



how LGBTI people ought to behave or look.⁸ For example not all lesbian women will appear masculine and not all gay men will appear effeminate, although some lesbian and gay persons may fit these expectations.

Across cultures, signals about a person's identity, sexual practices, or gender expression may vary, so a person may appear "obviously" gay in Iraqi society but not fit stereotypes formed in other countries about gay individuals. For example, the fact of being in a heterosexual marriage does not automatically disprove a claim of persecution based on membership in the LGBTI "group." Interviewers should therefore focus on eliciting testimony about exactly why and on what basis the applicant fears harm. For more critical information about evidentiary standards, including consistency, detail, corroborating evidence (and how this differs for sexual orientation vs. transgender identity versus HIV-positive status), see U.S. Citizen and Immigration service's officer training course *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims*. This is a government document focused specifically on adjudication of LGBTI claims that can be cited for all the common sense arguments made in this paragraph.⁹ Immigration Equality also has a number of useful resources for adjudicators as well as applicants.¹⁰

⁸ *Id.* at 40

⁹ "If you practice this area of law, you should be familiar with pages 61-64 of this Guidance. Specifically, the Guidance lays out possible 'changed circumstances' exceptions where the applicant: has recently 'come out' as LGBT; is transgender and has recently taken medical steps in his or her transition which changes his or her outward appearance; or has been recently diagnosed with HIV. The Guidance also lays out some LGBTI-specific 'extraordinary circumstances' exceptions which may arise, including: severe medical problems relating to HIV; mental health issues including PTSD and mental health consequences of being subjected to psychiatric 'treatment' in the home country to 'cure' him or her of being LGBTI ; severe family or community opposition or isolation, recognizing that many LGBTI people will not have the support of family or extended community upon arriving in the U.S." See Victoria Neilson, *Ground-breaking USCIS Guidance on LGBTI Asylum Claims*, Immigration Daily, <http://www.ilw.com/articles/2012,0314-neilson.shtm> (last visited June 25, 2014).

¹⁰ See generally Immigration Equality, *Immigration Equality Draft Model LGBT Asylum Guidance*, (2010), available at <http://www.immigrationequality.org/wp-content/uploads/2011/07/ImEq-Draft-Model-LGBT-Asylum-Guidance-2010.pdf>; Immigration Equality, *Immigration Equality Asylum Manual*, available at <http://www.immigrationequality.org/issues/law-library/lgbth-asylum-manual/>.



III. The Use of Country Condition Reports

Although the primary source of evidence in any immigration case must be each applicant's own testimony, and although that testimony alone can suffice to establish an applicant's eligibility for asylum or refugee status under U.S. or international law, country condition evidence may corroborate an applicant's claims. The purpose of this submission, therefore, is to synthesize existing evidence and research on country conditions in Iraq, referencing diverse sources that speak specifically to the country climate for LGBTI individuals. This report might be used 1) by visa applicants to the United States as an appendix to SIV or P2, 2) by asylum applicants or 3) by officials around the globe in immigration or administrative proceedings for LGBTI persons to supplement other country condition reports, which often lack information on persecution of LGBTI people.

The intention of this submission is to provide additional context and to fill in evidentiary gaps for individual cases. Documents like this one can help clarify why incidents of violence and discrimination against LGBTI individuals often are not recorded, and in particular what this reveals about the situation of LGBTI people in Iraq. For example, the UN refugee agency's (UNHCR) public data on refugees is not disaggregated according to sexual orientation or gender expression, and official reports from Iraqi or other governments on the conditions for LGBTI people are sparse. It is necessary, therefore, to rely on reports from civil society organizations that document abuse and interview LGBTI individuals themselves.

It bears repeating, however, that country condition information is not, strictly speaking, necessary where an applicant has already provided specific, credible, and detailed testimony.¹¹ *Therefore this report should not be used to impose a higher evidentiary burden on any applicant, and any individual's history may differ significantly from the generalized background information reported here.*

IV. Exacerbated Sectarian Strife and the Return of the Religious Militias

On June 10th, 2014, international news sources started reporting that Sunni militants from the movement known as the Islamic State in Iraq and Syria (ISIS) had successfully taken over Mosul—Iraq's second largest city and a regional capital—and had released 1400 prisoners from city jails.¹² Soon after, reports stated that the

¹¹ According to the REAL ID Act, potential asylees only need to corroborate "material facts which are central to [their] claim and easily subject to verification" n. 28 at 3, <http://harvardimmigrationclinic.files.wordpress.com/2013/02/here.pdf>

¹² *Iraqi PM asks for state of emergency after insurgents take Mosul*, Al-Jazeera, June 10, 2014, <http://america.aljazeera.com/articles/2014/6/10/iraq-mosul-isil.html>;

militants were moving south towards Baghdad, that the Iraqi army was plagued by desertions, and that confidence in Nuri al-Maliki and the Iraqi government was evaporating.¹³ By June 15th, the militants were tweeting and blogging photos claiming that they had been carrying out mass executions of Shiite and government-associated individuals, but the identity of the victims and the death toll could not be verified independently.¹⁴ By that time, the U.S. had begun removing staff from its Embassy, the first time it had done so since the U.S. invasion in 2003 (indicating that the violence could pose a threat even to those inside the so-called green zone).¹⁵ The U.N. also started pulling its staff around the same time.¹⁶

Reports from Mosul suggested that police officers and government workers might have been targeted for summary execution and that the ISIS militants issued pronouncements that strict Islamic law would be applied.¹⁷ The *New York Times* reported that the rise of ISIS was years in the making, dating back to ISIS's founding in 2006.¹⁸ This same report states that the goal of the extremist group, which opposes modern conceptions of the nation-state, is to carve out a caliphate spanning Iraq, Syria, and the Levant.¹⁹ ISIS has reportedly allied itself with some secular Baathists and other tribal militias, which share a common enemy: Iraqi security forces and Shiites.²⁰ The U.N. reported on June 24, 2014 that at least 1,075 people have been killed in Iraq so far this month, most of them civilians.²¹

¹³ Liz Sly & Ahmed Ramadan, *Insurgents seize Iraqi city of Mosul as security forces flee*, The Washington Post, June 10, 2014, http://www.washingtonpost.com/world/insurgents-seize-iraqi-city-of-mosul-as-troops-flee/2014/06/10/21061e87-8fcd-4ed3-bc94-0e309af0a674_story.html?hpid=z4; Suad Al-Salhy & Tim Arango, *Iraq Militants, Pushing South, Aim at Capital*, The New York Times, June 11, 2014, http://www.nytimes.com/2014/06/12/world/middleeast/iraq.html?hp&_r=0

¹⁴ Alia A. Nabhan, *Militants Claim Photos Show Mass Execution in Iraq*, The Wall Street Journal, June 15, 2014, <http://online.wsj.com/articles/militants-claim-photos-show-mass-execution-in-iraq-1402855360>

¹⁵ Liz Sly & Abigail Hauslohner, *U.S. starts removing embassy staff from Baghdad as ISIS grabs Iraqi town of Tel Afar*, The Washington Post, June 15, 2014

¹⁶ Nabih Bulos & Laura King, *U.N. pulls some staff from Baghdad as Iraqi forces attack militants*, LA Times, June 16, 2014, <http://www.latimes.com/world/middleeast/la-fg-iraq-offensive-un-20140616-story.html>.

¹⁷ *Id.*

¹⁸ Tim Arango et. al, *Rebels' Fast Strike in Iraq Was Years in the Making*, The NY Times, June 14, 2014

¹⁹ *Id.*

²⁰ *Id.*

²¹ The AP, *U.N.: At Least 1,075 Killed in Iraq in June*, TIME, June, 24, 2014, <http://time.com/2916974/u-n-at-least-1075-killed-in-iraq-in-june/>

Mokta al-Sadr, a Shia cleric who received theological training in Iran,²² led the Mahdi army in 2009 and 2012, when militia members were known to target LGBTI individuals for torture and murder.²³ The Mahdi army has remobilized recently and is reported to have announced that it “would under no circumstances be under the control of the government.”²⁴ This can be read as a challenge not only to the Shiite-controlled government but also to the country’s Shiite religious establishment, represented by Grand Ayatollah Sistani, who has also called for his followers to take up arms.²⁵

V. Iraqi Law

Even if consensual homosexual conduct is not technically a crime in Iraq,²⁶ the country has a number of laws that encourage the harassment, arrest, and imprisonment of LGBTI individuals. For example, the 1951 civil code, article 1(2), explains that, in the absence of a specific textual basis for prosecuting civil wrongs, courts may resort to customs, and failing a strong custom, resort may be made to the most relevant principle of sharia law.²⁷ Chapter five of the penal code provides the possibility of amnesty for violent criminals (for example, although the law doesn’t specify this, it could provide amnesty for violent crimes committed against LGBT persons) with “honorable motives” or in response to “serious provocation of a victim” (providing a mitigating excuse).²⁸ A separate law passed by the Iraqi Parliament in 2008 makes amnesty (a formal pardon) impossible for persons convicted of crimes related to sodomy, along with convicts of rape, incest, kidnapping, and aggravated theft.²⁹

²² *Id.*

²³ See discussion supra Parts III and IV.

²⁴ Thomas Erdbrink, *Rifts Among Shiites Further Threaten the Future of Iraq*, NY Times, June 23rd, 2014, <http://www.nytimes.com/2014/06/24/world/middleeast/challenges-to-shiite-establishment-further-threaten-the-future-of-iraq.html#>

²⁵ *Id.*

²⁶ It’s important to note that the only circumstances in which sodomy is explicitly criminalized are those in which vaginal sexual intercourse are also criminalized, such as rape and sex with a relative. It doesn’t appear that sodomy is singled out in any way by Iraqi law; rather, the use of the term “sodomy” in the country’s legal codes seems to be an attempt at being inclusive.

²⁷ *Al Qanun al Madani*, available at <http://www.dhrd.info/pdfs/lawo-2.pdf>; See also Iraq: Laws criminalizing SOGI, Aug 2013, IGLHRC, <https://iglhrc.org/content/iraq-0>

²⁸ *Id.*

²⁹ See *Id.* Full text of the amnesty law in Arabic is available at <http://www.iraq-ig-law.org/ar/content/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%81%D9%88-%D8%B1%D9%82%D9%85-19-%D9%84%D8%B3%D9%86%D8%A9-2008-0>.

VI. 2009: Campaign of Violence

Although reported murders of gay men and lesbians in Baghdad go back to 2004 and there have been sporadic reports of murders in the Western press since 2005,³⁰ the first organized and documented campaign of violence started in 2009, during an atmosphere of moral panic that cut across sectarian lines. One extremist group described by *The Observer* would troll internet chat rooms and gay websites to locate its victims. A computer science graduate student and hardline Islamist who performed this task explained, “It is the easiest way to find those people who are destroying Islam and who want to dirty the reputation we took centuries to build up.”³¹ One victim’s mother described how she found her son’s remains three days after he was kidnapped: “We found his body with signs of torture, his anus filled with glue and without his genitals... I will carry this image with me until my dying day.”³²

Although it was not always clear which groups were responsible for the murders, the Mahdi army—one of the most infamous militias connected with the killings—is known for its targeting of non-conforming and LGBTI people.³³ Militia members reportedly invaded homes and kidnapped men suspected of being gay, ultimately taking them to Sadr City (a large Shia slum in Baghdad), torturing them, killing them, and dumping their bodies in the streets as a warning.³⁴ The reported killings were most numerous in Baghdad but there were also attacks and acts of torture in Kirkuk, Najaf, and Basra.³⁵ In some cases, torturers injected glue up the anuses of victims and induced diarrhea; an official from the UN assistance mission for Iraq told HRW in April 2009 that the dead “probably already numbered ‘in the hundreds.’”³⁶ Human Rights Watch also reported “accounts of police complicity in abuse—ranging from harassing ‘effeminate’ men at

³⁰ These reports are from the research and reporting of of Rasha Moumneh (middle east north Africa division of HRW) and Scott Long, based on 22 interviews with Iraqi men, 24 phone interviews/ email/chat. *“They Want us Exterminated”: Murder, Torture, Sexual Orientation and Gender in Iraq.* HUMAN RIGHTS WATCH, Aug. 17, 2009, at 47, <http://www.hrw.org/node/85049/section/2>

³¹ Afif Sarhan & Jason Burke, *How Islamist gangs use internet to track, torture and kill Iraqi gays*, *The Observer*, Sept. 12, 2009, <http://www.theguardian.com/world/2009/sep/13/iraq-gays-murdered-militias>.

³² *Id.*

³³ “Sometimes their bodies are daubed with offensive terms such as “pervert”, or “puppy” which is a hate word for gay men in Iraq.” *Anti-gay attacks on rise in Iraq*, BBC, Aug. 17, <http://news.bbc.co.uk/2/hi/8204853.stm>.

³⁴ *IGLHRC’s Hossein Alizadeh Speaks to Aljazeera on LGBTI Rights in Iraq.* IGLHRC, Aug. 18, 2009, <https://iglhrc.org/content/iglhrcc-hossein-alizadeh-speaks-aljazeera-lgbt-rights-iraq>.

³⁵ *“They Want us Exterminated”: Murder, Torture, Sexual Orientation and Gender in Iraq.* HUMAN RIGHTS WATCH, Aug. 17, 2009, at 2, <http://www.hrw.org/node/85049/section/2>.

³⁶ *Id.* at 2

checkpoints, to possible abduction and extrajudicial killing.”³⁷

In April 2009, IGLHRC sent a letter to Iraq’s minister of human rights, Wijdan Salim, asking that the Iraqi government take steps to protect LGBT people.³⁸ The letter described the confirmed murders of six men whose bodies were found in the Sadr City neighborhood, an arson attack against a Sadr City coffee house that was popular among gay men and MSM, and mentioned other reports indicating dozens of extra-judicial murders across Iraq.³⁹ Also in April that year, IGLHRC and Human Rights Watch jointly appealed to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Working Group on Enforced or Involuntary Disappearance.⁴⁰

VII. 2012: Violence Renewed

In 2012, human rights organizations started reporting a new wave of violence, though the killings seemed to target teenagers who dressed “brashly,” and this time the Iraqi government itself labeled the youth as enemies. The attacks seemed to be part of a broader effort of social cleansing, a wider sweep against non-conforming people. On February 13, 2012, Iraq’s Interior Ministry released a statement that condemned the “phenomenon of emo” as Satanic; the statement said that rebellious teenage fashions of dark clothes, skull-print T-shirts and nose rings are emblems of the devil.⁴¹ The condemnation of this so-called “emo” look, at times conflated homosexuality with this particular style of dress, which some Iraqis consider effeminate. These killings and the statements from government officials made clear that the Iraqi government was unable and unwilling to protect non gender-conforming persons, and may even have participated in their harassment through police detentions and mistreatment.

³⁷ “*They Want us Exterminated*”: *Murder, Torture, Sexual Orientation and Gender in Iraq*. HUMAN RIGHTS WATCH, Aug. 17, 2009, <http://www.hrw.org/node/85049/section/2>

³⁸ *Iraq: IGLHRC Asks the Iraqi Government to Protect LGBTI People*, IGLHRC, April 17, 2009, <https://iglhrc.org/content/iraq-iglhrc-asks-iraqi-government-protect-lgbt-people>.

³⁹ *Id.*

⁴⁰ *Iraq: Statement on Recent Murder and Violence*, IGLHRC, April 8, 2009, <https://iglhrc.org/content/iraq-statement-recent-murder-and-violence>

⁴¹ Jack Healy, *Threats and Killings Striking Fear Among Young Iraqis, Including Gays*, NY Times, March 11, 2012, <http://www.nytimes.com/2012/03/12/world/middleeast/killings-strike-fear-in-iraqi-gay-and-emo-youth.html?pagewanted=all&module=Search&mabReward=relbias%3As>

VIII. Today: Presumption Raised by Past Persecution

As a general rule in U.S. asylum jurisprudence and practice, once an applicant has established past persecution, an asylum officer must presume that the applicant's fear of future persecution is well founded, and the burden shifts to the government to establish that the fear is no longer well founded (for example, because there has been a critical change in circumstances so that the applicant no longer has a well-founded fear, or because the applicant could relocate internally and it would be reasonable to do so).⁴²

Even if the past persecution has not occurred against the individual applicant her- or himself, a *pattern or practice* of persecution of individuals similar to the applicant will also solidify a claim of well-founded fear of persecution, and in this case the applicant would not have to demonstrate that she or he has been singled out.

A fundamental change in conditions on the ground in Iraq has occurred, but not for the better: the government is even weaker than it was in 2009 and 2012 and the Mahdi Army networks of violence have been reactivated. Today we are seeing the resurgence of armed groups and a loss of confidence in the Iraqi state. A major breakdown in security can lead to moral panic, as it did in Iraq in 2009. At that time the government permitted violence against "deviants" to occur with impunity. Then in 2012, the Minister of the Interior made statements that contributed to the stigmatization of gender non-conforming youth. Current conditions in Iraq are similar or worse to the conditions that saw the targeted murder and torture of LGBTI individuals in the past. As a result, there should be a strong presumption that LGBTI Iraqis have a well-founded fear of persecution, and that any discrimination or violence they face mostly likely will be shrouded in impunity.

IX. Conclusion

In its 2009 guidelines for treatment of LGBTI asylum seekers from Iraq, UNHCR explains: "While homosexuality is not prohibited by Iraqi law, it is a strict taboo and considered to be against Islam. Since 2003, Iraq's largely marginalized and vulnerable lesbian, gay, bisexual and transgender (LGBT) community has frequently been targeted for attacks in an environment of impunity."⁴³ Considering this statement

⁴² *Lesson Plan Overview: Asylum Officer Basic Training*, USCIS, Asylum Eligibility Part II: Well-Founded Fear, at 26 (2009), <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTTC%20Lesson%20Plans/Well-Founded-Fear-31aug10.pdf>.

⁴³ UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, "Sexual Orientation," pp. 193-195, <http://www.unhcr.org/refworld/docid/49f569cf2.html>, accessed May 2, 2009

from the UNHCR and the foregoing evidence, IGLHRC concludes that the risk or likelihood that grave harm will be inflicted upon LGBTI individuals or persons perceived as LGBTI has increased dramatically in the past few weeks. We therefore urge each official worldwide charged with the protection of refugees to take the pattern of past persecution of LGBTI Iraqis as strong evidence that they are today in an extremely precarious situation.

Respectfully submitted,

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**While IGLHRC may not be able to comment on the particulars of an individual's application, for Iraq country condition information, please contact mena@iglhrc.org.*