of issues in the true Islamic spirit considering the demands of modern times for emerging issues, by the competent authorities.

- Debates between women activists and religious groups as well as between the traditional *ulama* and the modern young educated scholars should be encouraged.

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## **About WAT**

Women Aid Trust (WAT) is an independent, nonprofit non-government organization dedicated to alleviating the sufferings of women in prisons, in Pakistan. The organization provides legal aid and rehabilitation services for imprisoned women, undertakes research and advocacy efforts to improve the country's legal and judicial system for the rights of women, and offers a range of community welfare, education, health and emergency relief services. WAT also provides legal aid and similar services for juveniles in Pakistani prisons.

Established in 1994, WAT is registered under the Trust Act, 1882 and is governed by a Board of Trustees. It maintains the head office in Islamabad and branch offices in Peshawar, Lahore, Karachi, Hyderabad, and Multan. The WAT team includes voluntary office bearers, employed staff and a multi sectoral pool of dedicated and highly active volunteers.