



**Iraqi Women and Constitutional Law Workshop**  
**Date: May 5-7, 2005**  
**Venue: Intercontinental Hotel**  
**Amman-Jordan**

**Introduction:**

Under the auspices of the United Nations Development Fund For Women "UNIFEM" Arab States Regional Office, Dr. Banafsheh Akhlaghi, President and Founder of the National Legal Sanctuary for Community Advancement (NLSCA), an NGO based in San Francisco, California, USA, created and facilitated a three-day workshop on the topic, "Iraqi Women and Constitutional Law" on May 5-7, 2003. The workshop, organized and sponsored by UNIFEM's Arab States Regional Office under the direction of Dr. Haifa Abu Ghazaleh, UNIFEM Regional Programme Director, brought together a group of 23 Iraqi Women Members of Parliament (MPs), newly elected to Iraq's National Assembly. Others in attendance included experts from regional and international organizations in the fields of Constitutional Law, International Human Rights Law and Women's Rights.

UNIFEM has joined the efforts of the international community in providing assistance to the Iraqi people. UNIFEM visited Iraq on June 15-19, 2003 to assess the situation on the ground. During the visit, UNIFEM identified Iraqi women who had begun to organize for the reconstruction and rebuilding process; met with members of the Coalition Provisional Authority to assess their strategy for carrying out their obligations to support the realization of women's human rights in the reconstruction and recovery; and consulted with relevant UN and other agencies working in the field on ways of collaborating on UNIFEM's programmes in the short and long term.

The Iraqi people suffered for decades under the former regime. Their situation has been made worse by the years of conflict and sanctions. In the wake of the recent conflict in Iraq, on May 22, 2003 the UN Security Council adopted resolution 1483 lifting the long-standing sanctions regime and providing an international legal and political framework for the reconstruction process of Iraq. Resolution 1483 encouraged efforts by the people of Iraq to form a representative Government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to gender and recalled Security Council Resolution 1325, which calls for a gender approach in post-conflict reconstruction. Finally, Resolution 1483 also resolved that the United Nations

should play a vital role in the reconstruction of Iraq and the establishment of national and local institutions for representative governance and gave the United Nations Special Representative the mandate to promote the protection of human rights.

The UNIFEM and NLSCA "Iraqi Women and Constitutional Law" workshop aimed to enhance and support the role of the Iraqi women parliamentarians by sensitizing the participants on the importance of women's rights, constitutional law, and the Universal Declaration on Human Rights. Additionally, the workshop aimed to acquaint participants with the similarities and differences between legal systems, and to discuss various mechanisms and other options to effectively integrate women's rights, human rights, and pertinent international laws into the new Iraqi constitution.

The "Iraqi Women and Constitutional Law Workshop" also sought to provide the exchange of opinions via interactive communication among participants and to emphasize group work discussions and recommendations. The following outcomes were expected and achieved. Namely, successful coordination among different MPs involved in the drafting of the Iraqi constitution, identification of particular points in the constitution for further discussion, and comprehensive understanding of various mechanisms which may be utilized to insure the effective integration of women's rights, human rights, and pertinent international laws. Most importantly, the concerns broached by the participants during the seminar were continually gathered and thus incorporated within the workshop.

**Day 1**

**Date: Thursday, May 5, 2005**

**Time: 9:00 a.m. – 5:30 p.m.**

**Venue: Intercontinental Hotel, Amman-Jordan**

***(Please see Appendix 1 for the agenda of all three days)***

**DAY 1 - Session 1**

**Time: 9:00 a.m. to 9:30 a.m.**

**Facilitator: Dr. Shirin Shukri**

**Topics addressed:**

- 1.) Description of Objectives of Workshop.**
- 2.) Discussion of Needs and Goals.**

Dr. Shirin Shukri welcomed the parliamentarians to Amman, Jordan as guests of UNIFEM. Dr. Shukri honored the participants as newly elected officials of Iraq and as women parliamentarians in particular, and she stressed the overall importance of women's political participation, especially in drafting Iraq's new

constitution. Dr. Shukri applauded the perseverance of the attendees' in making the journey. Subsequently, she read over the list of goals and objectives set for the workshop, in addition to the complete workshop agenda.

Dr. Haifa Abu Ghazaleh, Regional Programme Director of UNIFEM, graciously offered warm greetings to the group of MPs. Likewise, Dr. Abu Ghazaleh extended praise for the MP's commitment in further enhancing the equality of women not only in Iraq, but also within the region.

Dr. Shukri subsequently requested the MPs share their concerns and goals as they related to the workshop. Some of the topics the MPs hoped to cover during the workshop were as follows:

- Discussing characteristics of various constitutional strengths and weaknesses in comparative analysis.
- Focusing on Personal Status Laws in terms of how to legally protect women as wives and other related issues.
- Discussing Sharia in relation to the constitution.



by engaging with the Parliamentarians. Dr. Saiid offered an opportunity to engage with the Parliamentarians, not merely to speak "at" them. He went on to acknowledge the high degree of experience held within the room. He emphasized that the women attendees are the general authority of Iraq, responsible for creating the new constitution for their homeland.

After welcoming the participants to Amman, Dr. Saiid lectured on the nature and purpose of a constitution and its relation to the parliamentary system. When speaking on the constitution, he stressed that the constitution is the first and highest authority of a nation's law and therefore holds unlimited authority. Regarding the parliamentary system, he explained it was designed to represent the sovereignty of the people. He discussed law as the tool for political development. Further, he lectured on the etymology of the Arabic word for "constitution."

Other topics on which Dr. Saiid expounded included a historical overview of the role of women in developing Tunisia's constitution, an introduction to the involvement and role of women in the democratic processes in various countries, and the distinction between policy governing religion vs. religion governing policy. Later in his first session, at the behest of a participant, Dr. Saiid referenced a number of countries operating "democratically," however doing so, without written constitutions. He carefully explained that while a constitution may not be essential to a democracy, as is the case with England, it is a crucial component.

Following his lecture on the nature and necessity of a constitution, as well as the varying roles of individuals in its development, Dr. Saiid addressed the present-day, socio-cultural reality of Iraq. He insisted that all ambitions and aspirations held by the MPs for the new constitution be compatible with the prevailing situation. He stressed that for a constitution to be respected by all individuals in a nation-state, it must be in harmony with the reality of that nation-state. He also outlined various mechanisms, that when put in place, may ensure popular respect of the constitution. Subsequently, Dr. Saiid lectured on the nature of the preamble to the constitution.

The participants and Dr. Saiid discussed at length Sharia as Supreme Law and the manner in which to reference Islam as the nation's religion. Dr. Saiid referred the participants to sources including the constitutions of Sudan, Indonesia and Tunisia.

Dr. Saiid further distinguished concept of the use of Islam as "a" source of law vs. as "the" source of law. He stressed the need for legislation to be compatible and consistent with the language of the constitution. A participating MP asked Dr. Saiid to expand upon the difference between Islamic Law as the main source

vs. one source of legislation and whether the UDHR contradicts Sharia. Dr. Saiid responded in detail (***please see Appendix 2, page 8***).

Further discussion ensued on the difference between policy governing religion vs. religion governing policy whereby Dr. Saiid stressed the importance of freedom of religion.

After an initial introduction by Dr. Shukri, Dr. Banafsheh Akhlaghi, President of the National Legal Sanctuary for Community Advancement (NLSCA), presented herself to the MPs. She offered a warm welcome to them and emphasized the importance of the task ahead. Of particular concern to Dr. Akhlaghi was the shortage of time for the parliamentarians to draft the constitution. Under the Transitional Administrative Law (TAL), the National Assembly's deadline of August 15, 2005 with only one six – month extension, offers little time for drafting such a comprehensive document as a constitution, not to mention other important tasks before the parliament.

Additional concerns expressed by Dr. Akhlaghi were the inclusion of minority rights and how to draft a constitution that could be carried into the future. Dr. Akhlaghi identified the following as key points of discussion during her session:

- 1.) Strategizing to extend the deadline and allow for more time.
- 2.) Specific language examples provided and created in working groups.
- 3.) Coalition building among participants here and how to implement this strategy back in Baghdad.

Closing her initial remarks, Dr. Akhlaghi stressed that democracy doesn't look the same throughout the world. She identified the following constitutions as strong points of reference for the participants: Malaysia, India, USA, and Canada. She reiterated Dr. Saiid's earlier points that the Iraqi parliament must develop a constitution that is enforceable and valid in the eyes of the Iraqi people.

### **DAY 1 – Session 3**

**Time: 11:00 am to 1:00 pm**

**Facilitator: Dr. Saiid**

**Topics addressed:**

- 1.) The preamble and its importance in clarifying the meanings and objectives that the constitution aims to achieve.**
- 2.) Mechanisms for safeguarding rights and freedom.**
- 3.) International treaties as they relate to human rights and women's rights in constitutional law.**

Dr. Saiid began Session 3 with an acknowledgement of the sensitive historic situation within Iraq. He stressed that the participants are representatives of the Iraqi people and the constitution must express the needs of the people. To that

end, Dr. Saiid cautioned the MPs against wholly copying the constitutions of other countries and underscored the importance of a uniquely Iraqi document. He referenced the constitution of the United States as the oldest model, however stressed that it has yet to be successfully exported to another nation.

Dr. Saiid defined the role of law as an instrument of societal change. He stated that laws should aim to reshape social and cultural practices over time, whereby unwanted practices are replaced with new favorable ones.

More discussion on the preamble followed. Dr. Saiid reiterated the content of the preamble does not include law. Rather the preamble demonstrates the objectives of the individuals writing the constitution. Some preambles declare or make reference to rules. For example, Morocco and Algeria mention their adherence to the UDHR and the ICESCR. In that way, the drafters made it an objective and intention of their constitution to adhere to the international agreements mentioned. Dr. Saiid recommended to the MPs to include the UDHR, ICESCR, and the International Covenant on Civil and Political Rights (ICCPR). Dr. Saiid lectured on the relevance of modern French history as related to human rights. He then discussed the significance of the articles within the constitution, which are later used by courts to clarify judgments and to interpret texts other than the constitution, such as laws enacted by the parliamentary body.

In his discussion on how to remain consistent with the UDHR, Dr. Saiid responded to concerns from a participant on contradictions found between Sharia and the UDHR, such as the death penalty and the right to marriage regardless of race or religion. Some of the participating MPs expressed reservations about addressing the UDHR solely in the preamble. Dr. Saiid emphasized that the UDHR is not contradictory to Islamic Law. He identified as two of the most heavily debated UDHR provisions in Islamic countries the right of a woman to choose her husband and the rights of children.

Dr. Saiid then responded to a question regarding the impact of international treaties on the average citizen. He explained that if a convention is binding and a citizen's country ratifies this convention as law, nothing prohibits a citizen from demanding its country implement the laws of the convention. Dr. Saiid informed the group that international law trumps federal law, and he also noted that a concern specific to Arab nations was that despite the ratification of some international conventions, many have not been enforced, thus citizens feel little impact. Dr. Saiid identified the lack of capability to appeal, and the personal effect on a person who does initiate an appeal as major problems facing the implementation of international treaties. Mechanisms for safeguarding the protections found under such treaties are essential to put in place according to Dr. Saiid, who finished this topic with a metaphor: "A door must be left open, so to speak, leading to the international community."

On the topic of women's roles in various Arab countries, Dr. Saiid commented that today there exist varying degrees of acceptance of women leaders. Some Arab countries may refuse to acknowledge women leaders, but, Dr. Saiid believes this will change. While legal action is a crucial tool to aide in the empowerment of women, according to Dr. Saiid, it is not enough. Other avenues by which women may implement change include: school curricula, media, and the advocacy of other educational/outreach organizations and institutions. It will take time to develop credible organizations supporting the equality of women and women's rights.

Dr. Saiid urged the MPs to seek out local, national and international organizations which aide in ensuring equality for women. Dr. Saiid reiterated the need to address the reality within Iraq –Iraq has a tribal system which cannot and will not be eliminated with the constitution. Particular security concerns for women participating in the democratic process were shared by an MP, to which Dr. Saiid responded by stressing that the process of change occurs by writing women's rights into the constitution. Dominant cultural views do not change in 2-10 years. Rather, Dr. Saiid said that women must rely on changes continuing in later generations.

In response to a question regarding the development of a national charter, Dr. Saiid asserted that MPs could move to draft a national charter prior to a constitution. A national charter, said Dr. Saiid, would contain a group of goals, principles and rights that could be discussed, outlined and ratified prior to the drafting of a constitution. The constitution would then detail the issues and expand on the points in the charter.

Dr. Saiid's final comments before commencement of the workshop activities addressed the issue of national identity. A country needs to be united, by having its citizens feel and demonstrate their unity as a cohesive nation-state. Each Iraqi should feel he is an Iraqi before claiming allegiance to a particular sectarian group or party. Conforming to the national identity will secure a sense of national unity, he explained.

Dr. Saiid outlined the participants' long term objectives as follows: preparing projects to eventually be proposed to committees and proposing ideas to other coalitions within the NA willing to provide support. Dr. Saiid asked the MPs to focus upon the following within their respective working groups:

- The preamble and the first article.
- Compare other preambles in the constitutional packets distributed with the reference binders.
- Begin work on Article One, which focuses upon the Islamic State and the manner in which it incorporates minorities.

- Take fifteen minutes to draft Article One, and then present the work via a spokeswoman to the larger group before the break.

Groups shared their developments and participants discussed *pros* and *cons* amongst themselves as Dr. Saiid facilitated. Dr. Saiid provided participants with constructive criticism on their drafts, and offered some crucial points to keep in mind while developing the preamble and the constitution. **(Please see Appendix 2, page 12).**

#### **DAY 1 – Session 4**

**Time: 2:00 p.m. to 3:45 p.m.**

**Facilitator: Dr. Saiid**

**Topic addressed:**

#### **2. Protecting Women’s Rights in Policies and Legislation.**

Following lunch, Dr. Saiid lectured on personal status laws, an issue identified by most of the participants as a major source of concern to them in their attempts to address women’s rights. Dr. Saiid began by stating that constitutions do not govern a country’s civil code. His discussion featured issues concerning custodianship; even within Sharia, certain codes might allow for the appointment of custodianship to women, for example, a Belgium woman may be granted custody of a child with a Moroccan father. Other issues addressed were inheritance, alimony, honor crimes, protection of families, divorce, and other general rights such as reverence for the holy cow in India and labor laws and North Korea.

While Dr. Saiid indicated that a family should be acknowledged as a base or a main cell, he questioned: “How do you protect the family? Is it feasible to address these issues in the constitution? Do we want a long constitution, possibly including over 100 articles?” In response to his own inquiry, Dr. Saiid stated that a constitution must 1.) Guarantee the most essential principles; and 2.) Introduce mechanisms to protect those principles.

Advising on the topic of mechanisms to protect constitutional principles, Dr. Saiid reiterated that it is not enough to merely state rights in a constitutional document, but rights need applicable laws for enforcement. His recommendations included:

1.) The ability to determine constitutionality of laws: A court entity must be created with the purpose of monitoring the constitutionality of laws promulgated. The courts, under a system of separation of powers, will determine the constitutionality of laws passed by the legislature. Under the constitution, a court can judge that a law ratified by a legislative body contradicts the constitution and

thus, cannot prevail as law. The constitution must be upheld as the highest law of the land by the courts in their judgments.

2.) Limiting Corruption: Only solved through ombudsmen. Resolution of certain types of disputes may be designated to regional and/or tribal leaders to maintain their respective traditional roles in conciliatory matters, as these leaders can be more successful in certain matters.

### **DAY 1 – Session 5**

**Time:** 4:00 p.m. to 5:00 p.m.

**Facilitators:** Dr. Akhlaghi & Dr. Saiid

**Format:** Workgroups focused on the formation of constitutional law and mutual understanding: workgroups identified human rights issues, education, health and personal status law among others.

In this session, Dr. Akhlaghi emphasized the need to identify those rights and freedoms the participants desire to see implemented. After identifying these points of concern, Dr. Akhlaghi divided the participants into 4 working groups and assigned each group one of the following categories of rights:

- 1.) Political and Civil Rights
- 2.) Social, Economic and Cultural Rights
- 3.) Issues of Personal Status
- 4.) Social Welfare / Social Security Concerns

The purpose of the working group was to allow the participants to share their main concerns – possibly for the first time ever – in a safe and nurturing environment. During the second and third days of the workshop, Dr. Akhlaghi explained what types of rights and freedoms should be addressed in the constitution. She went on to distinguish appropriate constitutional subject matter from those issues that would be better addressed by a legislative body in a civil code.

Dr. Akhlaghi worked with the diverse group of MPs to identify commonalities in their concerns and common ground on key issues. It was on these core issues that Dr. Akhlaghi recommended they focus their efforts upon their return to Iraq. Dr. Akhlaghi suggested the group in attendance at the UNIFEM workshop would be most effective in ensuring the rights it identified as most crucial to women and minority groups if it acted in a unified fashion upon returning to Iraq's National Assembly (NA).

### **Day 2**

**Date:** Friday, May 6, 2005

**Time: 9:00 a.m. – 5:00 p.m.**  
**Venue: Intercontinental Hotel, Amman-Jordan**

***(Please See Appendix 1 for the agenda for all three days)***

**Day 2 – Session 1**

**Time: 9:00 a.m. to 10:45 a.m.**

**Facilitator: Dr. Shukri**

**Topics addressed:**

- 1.) Day 1 wrap-up.**
- 2.) Open discussion on the role of women parliamentarians in the drafting of the constitution.**
- 3.) Open discussion on the role of civil society in enhancing the role of women parliamentarians in drafting the constitution.**

Day Two began with Dr. Shukri revisiting the points addressed over the course of the previous day. After summarizing the main points addressed in the first day, Dr. Shukri requested and received feedback on the format and content of the workshop and how it was meeting the needs of the MPs. ***(Please see Appendix 2, page 17).***

Dr. Shukri segued into the topic of gender issues. As only 3 out of the 23 parliamentarians in attendance had been exposed to formal instruction on gender issues, Dr. Shukri began with an internationally recognized definition of gender as a “social type.” Solidified at the 1995 World Conference on Women in Beijing, this definition acknowledges the difference of roles and responsibilities between women and men, which change according to time and place. Likewise, it takes into consideration the fact that social relations are based on cultural, social and economic values and conditions in addition to practical conditions (for example, who does what types of work at what time and how). The “social type” category of gender is different from the concept of sex, which is fixed and unchangeable. Dr. Shukri reminded the group to keep gender in mind in all phrasing.

Dr. Shukri next focused upon the western concept of gender and Islamic tradition. She shared that in Islam, all verses from the Koran referencing personal laws make mention of male and female believers. If you read these verses, explicit reference is made to both genders. The text itself offers protection to both genders and their rights and duties under the Holy Koran. Historically, the role of the woman has been to raise children and care for the home. Upon exposure to educational opportunities Arab women became highly educated and their responsibilities at home and in the workplace became divided.

Dr. Shukri continued her discussion on various international conferences that have focused on women's rights after 1975. She offered some brief discussion on the following:

- 1.) U.N. Fourth World Conference on Women, Beijing (1995)
- 2.) U.N. Third World Conference on Women, Nairobi (1985)
- 3.) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)

Dr. Shukri then introduced the main topic of her session, the role of Iraq's MP women. Dr. Shukri defined important aspects of this role as follows:

- 1.) Acting as a bridge between female citizens and their government, working to ensure gender protection within the language of the constitution and initiating the dialogue on gender issues with men.
- 2.) Ensuring the freedom of the individual, both female and male, because both groups must be equal before the law.
- 3.) Ensuring the complete personal freedom of women.

Dr. Shukri then broke the attendees into groups for further discussion on the role of MP women. Upon discussion, the participants found an overlapping concept: women MPs provide a "bridge between their female and male constituencies and the parliament" and are also key representatives of women's issues in particular. ***(Please see Appendix 2, page 18)***

After the attendees indicated that male MPs were not participating in meaningful dialogue with their female colleagues, Dr. Shukri focused on the female MPs' need for persistence. She insisted that women must participate in drafting the constitution, not merely vote on it. She recommended the parliamentarians establish an office in which they must work with a man, and remarked that while women are particularly vulnerable in committees, they must persist. "Try to participate in discussions from their outset," said Dr. Shukri. "If you sense resistance, persist!"

More discussion ensued on the topic of effective composition of an article addressing equality, and MPs examined handouts from the ABA, Iraq Legal Development Project, and language from the constitutions of several countries. ***(Please see Appendix 2, page 19).***

Dr. Shukri's final words were full of hope as she reminded the participants of Iraq's rich history. A quick reference to Hammurabi's Code, developed and promulgated by the ancient Sumerian King of Mesopotamia around 1700 BC, illustrated her point. She concluded by saying, "Politicians come and go. Believe in yourselves."

**DAY 2 – Session 2**

**Time:** 11:00 a.m. to 12:45 p.m.

**Facilitator:** Dr. Akhlaghi

**Topics addressed:**

- 1. United States Constitutional History: Creation and Reform, Separation of Powers.**
- 2. The rights and strategies of the minority.**
- 3. South African, Indian, and Nigerian Constitutional History.**

After the morning break, Dr. Akhlaghi opened with a discussion on the historical background of the United States Constitution, and in particular the dynamic nature of this document. Dr. Akhlaghi remarked that the U.S. Constitution is a “living, breathing document.” She asked the MPs to keep in mind the process through which the U.S. Constitution was conceived over two hundred years ago and how the document has changed. She explained that change in the Constitution occurs in primarily two ways: either the text itself is changed or the interpretation of the existing language changes.

Dr. Akhlaghi stressed that what the people need today may dramatically differ from what the people need tomorrow. Therefore, it is critical to institute mechanisms that allow for altering the Constitution to address the changing desires and needs of the country and its people.

On the issue of the separation of powers, Dr. Akhlaghi began by explaining the U.S.’s federal structure and the three branches of government. She detailed how this system of checks and balances was designed to ensure no one branch accumulated overreaching powers. Dr. Akhlaghi stressed that the judicial branch, known as the Supreme Court in the U.S., or the Constitutional Court in South Africa, is the most important branch because it holds the power to enforce the provisions within the Constitution.

Dr. Akhlaghi pointed out that, presently, the TAL of Iraq does not create such a court. She suggested the MPs work to create a caucus for bringing about the creation of a Constitutional Court, emphasizing that the court must remain unbiased and objective and thereby empowered to enforce the rights granted within the constitution.

Continuing on to the subject of “The Majority, its Definition and Powers,” Dr. Akhlaghi distinguished the roles and definitions of political majorities vs. minorities. She cited examples in South Africa as a model for coalition building amongst minority groups prior to drafting South Africa’s Constitution. She

defined the majority as the group or party that holds the most political power, regardless of its numerical minority or majority status.

Noting that minorities can form coalitions to leverage political power, Dr. Akhlaghi strongly suggested the women MPs reach out to other minorities and form a stronger political voice to secure minority rights. She emphasized that the MPs should consider which women rights are absolutely nonnegotiable and which rights may be reconsidered through amendment/interpretation at a later date. For example, if all minorities rally behind constitutional language that protects individual religious rights for all, then women, as a group, would be included as recipients of individual religious rights.

One concerned MP raised the point that many minorities have various interests particular to their group or are fractured within the group. These schisms create obstacles to coalition building. Dr. Akhlaghi acknowledged that there are many difficulties to overcome in this respect. Dr. Akhlaghi then pointed out that bringing minorities together begins with candid discussions on where their commonalities may lie. She then reiterated the importance of a Constitutional Court, noting that regardless of whether minorities can agree on solutions to issues as they relate to particular interests, all minorities should be able to agree to the importance of establishing a Constitutional Court empowered to address such issues at a later date. Agreeing to create a Constitutional Court could act as a foundation upon which minorities could build a coalition.

Dr. Akhlaghi then moved into a discussion concerning the difficulties surrounding the effectiveness and implementation of the constitutions of the United States, India, and South Africa. Dr. Akhlaghi reminded the MPs that all three countries had amended their constitutions to address the rights of minorities. One critical problem that arose in South Africa concerned the lack of public awareness of Constitutional rights. Dr. Akhlaghi discussed South African efforts to inform the public of their rights through quarterly town hall meetings conducted by politicians within their respective jurisdictions. These town hall meetings served two purposes – first, rights training, and second, establishing bridges between political officials and their constituents. The gatherings were a noteworthy success, and Dr. Akhlaghi suggested the MPs consider implementing similar town hall meetings in their respective jurisdictions once public safety could be assured.

The final topic centered on the intersection of legal systems and religion. Dr. Akhlaghi began by discussing the Nigerian model, where Islam is the formal religion of the country and is a source of law. The Nigerian model separates legal matters of personal law into two separate judicial systems: a Sharia court and a secular court. The appeals processes from both court systems culminate before the Constitutional Court. Dr. Akhlaghi distinguished between the language of “a” source of law, and “the” source of law. In a country with a dual court

system such as Nigeria, Islam is necessarily “a” source of law, given the existence of a secular system that does not necessarily follow Sharia law. Dr. Akhlaghi suggested the MPs review the specific language used in the Nigerian Constitution as a possible model for Iraq should they be inclined to create a similar system. ***(Please see Appendix 7).***

**DAY 2 – Sessions 3 & 4**

**Time: 2:00 p.m. to 4:30 p.m.**

**Facilitator: Dr. Akhlaghi**

**Topics addressed:**

- 1.) Recap on Ensuring Protections: Constitutional Court, Amendments and Coalition Building.**
- 2.) Constitutional Law: The approaches, similarities, and comparisons between legal systems.**
- 3.) The integration of women’s rights and human rights in constitutional law: bridging the gap between the Islamic Legal Systems and Other Legal Systems.**
- 4.) Workgroup Discussion focused on formulating legal language structures to incorporate human rights, women’s rights, educational rights, personal status issues into the Iraqi constitution.**

Dr. Akhlaghi reviewed three legal principles which offer primary goals in developing the constitution. The first is the development of a Constitutional Court; the second is allowing for Constitutional Amendments; and the third is ensuring Equal Protection for Minority Rights.

In discussing the topic of constitutional law, Dr. Akhlaghi began her lecture with a discussion on the South African Constitution, arguably one of the best constitutions existing today. ***(Please see Appendix 6).***

Dr. Akhlaghi offered a brief historical overview. The South African Constitution was created in 1994 and finalized in 1996, with an Interim Constitution in effect for two years. The words and rights sought to incorporate all South African peoples, due to the centuries of struggle in their country. Since 1918, South Africa’s political minority groups had engaged in a struggle with the powerful elite – a numerically small group. Once the change in government occurred a constitution emerged. The constitutional committee performed outreach for two years in an effort to ensure all groups were represented within the final Constitution. Despite all the safeguards and the thoroughness of those who drafted the Constitution, today, after 11 years, South Africa is revisiting its Constitution for revision. As a result of in-depth assessment, the 1996 South African Constitution has been deemed somewhat incomplete. However, Dr. Akhlaghi said South Africa’s preamble offered an excellent example for the Iraqi

MPs because it incorporates the concept and future goal of “Unity through Diversity.” ***(Please see Appendix 6).***

On the issue of equality before the law, Dr. Akhlaghi discussed the manner in which South Africa instituted several ways of addressing past discrimination and issues concerning disenfranchised groups within the body of its constitution (referring to Chapter 2, Section 9 on Equality, ***please see Appendix 6***). South Africa’s intention was “to promote the achievement of equality via legislative means and other measures designed to protect and advance persons or categories of persons disadvantaged by unfair discrimination.” Dr. Akhlaghi pointed to this as an example of language that advances women’s equality without explicit reference to women, allowing coalitions to be forged with other disenfranchised groups seeking equality. Dr. Akhlaghi recommended the participants review the TAL’s section on equality, which is one paragraph in length (see Chapter 2, Article 12). She contrasted this with the South African constitution which addresses equality in one line but allows four full paragraphs in which to elaborate on its meaning.

On the issue of human dignity, Dr. Akhlaghi again referenced South Africa’s Constitution, Chapter 2; Section 10. ***(Please see Appendix 6)***. Dr. Akhlaghi argued that such an article could be used to encompass many of the rights identified as essential by the MPs. Dr. Akhlaghi pointed out that equality and human dignity are “universal rights” that can serve as important common ground with other minority groups in lobbying together for universal language in the constitution.

Dr. Akhlaghi used the South African and American models to illustrate state or provincial governing systems and how they relate to federal systems. ***(Please see Appendix 2, page 27).***

UNIFEM provided [www.iraqiconstitution.org](http://www.iraqiconstitution.org) as a reference tool for the Iraqi parliamentarians use. This website features constitutions from around the world in Arabic, English, and the language in which the constitution was originally written. ***(Please see Appendix 7).***

### **DAY 3 – Session 1**

**Time:** 9:00 a.m. to 2:00 p.m.

**Facilitator:** UNIFEM’s Dr. Shukri  
Dr. Akhlaghi

**Topics addressed:**

- 1.) Day 2 wrap-up and open discussion.**
- 2.) Discussion and analysis of each working group’s formulation of legal language structures.**

- 3.) **Development of strategies and an action plan for addressing constitutional matters.**
- 4.) **Constitutional monitoring of laws.**

***(Please See Appendix 1 for the agenda of all three days)***

The day started with Dr. Shirin Shukri going over the events of the past day. The participants spoke about the positive and negative impressions of the second day and the workshop thus far.

Dr. Akhlaghi addressed Iraq's modern constitutional history and focused on the 1990 constitution. ***(Please see Appendix 4 for the 1990 Constitution)***. Dr. Akhlaghi then moved on to discuss strategies and the development of an action plan for addressing constitutional matters. Each of the working groups from the previous day was asked to concentrate on a different law. Dr. Akhlaghi noted that laws may already exist within the constitution the participants might want to retain, but asked the participants to critically re-examine the language structures used in those laws. She continued by pointing out that there are already many progressive laws within the Iraqi system, but that they are not adhered to. Dr. Akhlaghi suggested that with the insights gathered from the workshop, the participants should review the TAL and the 1990 constitution to identify sections or ideas that should be maintained and those that should be re-worked. She also suggested that they write the laws in a manner that does not provoke strong opposition, and to think about their vision for the future of Iraq as they compose the constitution.



Upon completion of the exercise the participants were asked whether this would mark the first time they had truly analyzed the Iraqi TAL and former constitution to the level they had within this workshop. The answer was a unanimous “yes”. According to Dr. Akhlaghi, analyzing and reviewing legislation in their roles as MPs would be very similar to this exercise. Dr. Akhlaghi also suggested that the MPs create committees housing those MPs with legal backgrounds to act as resources for others. She also encouraged them to utilize the expertise of other parliamentarians with different backgrounds and perspectives.

Dr. Akhlaghi continued her discussion on the relevance and effectiveness of coalition building. Dr. Akhlaghi suggested appealing to men within disenfranchised groups. Dr. Akhlaghi noted that each of the participants was part of not only one coalition, (a coalition of women), but also part of other coalitions that include men. She suggested that those men can be used as allies as women MPs pushed for women’s rights to be included.

Addressing the content of the material produced in the working groups, Dr. Akhlaghi expressed concern regarding the fact that a vision statement did not exist, that while there was mention of a higher court, its duties were left undefined, and finally, the topics the MPs had worked to identify as important had not always been integrated into their work. Dr. Akhlaghi addressed the

issue of Sharia once again. She distinguished the spirit of the law from the letter of the law and mentioned Egyptian law as an example. Participants weighed in with their views, some in support of the letter and others preferring the spirit, because, as they explained, it allowed them to keep abreast of changes which may occur over time. Others preferred a mixture of both approaches, explaining that there were matters that are not subject to change, but that sometimes interpretation was acceptable.

Finally, with regards to consensus building, Dr. Akhlaghi went on to point out to two matters that she considers key:

1. No majority in any political establishment around the world can do it on its own. There must be consensus. Otherwise it is not a democracy. Minorities must be able to point out their grievances and wants.
2. Within the majority they will need to reach consensus among the different political, religious, racial, and other varied ideologies. It would be wise to begin by planting seeds.

The participants responded by stating that a specifically designated committee would be assigned the task of formulating a draft constitution, which would later be presented and discussed in the National Assembly. The participants tended to believe the current government allowed for healthy opposition, and that the constitutional drafting process would ultimately consider the interests of all Iraqis and express the will of the people. However there remained a concern that the women's minority voice would not be heard when the NA voted on the constitution.

In her conclusion, Dr. Akhlaghi stressed the importance of referring to the Indian and South African constitutions, because they have successfully incorporated rights which are not found within other constitutions. Dr. Akhlaghi then reviewed those articles on which the participants had worked and discussed with the participants their content and language structure.

Finally, as Dr. Akhlaghi completed the final day's session, she expressed concerns regarding the manner in which the constitution would reach the Iraqi people, their comprehension of the document, and the type of dialogue that would ensue.

Before the official farewell, the participants were asked to suggest what they think the next steps should be concerning UNIFEM's continued support of their efforts as women MPs within Iraq's National Assembly. The participants suggested the following:

- Pushing for an extension of the deadline given for drafting the constitution.

- Reviewing constitutions of the world in search of appropriate terminology and language structures.
- Having more workshops in Iraq for the same group, enabling them to work as a lobby.
- Focusing future workshops on the points of disagreement within the group and strategies for working together.
- Conducting a workshop with both men and women MPs from around the world to share solutions to common problems.

At the close of the day, Dr. Haifa Abu Ghazaleh, UNIFEM's Arab Regional Program Director, delivered a speech extending her appreciation to all the participants, consultants, and the organizing committee. Dr. Akhlaghi also expressed her warm gratitude to those present as well as to those who had assisted in organizing the event. Ms. Raja'a Al-Khusa'I spoke on behalf of the Iraqi Women Parliamentarians who were present for the workshop. Dr. Abu Ghazaleh officially concluded the event by presenting the participants with certificates of attendance.

