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## Language as a Canary: The Role of Language in the Refugee Regime

*This Note will explore the role of language in asylum claims and specifically how and why language discrimination can serve as a predominate indicator of persecution on the basis of nationality by examining language rights in relation to identity, nationality, and power dynamics. Part I will show how language is a focal point of national and ethnic identity because of its ties to political power and nation building. Accordingly, language discrimination creates a presumption of possible persecution based on nationality. Part II will look at some examples of how language is used as a tool of identification and discrimination. Part III will show how language is already being implicated with increasing frequency in refugee claims and within asylum procedures. Overall, this Note aims to persuade the refugee regime to pay more attention to language discrimination, because even if it doesn't amount to persecution by itself, language may be the canary for escalating social tensions. In short, language may be a warning sign of increasing marginalization of specific national and/or ethnic groups. Sufficient discriminatory and violent linguistic policies may even act as prima facie evidence of socio-political marginalization, perhaps nearing persecutory levels, of specific social groups, amounting to a need for refugee protection. This Note will conclude by offering some recommendations on how to better protect those who may be seeking asylum due to (or in part due to) language discrimination.*

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## INTRODUCTION

The Convention Relating to the Status of Refugees, signed in 1951 (hereinafter the “1951 Convention”) and the Protocol Relating to the Status of Refugees, entered into force in 1967, provide the foundational documents for the modern international refugee regime.<sup>1</sup> The 1951 Convention defines a refugee as someone who,

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1. *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr.org/en-my/3b73b0d63.pdf> [https://perma.cc/27MJ-M788]. As of April 2015, 145 States are parties to the 1951 Convention, 146 States are parties to the 1967 Protocol, and 142 States are parties to both, with 148 countries being parties to one or both instruments.

“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>2</sup> This definition of refugee accordingly has three main criteria: (1) the asylum seeker must be currently located outside his or her country of nationality; (2) because of a well-founded fear of persecution; (3) based on one or more of the five enumerated categories. This rather narrow definition arguably captures only a subset of individuals fleeing their home countries to seek refuge elsewhere.

While the 1951 Convention’s definition of refugee provides minimum guidelines, the current global refugee regime is much more complex as the regime has had to respond to new situations and new classes of refugees<sup>3</sup> since the 1950s. Accordingly, various regional agreements as well as national laws and procedures now complement the 1951 Convention.<sup>4</sup> In recent years, there have also been arguments for a need to provide new categories of protection, such as gender violence<sup>5</sup> and climate change.<sup>6</sup> Individual countries and or-

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2. Convention Relating to the Status of Refugees art 1 A(2), July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967).

3. OXANA SHEVEL, *MIGRATION, REFUGEE POLICY, AND STATE BUILDING IN POSTCOMMUNIST EUROPE* 5 (2011). For example, regions that have seen the breakup of multinational empires have created a great deal of “ethnic unmixing” such as in the Balkans and former Soviet Union, where the majority of refugees are “nontraditional” (i.e., falling outside the 1951 Convention). Specifically, 52% of those seeking refuge in former Yugoslavia, 79% in the former Soviet Union, and 94% in Russia are “nontraditional.”

4. See JANE MCADAM, *COMPLEMENTARY PROTECTION IN INTERNATIONAL REFUGEE LAW* (2007); Alexander Betts, *Institutional Proliferation and the Global Refugee Regime*, 7 *PERSP. ON POL.* 53 (2009).

5. See, e.g., UNHCR, *GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN* (1991); UNHCR, *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (1995); UNHCR, *GUIDELINES ON INTERNATIONAL PROTECTION NO. 1: GENDER-RELATED PERSECUTION* (2002); UNHCR, *GUIDELINES ON INTERNATIONAL PROTECTION: GENDER-RELATED PERSECUTION WITHIN THE CONTEXT OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR ITS 1867 PROTOCOL RELATING TO THE STATUS OF REFUGEES* (2002); Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

6. See, e.g., *Climate Change and Disasters*, UNHCR <http://www.unhcr.org/en-us/climate-change-and-disasters.html> [<https://perma.cc/GKP7-Y5Q2>]; Matthew Lister, *Climate Change Refugees*, 17 *CRITICAL REV. OF INT’L SOC. AND POL. PHIL.* 618 (2014); Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 *HARV. ENVTL. L. REV.* 349 (2009); Jeffrey D. Sachs, *Sustainable Climate Change Refugees*, 43 *SCI. AM.* 294 (2007); Damian Carrington,

ganizations have responded in various ways to these new needs. In the case of gender, some countries have incorporated gender into the existing framework; for instance, American courts consider gender violence to be a category of “persecution based on political opinion,”<sup>7</sup> while English courts have included “gender” as an example of persecution based on “anything else that puts you at risk because of the social, cultural, religious or political situation in your country.”<sup>8</sup> Other countries, like Serbia and Montenegro, have chosen to explicitly include gender as its own enumerated category of protection.<sup>9</sup> These various responses to the inclusion of gender-based persecution illustrate the somewhat piecemeal fashion by which the refugee regime has evolved throughout the last decades.

While arguments for the necessity of including new categories of protection continue in the background; in practice, those applying for protection continue to strive to fit their case within the five enumerated categories when arguing for refugee status. Thus, it is critical to understand what situations these categories encompass. However, all five categories—(1) race, (2) religion, (3) nationality, (4) membership of a particular social group, and (5) membership of a particular political opinion—are very malleable concepts. As such, the scope of all five categories are at times quite uncertain. This Note will argue that in regard to the “nationality” category, language, which acts as a foundational base for nationhood and ethnicity,<sup>10</sup> can be one particularly effective means of shaping its boundaries and thereby strengthening the protection that the nationality category provides to those seeking refugee status.<sup>11</sup> Accordingly, greater ex-

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*Climate Change Will Stir ‘Unimaginable’ Refugee Crisis, Says Military*, THE GUARDIAN (Dec. 1, 2016), <https://www.theguardian.com/environment/2016/dec/01/climate-change-trigger-unimaginable-refugee-crisis-senior-military> [<https://perma.cc/947D-XJ5G>]; Coral Davenport & Campbell Robertson, *Resettling the First American ‘Climate Refugees,’* N.Y. TIMES (May 2, 2016), [https://www.nytimes.com/2016/05/03/us/resettling-the-first-american-climate-refugees.html?\\_r=0](https://www.nytimes.com/2016/05/03/us/resettling-the-first-american-climate-refugees.html?_r=0) [<https://perma.cc/286P-2FQW>].

7. *Kamaleddin v. Immigration and Naturalization Service*, 21 F.3d 1113 (9th Cir. 1994); *Fatin v. Immigration and Naturalization Service*, 12 F.3d 1233 (3d Cir. 1993); *Lazo-majano v. Immigration & Naturalization Service*, 813 F.2d 1432 (9th Cir. 1987).

8. *Claim Asylum in the UK*, UK GOV’T, <https://www.gov.uk/claim-asylum/eligibility>, [<https://perma.cc/T8B9-3XVU>].

9. Law on Asylum of the Republic of Serbia [Serbia], 2007, Official Gazette of the Republic of Serbia, App. No. 109/2007; Zakon o azilu [Law on Asylum], 2006, Collection of Montenegrin Laws Related to Forced Migration, App. No. 01-993/2.

10. See *infra* Part II and Part III.

11. In practice, ethnicity claims may not always be analyzed under the nationality category, but could be analyzed within another category, such as “membership of a social

PLICIT attention by the refugee regime to language in assessing claims relating to nationality (and ethnicity)<sup>12</sup> would be helpful to broaden the scope of the nationality category. The Note includes ethnicity within nationality following the guidance of the Council Directive 2004/83/EC on “Minimum Standards for the Qualification of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Context of the Protection Granted.” This Directive defines “the concept of nationality” in Article 10(1)(c) to “not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, *ethnic, or linguistic identity*, common geographical or political origins or its relationship with the population of another State.”<sup>13</sup> Indeed, while nationality and ethnicity may be treated distinctly in other areas of the law, States are prone to take an encompassing view of nationality that includes ethnicity in the refugee context.<sup>14</sup> Thus, while acknowledging differences between na-

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group.” Consider, for instance, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (IN1/10/2004/ext/CN), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0083&from=en> [https://perma.cc/4363-LK3D]. Article 10(1)(d) defines social group as when “members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity of conscience that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.” While the directive has since been repealed in 2013, the concept remains the same and a linguistic group would certainly fit into “ethnic” or “social group.”

12. This Note recognizes that the terms “ethnicity” and “nationality” encompass complex concepts and that multiple meanings may be derived from both terms. Indeed, Craig Calhoun, an American sociologist, cautions against using terms that suggest unitary concrete meanings such as “society” or “nation” in light of “the multiple and overlapping networks of our social relations . . . and given the large scale international flows of our ideas, language, and cultural productions.” Craig Calhoun, *Nationalism and Ethnicity*, 19 ANN. REV. OF SOC. 211, 215 (1993).

13. Council Directive 2004/83, of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, O.J. (L304/12-304/23); <http://www.refworld.org/docid/4157e75e4.html> [https://perma.cc/U9DH-NRZD] (emphasis added).

14. For example, U.S. courts often consider claims of language discrimination under the “national origin” category of Title VII of the Civil Rights Act. See Carlo A. Pedrioli, *Respecting Language as a Part of Ethnicity: Title VII and Language*, 27 HARV. J. ON RACIAL & ETHNIC JUST., 97, 101 (2011); *Garcia v. Gloor*, 618 F.2d 264, 267 (5th Cir. 1980). However, in the refugee context, countries, including the U.S. have taken a more encompassing definition of “national origin” that can be strongly argued includes

tionality and ethnicity,<sup>15</sup> this Note will consider nationality to represent a broad provocative politicized concept<sup>16</sup> that encompasses ethnicity.<sup>17</sup>

Overall, this Note aims to show that greater attention to the role of language and language rights within the existing regime established by the 1951 Convention could help improve refugee protection. Specifically, this Note will explore how language discriminatory practices may reflect or be a warning sign of a well-founded fear of severe oppression or persecution on the basis of nationality. Language policies imply differential treatment of different social groups on the basis of perceived national or ethnic lines, as language is at the core of identity.<sup>18</sup> Accordingly, attacks on language represent attacks on one's very identity and way of life.<sup>19</sup> Language policies in general implicate a wider range of socioeconomic and political patterns, and language discrimination has the potential to become violent and may even amount to persecution in some circumstances. Even if language policies do not reflect current persecution, depending on the

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“ethnicity.” See 8 U.S.C. §1101(a)(42) (2000); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). It is also telling that in the refugee context, the equivalent category is termed “nationality,” not “national origin.”

15. Ethnicity and nationality may also refer to two distinct ideas. Generally, ethnicity seems to be a narrower conception, usually referring to a smaller and more homogeneous identifiable groups, which may or may not have political recognition as a formal social group with its own government. Nationality, on the other hand, has an explicit political aspect with greater ties to political identity, autonomy, and self-determination. Consider ethnicities such as the Roma (Gypsies) and Kurds who exist in multiple countries and are acknowledged as ethnic groups, but have no political nation-state to call their own. See also MILTON M. GORDON, ASSIMILATION IN AMERICAN LIFE 24 (1964); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 277 n.8 (1992).

16. *Nationality*, MERRIAM-WEBSTER (<https://www.merriam-webster.com/dictionary/nationality>) [<https://perma.cc/74E2-VKY6>]; Calhoun, *supra* note 12, at 212–15.

17. Accordingly, when analyzing case law and drawing examples, this Note will include cases concerning ethnicity claims within the umbrella of claims relating to nationality.

18. See Ruth Rubio-Marín, *Language Rights: Exploring Competing Rationales*, in LANGUAGE RIGHTS AND POLITICAL THEORY 52 (Will Kymlicka & Alan Pattern eds., 2003); Jan Branson & Don Miller, *Maintaining, Developing and Sharing the Knowledge and Potential Embedded in All Our Languages and Cultures: On Linguists as Agents of Epistemic Violence*, in RIGHTS TO LANGUAGE: EQUITY, POWER, AND EDUCATION 28, 28–32 (Robert Phillipson ed., 2000) (explaining that the concept of an “abstract and generic” language may also be a uniquely Western concept).

19. J.H. Burgers, *The Right to Cultural Identity*, in HUMAN RIGHTS IN A PLURALISTIC WORLD (J. Berting, et al. eds., 1999).

magnitude and extent of such linguistic policies, they may be warning signs of escalating socio-political discrimination, and/or more active resistance by oppressed groups. Like the canary, which used to be sent first into mines to detect carbon monoxide and warn miners of poisonous gases,<sup>20</sup> State-endorsed or otherwise politically supported linguistic discriminatory policies imply State intolerance and may act as prologues to escalating discrimination. Furthermore, even if not amounting to persecution yet, such linguistic policies reflect ongoing social marginalization of distinct national groups. Thus, language can help define the contours of the nationality category and help establish refugee status on account of persecution based on nationality. Overall, as language underlies all human experiences and interactions<sup>21</sup> as a foundational human right,<sup>22</sup> greater sensitivity to language would help provide more comprehensive refugee protection.

The following sections will argue that greater attention to the role of language within the refugee regime would help better address the needs of asylum seekers and may even help decrease the number of refugees in the first instance. Part I will show how in practice, language-related issues are indeed already being implicated with increasing prevalence in nationality claims, for example, as a marker of national identity, within the refugee regime. Part II will consider why language is so integral to claims of persecution on the basis of nationality, focusing on the role of language in identity, nationhood, and as a means of power and exclusion. Part III will delve deeper into examining how language policies reflect surrounding socio-

20. Kat Eschner, *The Story of the Real Canary in a Coal Mine*, SMITHSONIAN: SMARTNEWS (Dec. 30, 2016), <http://www.smithsonianmag.com/smart-news/story-real-canary-coal-mine-180961570/> [<https://perma.cc/N72A-BVT4>]; *Canary in the Coalmine*, GRAMMARIST, <http://grammarist.com/usage/canary-in-the-coalmine/> [<https://perma.cc/Z864-44W7>].

21. See *infra* Part II and Part III.

22. See *infra* Part II and Part III. See also the following important cases dealing with language rights at the European Court of Human Rights between 2007-2016 and published in their *Reports of Judgments and Decisions*, an official collection of the European Court of Human Rights' leading judgments. ECHR, <http://www.echr.coe.int/Pages/home.aspx?p=caselaw/reports&c=>

[<https://perma.cc/TCD8-GFZX>]. *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, 2012-III Eur. Ct. H.R. 483; *Catan and Others v. the Republic of Moldova and Russia*, 2012-V Eur. Ct. H.R. 309; *Mozer v. the Republic of Moldova and Russia*, App. No. 11138/10, Eur. Ct. H.R. (2016), <http://hudoc.echr.coe.int/eng?i=001-161055> [<https://perma.cc/KBL7-ZQMZ>]; *Oršuš and Others v. Croatia*, 2010-II Eur. Ct. H.R. 247; *Petropavlovskis v. Latvia*, App. No. 44230/06, Eur. Ct. H.R. (2015), <http://hudoc.echr.coe.int/eng?i=001-150232> [<https://perma.cc/KAH5-AZZE>].

political conditions and attitudes against minority groups. The experience of the Kurdish people in Turkey will be used as a case example. Finally, in Part IV, this Note will conclude with some recommendations on ways the refugee regime and refugee intake officers could use this framework of understanding of language discrimination as a proxy for social exclusion to better assess refugee claims and assist those who most need protection.

### I. CURRENT ROLE OF LANGUAGE IN THE REFUGEE REGIME: OVERLAP OF LANGUAGE DISCRIMINATION AND CLAIMS OF PERSECUTION ON THE BASIS OF NATIONALITY

This Part illustrates the role language is currently playing in the refugee regime. It will assess the current prevalence of language discrimination in persecution on the basis of nationality claims to highlight how language discrimination is in fact frequently implicated in reasons for seeking asylum, especially in relation to claims of persecution on the basis of nationality or ethnicity.

In practice, language discrimination or language persecution claims do in fact often accompany claims of persecution on the basis of nationality. For example, out of ninety-six cases dealing with nationality or ethnicity persecution at various national and regional courts,<sup>23</sup> twenty cases explicitly refer to language, accent, or dialect as a distinguishing characteristic and reason for discrimination.<sup>24</sup>

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23. I used a broad understanding of nationality and ethnicity, *e.g.* claims of persecution/discrimination on the basis of nationality, national origin, ethnicity, ethnic origin, clan membership, etc.

24. A search on Refworld (a comprehensive database of scholarship, reports, case law, and statistics related to refugees and refugee status determination) for “cases” within a search of “Adjudication of asylum claims (refugee status determination/asylum procedures) / Persecution based on nationality” gave 25 cases available in English (from various courts) dealing with nationality or ethnic persecution, among which 7 cases dealt with language specifically. REFWORD, <http://www.refworld.org/topic,50ffbce40,50ffbce44b,,0,,CASELAW,.html>, [https://perma.cc/9V23-Q3DH]. Meanwhile, a search on the HUDOC database (a database of case law and opinions from the European Court of Human Rights), as of January 2017, showed 383 results for the search words “nationality” and “persecution”. {"fulltext":["nationality persecution"],"languageisocode":["ENG"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS"]}. HUDOC, <http://hudoc.echr.coe.int/eng#> [https://perma.cc/UG7Y-3GG4]. Analysis of a random 250 cases shows that, of these 250 cases, only 71 deal specifically with nationality/ethnicity persecution, of which 13 mention linguistic discrimination. Thus, in total, this Note considered 96 cases dealing with persecution on the basis of nationality or ethnicity, of which 20 dealt specifically with

That is, language issues are squarely implicated in over a fifth of the analyzed cases relating to persecution based on nationality or ethnicity. The next most frequently cited overlapping issue was property, which only appeared in three<sup>25</sup> of the ninety-six cases dealing with nationality or ethnicity that were analyzed, illustrating the predominance of language claims in nationality/ethnicity claims. Specifically, six cases discuss language discrimination,<sup>26</sup> four cases concern discrimination on the basis of an accent,<sup>27</sup> eight cases refer to language acting as barriers to accessing fundamental social and political processes,<sup>28</sup> and two cases mention a combination of the above.<sup>29</sup>

language.

25. *Broniowski v. Poland*, 2004-V Eur. Ct. H.R. 1; *Chiragov and Others v. Armenia*, App. No. 13216/05, Eur. Ct. H.R. (2015), <http://hudoc.echr.coe.int/eng?i=001-155353> [<https://perma.cc/D2X9-DLHA>]; *Sargsyan v. Azerbaijan*, App. No. 40167/06, Eur. Ct. H.R. (2015), <http://hudoc.echr.coe.int/eng?i=001-155662> [<https://perma.cc/R9Z2-N93Z>].

26. *Ambartsourmian v. Ashcroft*, 388 F.3d 85 (3d Cir. 2004) (mentions difficulties of getting a job in Ukraine due to inability to speak the official language); *Achmadov and Bagurova v. Sweden*, App. No. 34081/05, Eur. Ct. H.R. (2007) (restrictions on teaching and printing of minority languages in Azerbaijan), <http://hudoc.echr.coe.int/eng?i=001-82113> [<https://perma.cc/8FVP-KJP4>]; Country reports issued by the Ministry of Foreign Affairs on March 24 and November 6, 1998, showing that young Tamils in Colombo who spoke little Sinhalese and whose documents indicated they were born in the North were taken for questioning by authorities, was cited in *Venkadajalasarma v. The Netherlands*, App. No. 58510/00, Eur. Ct. H.R. ¶ 37 (2004), <http://hudoc.echr.coe.int/eng?i=001-61635>, [<https://perma.cc/JN27-YFKX>]; *Thampibillai v. The Netherlands*, App. No. 61350/00, Eur. Ct. H.R. ¶ 38 (2004), <http://hudoc.echr.coe.int/eng?i=001-61634>, [<https://perma.cc/R6M3-H7RD>]; *Sisojeva and Others v. Latvia*, App. No. 60654/00, Eur. Ct. H.R. ¶ 63 (2007), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-79022%22> [<https://perma.cc/9AVA-NCBN>]; RRT Case No. 1113384 [2012] RRTA 951, Australia: Refugee Review Tribunal ¶ 73, [http://www.refworld.org/cases,AUS\\_RRT,50f6d5c62.html](http://www.refworld.org/cases,AUS_RRT,50f6d5c62.html) [<https://perma.cc/4N4L-NS4E>]; *Samira Wilson Binyamin v. Canada* (Minister of Citizenship and Immigration) [2008] 3 F.C.R. ¶¶ 2, 17 (Can.) (fear of removal to Australia because of the violence she “suffered at the hands of [her] husband in Australia” claimed difficulty because applicant didn’t speak the dominant language in Australia).

27. *N. v. Finland*, App. No. 38885/02, Eur. Ct. of H.R. ¶¶ 17, 33 (2005), <http://hudoc.echr.coe.int/eng?i=001-69908> [<https://perma.cc/SEJ2-MFFA>] (inability to speak local language led to mistaken identification as a threat and trouble with authorities); Refugee Appeal Nos. 74321, 74322, 74323 & 74324 [2005], New Zealand: Refugee Status Appeals Authority, ¶ 39, [http://www.refworld.org/cases,NZL\\_RSAA,477cfbc30.html](http://www.refworld.org/cases,NZL_RSAA,477cfbc30.html) [<https://perma.cc/742W-WGVX>]; RRT Case No. 1213085 [2012] RRTA 1065, Australia: Refugee Review Tribunal ¶ 59, [http://www.refworld.org/cases,AUS\\_RRT,512383762.html](http://www.refworld.org/cases,AUS_RRT,512383762.html) [<https://perma.cc/3W7T-RM8Q>]; *SZIPL v. Minister for Immigration & Anor* [2009] FCR 585 ¶ 20 (Austl.), [http://www.refworld.org/cases,AUS\\_FMC,4aae53562.html](http://www.refworld.org/cases,AUS_FMC,4aae53562.html) [<https://perma.cc/HC8M-743P>] (alleged discrimination due to speaking with “an accent that differed from other Syrians”).

28. *D.H. and Others v. The Czech Republic*, 2007-IV Eur. Ct. H.R. 241; *Mozer*, App. No. 11138/10, Eur. Ct. H.R. ¶ 44 (prohibited from speaking native language during alleged

The results and some examples are shown in the table below:

<b>Instances of “Language Discrimination/Identification” in Case Law Relating to Nationality or Ethnicity Persecution<sup>30</sup></b>		
<b>Issue</b>	<b>Number</b>	<b>Examples</b>
Language Discrimination	6	- In Malaysia, “exclusive use of the Malay language by the government [serves] as a tangible barrier to ethnic Indian employment within the civil service.” <sup>31</sup> - Russian-speakers in Latvia continue to experience social discrimination in the wake of the breakup of the Soviet Union. <sup>32</sup>
Accent Discrimination	4	- Students with Croat accents may face harassment and humiliation in Serbia schools. <sup>33</sup>

arbitrary detention); *Oršuš and Others*, 2010-II Eur. Ct. H.R.; *Salah Sheekh v. The Netherlands*, App. No. 1948/04, Eur. Ct. H.R. (2007), <http://hudoc.echr.coe.int/eng?i=001-78986>, [<https://perma.cc/V8BH-YW2S>] (social difficulties in going back to live in a country whose language they do not speak or speak with an accent); *Shamayev and Others v. Georgia and Russia*, 2005-III Eur. Ct. H.R. 153, 214 (inability to provide documents to Court because of language barriers); *Slaku v. Bosnia and Herzegovina*, App. No. 56666/12, Eur. Ct. H.R. ¶¶ 14–16 (2016), <http://hudoc.echr.coe.int/eng?i=001-163056> [<https://perma.cc/DZ67-B5R9>] (ineligibility to stand for election into government because of Albanian origin and involvement in promoting Albanian tradition, culture, and language); *Soldatenko v. Ukraine*, App. No. 2440/07, Eur. Ct. H.R. (2008), <http://hudoc.echr.coe.int/eng?i=001-89161> [<https://perma.cc/4GY9-98UJ>] (insufficiency of translations from Russian to Turkmen of court transcripts hindered judicial processes); *Vilvarajah and Others v. The United Kingdom*, App. Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, Eur. Ct. H.R. ¶ 5 (1991), <http://hudoc.echr.coe.int/eng?i=001-57713>, [<https://perma.cc/7YZH-VEMZ>].

29. *Jersild v. Denmark*, App. No. 15890/89, Eur. Ct. H.R. ¶¶ 11–12, 29 (1994), <http://hudoc.echr.coe.int/eng?i=001-57891> [<https://perma.cc/QNC9-8QPE>]; RRT Case No. 0908992 [2010] RRTA 389, Australia: Refugee Review Tribunal, ¶¶ 26, 28, 46, 130, 148, [http://www.refworld.org/cases,AUS\\_RRT,4c8117542.html](http://www.refworld.org/cases,AUS_RRT,4c8117542.html) [<https://perma.cc/W54A-UFRB>].

30. There are many more cases showing discrimination and marginalization of the Kurdish language specifically. Part II (B) will provide some further analysis of the case law at the European Court of Human Rights involving the discrimination of Kurds in Turkey.

31. *RRT Case No. 1113384*, [2012] RRTA 951, ¶ 73.

32. *Sisojeva*, App. No. 60654/00, Eur. Ct. H.R. ¶ 63.

33. *Refugee Appeal Nos. 74321, 74322, 74323 & 74324* ¶ 39.

		- Hazaras have an accent that is “easily identifiable which puts them at greater risk when moving around the country” in Afghanistan. <sup>34</sup>
Linguistic barriers to political or social processes	8	- There are claims that Roma children were differentiated and classified into specialized schools based not on mental development, but solely because of language and cultural differences in the Czech Republic. <sup>35</sup> - Inability to speak the official language may hinder free movement due to heightened police scrutiny of minority language speakers in Sri Lanka. <sup>36</sup>
Combination	2	- Speakers with heavy Indonesian accents expressed fears of being treated as second class citizens in China and Hong Kong. <sup>37</sup> - Those who speak “hula-hula language in the street” may face discrimination by the public, while lack of knowledge of the Danish language may prevent such marginalized speakers from lodging complaints with the relevant authorities. <sup>38</sup>

As illustrated by the table above, language, dialect, and accent can act as means of identification, discrimination, and even persecution. The existence of such case law in various national and interna-

34. *RRT Case No. 1213085* ¶ 59.

35. *D.H.*, 2007-IV Eur. Ct. H.R.; *Oršušs*, 2010-II Eur. Ct. H.R.,

36. *Vilvarajah*, App. Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, Eur. Ct. H.R. ¶ 5.

37. *RRT Case No. 0908992* ¶¶ 26, 28, 46, 130, 148.

38. *Jersild*, App. No. 15890/89, Eur. Ct. H.R. ¶¶ 11–12, 29.

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tional courts highlights the seriousness of such discriminatory practices as case law only captures a small sample of wider patterns of linguistic discrimination and marginalization. In particular, it highlights the key connection between language and perceived national (including ethnic) identity.

## II. WHY IS LANGUAGE SO ESSENTIAL TO NATIONAL IDENTITY?

“The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around it. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.”<sup>39</sup>

Linguistic repression is so effective because language is an integral component of identity, particularly national identity. A 2017 survey of fourteen countries by the Pew Research Center found that language, over all other characteristics such as birthplace, national customs and traditions, or religion, is considered to be the predominant characteristic of nationality.<sup>40</sup> Indeed, the majority of polled individuals responded in the affirmative to the question of whether “being able to speak out national language is very important for being truly [enter country nationality].”<sup>41</sup> This Part will explore the significance of language as a marker, and try to answer why language is such a predominate indicator of national identity. Part II.A will flesh out why language is so essential to identity and culture, while Part II.B will briefly recap the role language played in nation-building and the role it continues to play in solidifying nationhood and State sovereignty. Finally, building on this background, Part II.C will explain why language is such an effective socio-political tool of control and power.

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39. *Manitoba Language Rights*, [1985] 1 S.C.R. 721, 744 (Can.).

40. Bruce Strokes, *What it Takes to be Truly “One of Us,”* PEW RESEARCH CTR (Feb. 1, 2017), <http://www.pewglobal.org/2017/02/01/what-it-takes-to-truly-be-one-of-us/> [https://perma.cc/468K-5HEX].

41. Bruce Strokes, *Language: The Cornerstone of National Identity, What it Takes to Truly be “One of Us,”* PEW RESEARCH CENTER (Feb 1 2017), <http://www.pewglobal.org/2017/02/01/language-the-cornerstone-of-national-identity/> [https://perma.cc/6VTW-5B42].

### A. Language as Identity & Culture

Language is an essential human right<sup>42</sup> warranting protection, as it is so central to socio-political and cultural identity.<sup>43</sup> More abstractly, language can be conceptualized as the process of “naming the world” and thereby, creating reality for its speakers.<sup>44</sup> Language is thus fundamental to human existence; as Fernand de Vareennes, a leading scholar of language rights, premises: “*homo sapiens* are, by definition ‘language animals.’”<sup>45</sup> Language is more than communication: it is identity,<sup>46</sup> culture,<sup>47</sup> community,<sup>48</sup> a way of seeing and experiencing the world. In this regard, the twentieth century has seen the development of various regional and universal declarations, agreements, and bilateral treaties that provide provisions respecting

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42. In the past decades, language rights are being increasingly framed in terms of human rights, whether as normative aspirations or absolute rights. Moria Paz, *The Failed Promise of Language Rights: A Critique of the International Language Rights Regime*, 54 HARV. INT’L L.J. 158, 158–59 (2013).

43. FERNAND DE VARENNES, LANGUAGE, MINORITIES, AND HUMAN RIGHTS 129 (1996); Tove Skutnabb-Kangas, *Education of Minorities*, in HANDBOOK OF LANGUAGE AND ETHNIC IDENTITY 42–59 (Joshua A. Fishman ed., 2nd ed. 1999); Gyorgy Andrassy, *Freedom of Language: A Universal Human Right to Be Recognized*, 19 INT’L J. ON MINORITY AND GROUP RTS. 195 (2012); Fernand de Vareennes, *Equality and Non-discrimination: Fundamental Principles of Minority Language Rights*, 6 INT’L J. ON MINORITY AND GROUP RTS. 307, 311–13 (1999); Fernand de Vareennes, *The Protection of Linguistic Minorities in Europe and Human Rights: Possible Solutions to Ethnic Conflicts?*, 2 COLUM. J. EUR. L. 107 (1995).

44. Pennycook, Alastair, *The Right to Language: Towards a Situated Ethics of Language Possibilities*, 20 LANGUAGE SCI. 73, 79 (1998); Naz Rassool, *Language Maintenance as an Arena of Cultural and Political Struggles in a Changing World*, in RIGHTS TO LANGUAGE: EQUITY, POWER, AND EDUCATION 57, 61 (Robert Phillipson ed., 2000).

45. Fernand de Vareennes, *Ethnic Conflicts and Language in Eastern Europe and Central Asian States: Can Human Rights Help Prevent Them*, 5 INT’L J. ON MINORITY & GROUP RTS. 135, 138 (1997).

46. See JOHN EDWARDS, LANGUAGE AND IDENTITY: AN INTRODUCTION (2009); Stella Ting-Toomey & Tenzin Dorjee, *Language, Identity, and Culture: Multiple Identity-Based Perspectives*, in THE OXFORD HANDBOOK OF LANGUAGE AND SOCIAL PSYCHOLOGY (Thomas M. Holtgraves ed., 2014).

47. Miroslav Kusy, *Inmate Dignity, Cultural Identity and Minority Language Rights*, 6 INT’L J. ON MINORITY AND GROUP RTS. 299, 303 (1999); Dónall Ó Riagáin, *The Importance of Linguistic Rights for Speakers of Lesser Used Languages*, 6 INT’L J. ON MINORITY & GROUP RTS. 289 (1999).

48. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 45 (A Penn State Electronic Classics Series Publication 2002) (1841) (“The tie of language is perhaps the strongest and most durable that can unite mankind.”).

language as a fundamental human right.<sup>49</sup> As language, by its nature, underlines all facets of human interaction and societal processes, language rights overlap significantly with and may even be a prerequisite for other fundamental human rights values,<sup>50</sup> such as non-discrimination,<sup>51</sup> freedom of private and family life, right to education,<sup>52</sup> freedom of expression,<sup>53</sup> and access to public services and

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49. G.A. Res. 217 A, U.N. Doc. A/RES/3/217 A (Dec. 10, 1948) (Universal commitments to language rights: “Everyone is entitled to freedom . . . without distinction of any kind, such as . . . language . . . .”); International Labour Organization Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, Jun. 25, 1958, 42 I.L.C. No. 111 (1960); G.A. Res. 2200A (XXI), U.N. Doc. A/2200, arts. 27, 2(2) (Dec. 16, 1966) (Article 27 providing “[P]rotection against discrimination on . . . language . . . .” and Article 2(2) stating that all rights in the Covenant must be available without discrimination on grounds of “[L]anguage . . . .” and recognizing minorities’ right “to enjoy culture and to use language”); G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989); G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992) (requires states to protect existence/identities of minorities and encourages promotion of linguistic identities, among others while Article 2(1) provides that minorities will have the right to . . . “use their own language, in private and in public, freely and without interference or any form of discrimination”). The European Union and the Organization for Security and Cooperation in Europe (OSCE) have also promulgated additional security for language rights within the Council of Europe, including: European Convention for the Protection Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, art. 14, Nov. 4, 1950, E.T.S. [hereinafter “European Convention on Human Rights”] (Article 14 provides that “the enjoyment of the rights and freedoms . . . shall be secured without discrimination on any ground . . . .language.”); the 1982 Declaration on Freedom of Expression and Information; the 1990 Document of the Copenhagen Meeting; the 1992 European Charter for Regional or Minority Languages; the 1995 Framework Convention for the Protection of National Minorities. Additional protections also exist at the sub-regional and bilateral levels including the 1994 Convention on Guaranteeing the Rights of Persons Belonging to National Minorities adopted by the Commonwealth of Independent States; 1923 Treaty of Lausanne, Greece-Turkey, Jul. 24, 1923; the 1947 Treaty of Peace with Italy, Feb. 10, 1947, 61 stat. 1245. *See generally* MINORITY RIGHTS IN EUROPE: EUROPEAN MINORITIES AND LANGUAGES (Snezana Trifunovska ed., 2001).

50. de Varennes, *Equality and Non-discrimination*, *supra* note 43, at 311–13.

51. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R. (Jan. 19, 1984) (Addressing Costa Rican Government’s proposed amendment to the Naturalization Law that would require Spanish proficiency as a requirement to acquire citizenship. While the majority of judges in the Inter-American Court felt that the current requirement of Spanish fell within the “margin of appreciation reserved to the state” in concerning the limits and requirements of nationality, the court indicated that imposition of a language requirement for acquiring citizenship did constitute differentiated treatment that could be discriminatory. One dissenting judge noted that even if imposing such language requirements for citizenship may not always be unreasonable or disproportionate, the state could not completely disregard other languages used by citizens.)

52. Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium, App. Nos. 1474/62, 1677/62, 1691/62, 1769/63,

communication with institutions.<sup>54</sup>

Insofar as individuals can access the official language, language also constitutes part of civil identity and is the foundation for democratic dignity. Correspondingly, minority groups, for whom access to public discourse and institutions may be limited due to language barriers, are effectively denied complete civil identity and democratic dignity.<sup>55</sup> For example, in Korea, King Sejong is believed to have created the Korean alphabet, Hangul, in 1446 with the hopes of spreading literacy to the general population,<sup>56</sup> thereby opening access to political and social processes.<sup>57</sup> Prior to the introduction of Hangul, the written language in Korea was largely limited to scholars who had both the time and resources to dedicate to memorizing the countless thousands of characters required for the Idu system, which relied on the hanja script (borrowed heavily from Chinese characters).<sup>58</sup> The introduction of Hangul helped spur higher rates of literacy and opportunities for civic engagement to a wider population.<sup>59</sup> While States are not required to ensure that all their citizens know the official language or script, insofar as linguistic barriers to public discourse prevent individuals from accessing public forums and/or minority language speakers are prevented from holding public dialogue in their language, minority speakers will be denied full civic identity. As the European Court of Human Rights (“the Court”) stated in *Şükran Aydın and Others v. Turkey*, “the right to impart one’s political views and ideas and the right of others to receive them

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1994/63, 2126/64, 1 Eur. H.R. Rep. 252 (1968); *Cyprus v. Turkey*, 2001-IV Eur. Ct. H.R. 1; Case 379/87, *Groener v. Minister for Education*, 1989 E.C.R. 3967; *Minority Schools in Albania*, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6).

53. *Ballantyne, Davidson and McIntyre v. Canada*, Views of the U.N. Hum. Rts. Comm., U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993), <http://hrlibrary.umn.edu/undocs/html/v359385.htm> [<https://perma.cc/H8FB-PAYL>].

54. *J.G.A. Diergaardt (late Captain of the Reboboth Baster Community) et al. v. Namibia*, Views of the U.N. Hum. Rts. Comm., U.N. Doc. CCPR/C/69/D/760/1997 (2000), <http://hrlibrary.umn.edu/undocs/session69/view760.htm> [<https://perma.cc/7EMY-E5FN>].

55. Kusy, *supra* note 47, at 304; Pádraig Ó Riagáin & Niamh Nic Shuibhne, *Minority Language Rights*, 17 ANN. REV. OF APPLIED LINGUISTICS 11, 12 (1997).

56. Gari Ketihher Ledyard, *The Korean Language Reform of 1446: The Origin, Background, and Early History of the Korean Alphabet 96–97* (1966) (Dissertation Presented, University of California, Berkeley)

57. *How was Hangul Invented?*, ECONOMIST: THE ECONOMIST EXPLAINS (Oct. 8, 2013), <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-7> [<https://perma.cc/PU4X-QPQS>].

58. Ledyard, *supra* note 56, at 21.

59. *Id.* at 104–14.

would be meaningless if the possibility of using a language that could possibly convey those views and ideas were diminished owing to the threat of criminal sanctions.”<sup>60</sup> Thus, at a minimum, States should work to limit any linguistic barriers that may hinder various social groups from civic engagement.

### *B. Language as Nation Building*

As language forms the core of identity, language is also at the foundation of the modern nation-State and continues to play a critical role in nationhood.<sup>61</sup> Benedict Anderson, considering the origins of the modern nation-State, defines nation as “an imagined political community.”<sup>62</sup> The nation is imagined as a fraternity of strangers conceived to share some core central identity. That is, “nationalism is not the awakening of nations to self-consciousness: it *invents* nations where they do not exist”<sup>63</sup> and thereby demarcates clear boundaries between different social groups.<sup>64</sup> The resulting deep comradeship of fraternity among fellow-citizens creates a shared identity so visceral that members become prepared to kill and die for individuals they have never even actually met. Anderson claimed that such an extent of devotion to the “imagined community” of nationality is only possible because of its cultural foundation.<sup>65</sup> The growth of this cultural foundation and accordingly the nation-State in turn was only possible via the birth of “print capitalism,” or the spread of vernacular languages in printed form. “Print-languages” were especially important in three ways: (1) they created “unified fields of exchange” and linguistic community embryos; (2) they perpetuated a new “fixity” to language; and (3) alongside the decline of Latin, they were transformed into “languages-of-power,” which dominated over lesser non-print languages. Language, via its role in identity, culture, and power, thus played a key role in the emergence

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60. Şükran Aydın and Others v. Turkey, App. nos. 49197/06; 23196/07; 50242/08; 60912/08; 14871/09, Eur. Ct. H.R. ¶ 55 (2013), <http://hudoc.echr.coe.int/eng?i=001-116031> [https://perma.cc/D698-25T7].

61. HARALD HAARMANN, LANGUAGE IN ETHNICITY: A VIEW OF BASIC ECOLOGICAL RELATIONS 261 (1986).

62. Benedict Anderson, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM 6 (2006).

63. *Id.* (quoting ERNEST GELLNER, THOUGHT AND CHANGE 169 (1964) (emphasis added)).

64. *Id.* at 7.

65. *Id.* at 7–37.

of nationhood and in defining its boundaries and membership.<sup>66</sup> As Leon Dominian articulated, language is valued as the “cohesive power of nationality.”<sup>67</sup> This focus on the script of a language can also be seen in recent examples, such as Croatia’s choice to use the Latin-script instead of the Cyrillic-script as used in Serbia after declaring independence from Serbia in 1991.<sup>68</sup> Consequently, the centralization of government and emergence of the nation-State may only have been possible due to languages’ power to create unity and uniformity.<sup>69</sup>

Accordingly, since the birth of the nation-State, language has often been synonymous with nation-building and national unity. For example, after the fall of the Soviet Union, nationalist efforts in Uzbekistan were most prominently manifested in the government’s rapid switch from Russian to Uzbek as the official language.<sup>70</sup> These new language laws aimed to block Russian and Tajik from public discourse,<sup>71</sup> thereby redistributing sociopolitical power to the Uzbek-speaking population.<sup>72</sup> Indeed, in at least one case, Russian-speakers have sought asylum on the basis of marginalization faced in Uzbekistan for speaking Russian.<sup>73</sup> The role of language in nation building may be especially critical when there are competing nationhood movements or when there are multiple ethnic groups occupying the same territory,<sup>74</sup> as from the view of the State, language diversity is a

66. *Id.* at 44–45; 144–46.

67. Leon Dominian, *FRONTIERS OF LANGUAGE AND NATIONALITY IN EUROPE* xxii (1917).

68. Fernand de Varennes, *Law, Language and the Multiethnic State*, 16 *LANGUAGE & COMM.* 292 (1996).

69. Dónall Ó Riagáin, *All Languages – Great and Small: A Look at the Linguistic Future of Europe with Particular Reference to Lesser Used Languages*, in *MINORITY RIGHTS IN EUROPE: EUROPEAN MINORITIES AND LANGUAGES* 31–32 (Snezana Trifunovska ed., 2001).

70. IRB - Immigration and Refugee Board of Canada: Update of UZB34545.E of 2 June 2000 on treatment of ethnic Russians (June 2000-July 2002) [UZB39331.E], July 24, 2002, [http://www.ecoi.net/local\\_link/198386/302647\\_en.html](http://www.ecoi.net/local_link/198386/302647_en.html), [<https://perma.cc/Z6FR-VMBS>].

71. ICG, *UZBEKISTAN AT TEN: REPRESSION AND INSTABILITY* (2001), [http://www.intl-crisis-group.org/projects/asia/centralasia/reports/A400393\\_21082001.pdf](http://www.intl-crisis-group.org/projects/asia/centralasia/reports/A400393_21082001.pdf) [<https://perma.cc/YLM2-AUPG>].

72. Taras Kuzio, *Soviet-Era Uzbek Elites Erase Russia from National Identity*, *EUROASIA* (Apr. 19, 2002), [http://www.taraskuzio.com/media8\\_files/4.pdf](http://www.taraskuzio.com/media8_files/4.pdf) [<https://perma.cc/FU2G-A5TU>].

73. *Refugee Appeal Nos. 73961 and 73962*, New Zealand: Refugee Status Appeals Authority, Aug. 5, 2004, [http://www.refworld.org/cases,NZL\\_RSAA,477cfbb30.html](http://www.refworld.org/cases,NZL_RSAA,477cfbb30.html) [<https://perma.cc/XA34-2GJJ>].

74. Alan Patten and Will Kymlicka, *Introduction: Language Rights and Political*

nuisance if not an active hindrance to centralized control.<sup>75</sup> Certainly, there are important benefits of having an official national language, including providing a means for unification and leveling the field for academic and socio-political advancement. However, the existence of linguistic minorities means that from the perspective of human rights and ongoing stability, the State must remain aware of existing language patterns when centralizing control and provide accommodations for significant minority languages.<sup>76</sup>

Language is thus both a driving mechanism and a construction of the process of nation building. The favored language(s) act as a driving mechanism in creating and perpetrating a common identity via broadcasting, public forums, and education.<sup>77</sup> As Pierre Bourdieu, a noted French scholar, remarked, “the official language is bound up with the state, both in its genesis and in its social uses.” The process of nation building creates the circumstances for domination by an official language, which once implemented, perpetuates itself as the dominant language and norm against which others are measured.<sup>78</sup> As an illustration, consider the relative prominence of the Catalan identity in Spain in relation to the almost nonexistent Catalan identity in France, which can be linked to the timing of when mass literacy occurred in the respective populations. Catalan identity is stronger in Spain, where mass literacy developed in the absence of a national State education system.<sup>79</sup> In contrast, the Catalan identity is weaker in France, where mass literacy and education were promulgated as part of an agenda to strengthen national unity.<sup>80</sup> That is, the

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*Theory: Context, Issues, and Approaches*, in LANGUAGE RIGHTS AND POLITICAL THEORY 37–42 (Will Kymlicka and Alan Patten eds., 2003).

75. D.P. Pattanayak, *Linguistic Pluralism: A Point of Departure*, in RIGHTS TO LANGUAGES: EQUITY, POWER, AND EDUCATION 47 (Robert Phillipson ed., 2000).

76. Accounting for language patterns may be especially complicated in postcolonial societies where colonial languages had been the language of administration and law. While one response may be to switch the language of administration and law into the indigenous language or lingua franca of the region after the overthrow of the colonial regime; this is likely to be a difficult if not impossible task, especially as local indigenous legal and public legislative practices may exist solely in oral and/or uncodified forms. Andrew Gonzalez, *Incongruity Between the Language of Law and the Language of Court Proceedings: The Philippine Experience*, 16 LANGUAGE & COMM. 229, 231–232 (1996).

77. Pierre Bourdieu, LANGUAGE AND SYMBOLIC POWER 50 (Gino Raymond & Matthew Adamson trans., 1991).

78. *Id.* at 45.

79. Laia Balcells, *Mass Schooling and Catalan Nationalism*, 19 NATIONALISM AND ETHNIC POL. 467 (2013).

80. *Id.* at 474–75.

introduction of mass French literacy led to a decline in the use of minority languages. Specifically, the decreased use of the Catalan language effortlessly corresponded with a virtually nonexistent Catalan identity in France. In this way, language can be conceptualized in terms of political redistribution as language is used to create and perpetuate new national identities.<sup>81</sup>

### *C. Language as a Means of Political Power and Exclusion*

As language manifests and symbolizes identity and socio-political authority, it is unsurprising that language can easily be utilized as a tool of power. From the beginning, it is impossible for governments to be completely neutral in approaches to language, as the very act of choosing the language(s) of administration indicates a choice of one language over others.<sup>82</sup> This choice of language reflects social hierarchies and patterns of political and economic power dynamics in the particular societies. Language thus creates boundary lines between different communities, and insensitivity to the needs of minority language groups may create alienation, powerlessness, and political impotence.<sup>83</sup> As de Varennes articulated, “the denial of language rights often leads to the denial of power and of opportunities, to marginalization, frustration, anger and at times violence.”<sup>84</sup> Those who speak the dominant language have significant power as they can shape the way cultures see one another and how much access particular groups have to influence others.<sup>85</sup> It is important to remember that linguistic policies are aimed at certain minority groups, not the languages themselves. Accordingly, although claims of language violations may seem benign or less serious compared to other more violent means of discrimination, it is important to consider the back-

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81. Paz, *supra* note 42, at 166.

82. Kenneth D. McRae, CONFLICT AND COMPROMISE IN MULTILINGUAL SOCIETIES: BELGIUM 3–4 (1986).

83. Perea, *supra* note 15, at 335; de Varennes, *Ethnic Conflicts and Language in Eastern Europe and Central Asian States*, *supra* note 45, at 142.

84. Fernand de Varennes, *Language, Ethnic Conflicts and International Law*, 65 J. ETHNIC STUDIES 8, 14–15 (2011).

85. Paz, *supra* note 42, at 166; Perea, *supra* note 15, at 335; Shahar Ronen, et. al., *Links that Speak: The Global Language Network and Its Association with Global Fame*, 111 PNAS ES5616 (2014); GLOBAL LANGUAGE NETWORK, <http://language.media.mit.edu/visualizations/books> [<https://perma.cc/7VL4-ZSK5>]; Michael Erard, *Want to Influence the World? Map Reveals the Best Languages to Speak*, SCI. MAG. (Dec. 15, 2014), <http://www.sciencemag.org/news/2014/12/want-influence-world-map-reveals-best-languages-speak> [<https://perma.cc/M3BN-Z4BW>].

ground socio-political conditions that are reflected and/or foreshadowed by such linguistic targeting.

When viewing language from a redistributive framework, language rights should protect those who have been disadvantaged due to membership in a particular group that speaks a language that is different from the dominant or State sanctioned language.<sup>86</sup> William C. Gay, an American philosopher, argued that language is an instrument of institutional violence against specific social groups as “language is inseparable from the distribution of power in society, and these relations are unequal in every society.”<sup>87</sup> Given the importance of language, especially in societies rebuilding from ethnic conflicts, it is important to ensure that democratic systems temper the majority voice with recognition and support for minority interests. State policies favoring one language to the exclusion of others without any accommodation for other languages may be perceived as attempting to legitimize dominance of one social group, leading to instinctive resistance with the potential to escalate to violence.<sup>88</sup>

Part III and Part IV will further illustrate how language may often be a predominate indicator of identity, and can be used as a tool of exclusion and marginalization against minority groups. The examples show that language discrimination may act as a canary, or warning sign, of increasing marginalization against nationality groups and/or of escalating tensions between social groups, or may even reflect *prima facie* evidence of national discrimination and persecution.

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86. David D. Laitin and Rob Reich, *A Liberal Democratic Approach to Language Justice*, in LANGUAGE RIGHTS AND POLITICAL THEORY 80–81 (Will Kymlicka & Alan Patten eds., 2003); Rolf Ekéus, High Comm’r on Nat’l Minorities, Address to the Colloquium of the Stanford Center on International Conflict and Negotiations (SCICN) (Mar. 15, 2007) (transcript available at <http://www.osce.org/hcnm/24444?download=true> [<https://perma.cc/22FB-D92V>]).

87. William C. Gay, *Exposing and Overcoming Linguistic Alienation and Linguistic Violence*, 24 PHIL. & SOC. CRITICISM 137, 137–156 (1998); William C. Gay, LINGUISTIC VIOLENCE IN INSTITUTIONAL VIOLENCE (eds. Robert Litke and Deane Curtin forthcoming); Maurice Merleau-Ponty, SIGNS (Richard C. McCleary trans., 1974).

88. Carlile A. Macartney, NATIONAL STATES AND NATIONAL MINORITIES 17 (1968); de Varennes, *Ethnic Conflicts and Language in Eastern Europe and Central Asian States*, *supra* note 45, at 143–50.

### III. LANGUAGE AS IDENTIFICATION & PERSECUTION OF SPECIFIC GROUPS

Language as a physical manifestation of identity<sup>89</sup> is an easy means of differentiation.<sup>90</sup> Moreover, language is arguably the most important source of group identity, more so than any other shared characteristic such as history, traditions, customs, skin color, or physical appearance.<sup>91</sup> Language is thus often used as a tool of oppression, especially in emerging nations<sup>92</sup> and countries undergoing ethnic conflict.<sup>93</sup> In turn, language may become a key rallying call for defiance and resistance,<sup>94</sup> thereby further escalating conflicts. Language can thus be a “powerful marker for social discrimination and an avenue for individuals to form prejudices and stereotypes against various social groups based on how they perceive speakers from those groups.”<sup>95</sup> One common representation of the engrained nature

89. Jan Branson and Don Miller, *Maintaining, Developing and Sharing the Knowledge and Potential Embedded in All Our Languages and Cultures: On linguists as Agents of Epistemic Violence*, in *RIGHTS TO LANGUAGE: EQUITY, POWER, AND EDUCATION* 28, 28–32 (Robert Phillipson ed., 2000); UNESCO (@UNESCO), TWITTER (Feb. 15, 2017, 6:25 AM), <https://mobile.twitter.com/UNESCO/status/8318268851097722881> [<https://perma.cc/NZW2-AF9Y>].

90. See *supra* Part I.B. Individuals are likely to instinctively favor those who speak the same language and/or have the same accent.

91. OSCE, REPORT ON LINGUISTIC RIGHTS OF PERSONS BELONGING TO NATIONAL MINORITIES IN THE OSCE AREA (1999), <http://www.osce.org/hcnm/42060?download=true> [<https://perma.cc/5W77-4FMR>]; Edwin Bakker, *Organization for Security and Cooperation in Europe: Linguistic Rights and the Organization for Security and Cooperation in Europe*, in *MINORITY RIGHTS IN EUROPE: EUROPE MINORITIES AND LANGUAGES* 241 (Snezana Trifunovska ed., 2001); Gwyneth E. Edwards, *Hungarian National Minorities: Recent Developments and Perspectives*, 5 INT’L J. ON MINORITY AND GROUP RTS. 345, 346 (1998).

92. If minority languages are not properly integrated in developing societies, societies may settle into hardened linguistic divides. See Tina Kempin Reuter, *Including Minority Rights in Peace Agreements: A Benefit or Obstacle to Peace Processes after Ethnic Conflict*, 19 INT’L J. ON MINORITY AND GROUP RTS. 359, 392 (2012); OSCE MISSION IN KOSOVO, IMPLEMENTATION OF THE LAW ON THE USE OF LANGUAGES BY KOSOVO MUNICIPALITIES (2008), <http://www.osce.org/kosovo/32762?download=true>, [<https://perma.cc/YW9H-MBU7>].

93. M. Najcevska, *Bilingualism in a Kumanovo Kindergarten*, in *MANAGING MULTIETHNIC COEXISTENCE* 95 (Meghan Simpson & Radomir Sovljanski eds., 2000).

94. Pedrioli, *supra* note 14, at 111; Richard Delgado, *Rodrigo’s Corrido: Race, Postcolonial Theory, and U.S. Civil Rights*, 60 VAND. L. REV. 1691, 1708–09 (2007); Raj Rao, *Language and Spirit*, in *THE POSTCOLONIAL STUDIES READER* 296 (Bill Ashcroft et al. eds., 1995).

95. Peter Melkus, *Language, Political Identity Strongly Linked in Ukraine Conflict*, SF STATE NEWS, (June 8, 2016) <https://news.sfsu.edu/news-story/language-political-identity->

of linguistic prejudices is villainous characters in movies and TV shows who speak with foreign accents.<sup>96</sup> For example, consider the high prominence of villains with Russian accents in James Bond's films, especially during the Cold War.<sup>97</sup> Language is thus an easy marker of identity, quickly classifying individuals into different groups often delineated along national or ethnic lines.

If language is the only identifying feature, and human rights considerations of a right to language were ignored, it could be argued that individuals only need to learn the dominant language of a particular region to escape discrimination. However, not only is it very difficult to learn a new language, especially for older adults or for those with little time or resources to devote to the task,<sup>98</sup> it is difficult to fully eradicate accents or other second-language traits. Chaim Kaufmann, an international relations scholar, argues that ethnic identities, of which language is a key component, are fixed by birth,<sup>99</sup> and that while ethnic identities may conceivably be changed, it is very difficult, as they depend on fundamental characteristics such as "*language, culture, [ . . . ] religion, [and] parentage.*"<sup>100</sup> Inter-ethnic conflicts and discrimination also further solidify ethnic identities as extremists within their own group and one-dimensional identification by the opposing group(s) create stronger ties to group identity.<sup>101</sup> Accordingly, native languages are fairly immutable and hard to com-

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strongly-linked-ukraine-conflict [https://perma.cc/STX8-MAML].

96. Tom Brook, *Hollywood Stereotypes: Why are Russians the Bad Guys?*, BBC NEWS (Nov. 5, 2014), <http://www.bbc.com/culture/story/20141106-why-are-russians-always-bad-guys> [https://perma.cc/B4P2-69WY]; Elizaveta Vereykina, *5 Hollywood Villains That Prove Russian Stereotypes Are Hard to Kill*, THE MOSCOW TIMES (Aug. 10, 2015), <https://themoscowtimes.com/articles/5-hollywood-villains-that-prove-russian-stereotypes-are-hard-to-kill-48849> [https://perma.cc/95E8-NNKB].

97. FROM RUSSIA WITH LOVE (Eon Productions 1963); THE SPY WHO LOVED ME (Eon Productions 1977); FOR YOUR EYES ONLY (Eon Productions 1981); OCTOPUSSY (Eon Productions 1983); A VIEW TO KILL (Eon Productions 1985); THE LIVING DAYLIGHTS (Eon Productions and United Artists 1987); GOLDEN EYE (Eon Productions and United Artists 1995); THE WORLD IS NOT ENOUGH (Eon Productions and Metro-Goldwyn-Mayer 1999); DIE ANOTHER DAY (Eon Productions and Metro-Goldwyn-Mayer 2002) (North Korea).

98. VICTORIA FROMKIN & ROBERT RODMAN, AN INTRODUCTION TO LANGUAGES 383–94, 422–23 (5th ed. 1993); James Leonard, *Bilingualism and Equality: Title VII Claims for Language Discrimination in the Workplace*, 38 U. MICH. J. L. REFORM 57, 119120 (2004); ALENE MOYER, AGE, ACCENT AND EXPERIENCE IN SECOND LANGUAGE ACQUISITION 1 (David Singleton ed., 2004); Pedrioli, *supra* note 14, at 118.

99. Chaim Kaufmann, *Possible and Impossible Solutions to Ethnic Civil Wars*, 20 INT'L SECURITY 136, 136 (1996).

100. *Id.* at 141 (emphasis added).

101. *Id.* at 143–44.

pletely eradicate. Therefore, even if individuals adopt the language of their surroundings, their native language may continue to play a key identifying role.

The following sections will explore how language politics may be used as tools of identification, marginalization, and persecution, thereby forcing some to seek refuge outside their Country of Origin (hereinafter “COI”). Part III. A will consider instances where language has been used as a social tool—from arguably benign uses to more explicit purposeful discrimination. Part III.B will provide a case study on the Kurds in Turkey, looking at country reports and some sample European Court of Human Rights cases.

*A. Examples of When Language is a Canary of Escalating Discrimination or Prima Facie Evidence of Ongoing Socio-Political Discrimination of Discrete Groups*

Language can be utilized effectively as tools of social discrimination. As discussed further below in Part III.C, the birth of the modern nation-State solidified language as an expression of power. Accordingly, official restrictions on the use of language, whether purposeful or benign, indicate a presumption of State discriminatory practices against certain nationality groups.<sup>102</sup> As articulated above, because language partiality often represents physical manifestations of broader social discrimination, and because language violations act as direct threats to identity and existence, overt language discrimination by State institutions may act as a canary, that is, a forewarning of escalating social tensions and conflict. As Dónall Ó Riagáin, special advisor to the European Bureau for Lesser Used Languages, expressed, “to suppress or deliberately restrict the use of a people’s language is to attack their dignity in the most profound manner and to infringe their human rights.”<sup>103</sup> Accordingly, language can be used as an effective tool of power, as any interference with an individual’s right to speak a particular language is bound to arouse strong reactions while sufficiently severe language oppression may create psychological feelings of hopelessness.

One prime example is the Soweto Uprising of 1976, which

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102. GLOBAL EDUCATION MONITORING REPORT, IF YOU DON’T UNDERSTAND, HOW CAN YOU LEARN? (2016) (finding that “disputes over language often reflect long stories of domination, subordination, and, in some cases, decolonization”), <http://unesdoc.unesco.org/images/0024/002437/243713E.pdf> [<https://perma.cc/YC8P-FSHP>].

103. Riagáin & Shuibhne, *supra* note 55, at 29.

erupted in the wake of the Afrikaans Medium Decree of 1974. The Afrikaans Medium Decree, mandating English and Afrikaans as the sole languages of instruction, was enacted against a backdrop of continued oppression, in which the Apartheid government's education policy purposefully worked to educate blacks of their inferiority to whites, creating an environment that prevented any meaningful opportunities for blacks. The Decree thus acted as the final cumulative stone on a tower of subjugation. The introduction of mandatory Afrikaans education acted as the final tipping point, since it meant being forced to be educated in what Desmond Tutu termed, the "language of the oppressor."<sup>104</sup> The Afrikaans Medium Decree marked the extent to which the government's oppression had been entrenched, and in turn, acted as a canary, generating a spark that marked a turning point in South Africa, creating a new generation of politically active youth determined to end the oppression of previous decades. The peaceful multi-high school student protests of June 16, 1976 were met with shocking police gunfire.<sup>105</sup> The violent reaction by police officers to the peaceful student march illustrates that there was much more at play than just the immediate cause of the strike.

More generally, more than seventy percent of the world's conflicts since World War II have been drawn on ethnic lines,<sup>106</sup> of which language is an essential component.<sup>107</sup> One study conducted in 2009 found that "over half of the countries affected by armed conflict are highly diverse linguistically."<sup>108</sup> A few examples of when

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104. *Language in South Africa: A Delicate Balans*, THE ECONOMIST: JOHNSON LANGUAGE (Aug. 13, 2012), <http://www.economist.com/blogs/johnson/2012/08/language-south-africa> [perma.cc/B8TQ-KBNB].

105. See P.L. BONNER AND LAUREN SEGAL, *SOWETO: A HISTORY* (1998); GEM Report, *South Africa: Proof that Language in School can be a Source of Grievance if Not Done Right*, WORLD EDUCATION BLOG (Feb. 22, 2016), <https://gemreportunesco.wordpress.com/2016/02/22/south-africa-proof-that-language-in-school-can-be-a-source-of-grievance-if-not-done-right/> [https://perma.cc/VGD7-DCCA]; Weizmann Hamilton, *The Soweto Uprising 1976*, SOCIALIST, <http://www.sahistory.org.za/topic/june-16-soweto-youth-uprising> [https://perma.cc/NC5Y-WNA7].

106. de Varennes, *Language, Ethnic Conflicts and International Law*, *supra* note 84; de Varennes, *Law, Language and the Multiethnic State*, *supra* note 68.

107. See e.g., Doris Schupbach, *Testing Language, Testing Ethnicity? Policies and Practices Surrounding the Ethnic German Aussiedler*, 6 LANGUAGE ASSESSMENT Q. 78 (2009).

108. Global Education Monitoring Report, *supra* note 102; Helen Pinnock, *Language and Education: The Missing Link – How the Language Used in Schools Threatens the Achievement of Education for All*, CFBT EDUCATION TRUST AND SAVE THE CHILDREN ALLIANCE (2009), <http://www.unesco.org/education/EFAWG2009/LanguageEducation.pdf> [https://perma.cc/JTP4-VDPH].

language has been used as a tool of discrimination, marginalization, and oppression are outlined in the following table:

<b>Examples of Language Used as Tools of Discrimination/Persecution<sup>109</sup></b>	
Least serious, may amount to a canary, i.e., warning sign of escalating social discrimination & social conflict	<ul style="list-style-type: none"> <li>- Belgium: Belgium faces ongoing tensions between the French-speaking and Flemish-speaking populations, especially in relation to education.<sup>110</sup></li> <li>- Belarus: Russian and Belarusian enjoy equal legal status, but Russian is the primary language of government. Authorities are known to have harassed and intimidated academic and cultural groups promoting the Belarusian language as such groups are considered to be political opponents of the government. The government has also routinely rejected proposals to widen use of the Belarusian language.<sup>111</sup></li> <li>- Kyrgyzstan: Socio-political and academic marginalization of Uzbek-speaking minority include restrictions on language use.<sup>112</sup></li> <li>- Former Yugoslavia (including Kosovo, Macedonia, Serbia): Prejudiced attitudes towards Albanian-speaking populations.<sup>113</sup></li> </ul>

109. There are many more examples, including Algeria (Berber); China (Ulghur); Chile (Rapa Nui); Estonia & Latvia (Russian); France (Breton); Indonesia (Acehnese); Ireland (Gaelic); Kyrgyzstan (Uzbek); Macedonia (Albanian); Moldova (Russian); Romania (Hungarian); Spain (Catalan; Basque); Slovakia (Hungarian); Uzbekistan (Russian); United Kingdom (Welsh).

110. Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium," App. Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, 1 Eur. H.R. Rep; Ian Traynor, *The Language Divide at the Heart of a Split that is Tearing Belgium Apart*, THE GUARDIAN (2010), <https://www.theguardian.com/world/2010/may/09/belgium-flanders-wallonia-french-dutch> [<https://perma.cc/8YWA-SZWT>].

111. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015: BELARUS, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252825> [<https://perma.cc/NHA3-F2Z8>].

112. ICG, KYRGYZSTAN: WIDENING ETHNIC DIVISIONS IN THE SOUTH (2012), <https://d2071andvip0wj.cloudfront.net/222-kyrgyzstan-widening-ethnic-divisions-in-the-south.pdf> [<https://perma.cc/YX3R-KSEJ>].

113. See generally de Varennes, *supra* note 68.

<p>More serious, likely to be a canary, i.e., warning sign of escalating conflict, and/or <i>prima facie</i> evidence of socio-political discrimination</p>	<ul style="list-style-type: none"> <li>- Australia: Aboriginal people in Australia face restrictions on the right to participate in political life and prohibitions on the right to practice their culture or speak their native languages.<sup>114</sup></li> <li>- Latvia: A Russian-speaking political candidate was stricken off the ballots for the primary elections due to alleged insufficient knowledge of the official language.<sup>115</sup></li> <li>- Pakistan: Some argue that the origin of the conflict in Pakistan and the resistance against the Pakistani government in the early 1950s can be traced to the Pakistani government's announcement that Urdu would be the country's exclusive official language.<sup>116</sup></li> <li>- South Africa: As mentioned above, the Afrikaans Medium Decree of 1974, mandating Afrikaans and English as the sole two languages of instruction, acted as the immediate precursor to the Soweto Uprising of 1976.<sup>117</sup></li> <li>- Ukraine: Language policies remain a contentious issue in Ukraine as proposals for language legislation often encounter lengthy delays by political leaders. There are also concerns of socio-political discrimination of Russian-speakers. Moreover, some refugees from Ukraine have claimed language persecution as their reason for leaving Ukraine.<sup>118</sup></li> </ul>
<p>Most serious, may amount</p>	<ul style="list-style-type: none"> <li>- Sri Lanka: Discrimination of Tamils have included prohibitions on their native language,</li> </ul>

114. Ray Minniecon, FORGIVENESS PROJECT (May 7, 2015), <http://theforgivenessproject.com/stories/ray-minniecon-australia/> [https://perma.cc/2TM4-FSJ3].

115. Podkolzina v. Latvia, 2002-II Eur. Ct. H.R. 11.

116. See de Varennes, *Language and the Multiethnic State*, *supra* note 68, at 20–21.

117. See HAARMANN, *supra* note 61.

118. Jin Sol Lee, *Interview with Miodrag Ćakić: A Field Perspective on the Serbian Response to Refugees*, Colum. J. Transnat'l L.: Bulletin (Jan. 6, 2017), <http://jtl.columbia.edu/a-field-perspective-on-the-serbian-response-to-refugees/> [https://perma.cc/46WJ-DR84].; DE VARENNE, LANGUAGE, MINORITIES, AND HUMAN RIGHTS, *supra* note 43, at 2–3.

to <i>prima facie</i> evidence of violence, discrimination or persecution	and at times has led to violent confrontations. <sup>119</sup> - Turkey: Severe restrictions on the Kurdish language by the Turkish government. <sup>120</sup>
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As illustrated, language is an effective marker in identifying and discriminating individuals based on real or perceived<sup>121</sup> member-

119. See Jathindra Ariyapala, *Sri Lanka: Discrimination Against Tamils Continues After the War*, MINORITY VOICES (Mar. 9, 2011), <http://www.minorityvoices.org/news.php/fr/804/sri-lanka-discrimination-against-tamils-continues-after-the-war> [https://perma.cc/9GFY-NN4E] (“Many historians trace the root of the conflict back to the government’s 1956 decision to make Sinhalese the country’s official language, thereby disenfranchising its Tamil-speaking minority. In 1987 Tamil was also recognized as an official language in the constitution, but the move failed to end the conflict that saw about 1 million Tamils flee the country.”); COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION, 5 LESSONS LEARNT AND RECONCILIATION COMMISSION (LLRC), (2011); International Movement Against All Forms of Discrimination and Racism (IMADR) submitted to the 90<sup>th</sup> session of the Committee on the Elimination of Racial Discrimination (CERD), *Racial Discrimination in Sri Lanka* (July 2016), [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LKA/INT\\_CERD\\_NGO\\_LKA\\_24535\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LKA/INT_CERD_NGO_LKA_24535_E.pdf) [https://perma.cc/L65C-CP3B]; National Christian Evangelical Alliance of Sri Lanka (NCEASL), CENTRE FOR HUMAN RIGHTS DEVELOPMENT (CHRD), AND MINORITY RIGHTS GROUP INTERNATIONAL (MRG), ALTERNATIVE REPORT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) (2016), [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LKA/INT\\_CERD\\_NGO\\_LKA\\_24606\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LKA/INT_CERD_NGO_LKA_24606_E.pdf) [https://perma.cc/Q2EA-9V64].

120. *Infra* Part II(B).

121. Individuals may be persecuted on a perceived, but mistaken, membership in a particular linguistic group as not everyone who speaks a certain language identifies with the same nationality. In the refugee context, it is immaterial whether a person actually possesses the characteristics that he/she is being discriminated/persecuted for; insofar as the perpetrator(s) are targeting the individual on the belief that he/she shares a particular characteristic, or that his/her language implies membership of a particular social group. Thus, for assessing refugee claims, it doesn’t matter whether a speaker is actually part of the linguistic group that he/she is perceived. Directive 2004/83, of the Council of the European Union on, on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, OJ (L304/12-304/23).. Article 10(2) clarifies that “[w]hen assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.” U.S. case law also shows that the applicant does not need to show “conclusively” that the persecution was motivated by one of the 5 enumerated grounds but may produce evidence, direct or circumstantial, that creates a reasonable belief that the harm was or desire to harm was motivated in part by actual or imputed protected ground; *In re S-P-*, 21 I&N Dec. 486, 489-94 (BIA 1996); *Matter of*

ship of particular groups. Language discrimination may be more benign, perhaps an oversight by governments to account for substantial linguistic communities, inadvertently blocking access to public services, and creating disproportionate burdens on certain groups. In emerging nations, language policies may be used to unify and strengthen national unity, at the perhaps unintended expense of minority groups. In this regard, language can take on an unintentional gatekeeping role, classifying certain social groups as the true owners of a certain nation-State while excluding others.

Governments and institutions may also intentionally use language to create boundaries between different populations and silence the voices of certain social groups. Some more deliberate examples of linguistic discrimination include the social marginalization faced by the Tamil-speaking population in Sri Lanka, which include lack of language accommodations and discrimination based on linguistic identification,<sup>122</sup> and linguistic minorities in Iraq who report not feeling safe speaking in their native tongue in public.<sup>123</sup> As shown, language can be used as a tool in a variety of ways, from more benign to intentionally targeted.

One particularly long-lasting and violent articulation of the use of language as a social tool is the practice of “Shibboleth”—the use of a phrase or word as a type of “linguistic password”—to identify non-members who cannot properly pronounce a particular phrase or word.<sup>124</sup> Shibboleth is first articulated in the Old Testament, Judges 12:6, as a means Gileadites used to identify and kill Ephraimites.<sup>125</sup> The practice of Shibboleth is a key ongoing example of how language is a proxy for discrete social groups and how language violence itself is merely a cumulative manifestation of systematic discrimination. Some modern examples of Shibboleth can be observed

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*Fuentes*, 19 I&N Dec. 658, 622 (BIA 1988).

122. See Ariyapala, *supra* note 119.

123. Preti Taneja, *Iraq's Minorities: Participation in Public Life*, MINORITY RIGHTS 25 (2011), [http://minorityrights.org/wp-content/uploads/2015/07/MRG\\_Rep\\_Iraq.pdf](http://minorityrights.org/wp-content/uploads/2015/07/MRG_Rep_Iraq.pdf) [<https://perma.cc/U7J4-XACK>] (finding that minorities refrain from speaking in their language in public to hide their community affiliation).

124. Suzanne Kemmer, *The Story of Shibboleth*, RICE UNIV., <http://www.ruf.rice.edu/~kemmer/Words/shibboleth.html>, [<https://perma.cc/HRX6-XEKE>].

125. Judges 12:6 tells that states that when Gileadites captured the fords of Jordon opposite Ephraim, they prevented Ephraim fugitives from crossing by testing their pronunciation, or more accurately, mispronunciation, of the word “Shibboleth.” They would first ask “Are you an Ephraimite?” If they replied no, they were asked to say ‘Shibboleth.’ If they could not pronounce the word correctly, they were killed as Ephraimites. In this way, forty-two thousand Ephraimites were killed.

in the aftermath of the Great Kanto Earthquake of 1923 in Japan, where rumors and propaganda against Koreans led to immediate executions of Koreans who were identified by their mispronunciation of the Japanese phrase “Ju go en, go ju go sen” (Japanese for “fifteen yen, fifty-five sen”)<sup>126</sup> and the October 1937 “Parsley Massacre” of 35,000 Haitians in the Dominican Republic where Dominican soldiers identified Haitians by their inability to correctly pronounce “perejil” (Spanish for “parsley”).<sup>127</sup> Since language is a marker for membership of a particular community, any discriminatory State practice against certain languages are potential red flags of intolerance, and, in extreme circumstances, may represent national or ethnic cleansing of particular groups identifiable by their spoken language.<sup>128</sup> In such cases, language discrimination likely reflects institutional failure to protect particular minority groups.

### B. A Case Study: Kurds

The following case study on the Kurds will be used to illustrate some of the issues discussed above: how language discrimination is a warning sign or even *prima facie* evidence of marginalization and persecution of discrete national groups. The situation of the Kurds in Turkey provides an important long-lasting example of a group that has been targeted and excluded due to their collective identity and highlights the close ties between language and nationality. This Note will focus specifically on the linguistic restrictions that have been placed on the Kurds. Language restrictions act as a prohibition of arguably the most essential part of identity and are especially effective socio-political tools for suppressing Kurdish identity and preventing the Kurdish people from amassing social power or political voice. The following will examine how the Turkish government’s restrictions on the Kurdish language reflect the general atmosphere of discrimination and persecution of Kurds in Turkey.

The Kurds, who make up the fourth largest ethnic group in the Middle East and exist as minority groups in various countries in

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126. JOSHUA HAMMER, *YOKOHAMA BURNING: THE DEADLY 1923 EARTHQUAKE AND FIRE THAT HELPED FORGE THE PATH TO WORLD WAR II* 156, 149–70 (2006).

127. Anurada Malalasekara, *Password for Life*, DAILY NEWS (Oct. 5, 2011), <http://archives.dailynews.lk/2011/10/05/art12.asp> [<https://perma.cc/7U4C-3EMQ>].

128. Even if individuals learn the dominant language, accents are likely to continue to identify the speaker as a non-native speaker. See de Varennes, *Ethnic Conflicts and Language in Eastern Europe and Central Asian States*, *supra* note 45, at 138; Rubio-Marín, *supra* note 18, at 63–64.

the region, face considerable marginalization and discrimination.<sup>129</sup> In Turkey, the Kurdish language was officially banned outright until 1991.<sup>130</sup> Even today, Kurdish is restricted in official settings and within the education system,<sup>131</sup> meaning that Kurds in Turkey still face possible arrest if heard speaking Kurdish in public.<sup>132</sup> The Turkish police and judicial branch have been known to instigate prosecution against individuals suspected of pro-Kurdish leanings merely on the flimsy grounds that an individual spoke Kurdish.<sup>133</sup> For example, in November 2009, two local mayoral candidates were convicted and sentenced to six months jail time (later converted to fines) for using Kurdish while campaigning.<sup>134</sup> Consequently, Kurdish often remains de facto prohibited in the political sphere. Even non-political figures, such as lawyers and artists, have been imprisoned merely for using terms such as “Kurds” and “Kurdistan” during public speeches.<sup>135</sup> Thus, while the most severe language restrictions were lifted in the 1990s, in part bending to pressure from international institutions, Kurds continue to confront linguistic discrimination<sup>136</sup> in their everyday lives,<sup>137</sup> both in the public<sup>138</sup> and private sphere.<sup>139</sup> Moreover,

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129. *Who are the Kurds?*, CNN NEWS (Oct. 31, 2017), <http://www.bbc.com/news/world-middle-east-29702440> [<https://perma.cc/TK99-5DEM>].

130. Anti-Terror Law (Act No. 3713/Apr. 12, 1991) (Turk.).

131. *Kurdish Spoken in Challenge to Turkey*, NBC NEWS (Feb. 24, 2009), [http://www.nbcnews.com/id/29371366/ns/world\\_news-europe-t/kurdish-spoken-challenge-turkey/#.WqV9nGV0YhQ](http://www.nbcnews.com/id/29371366/ns/world_news-europe-t/kurdish-spoken-challenge-turkey/#.WqV9nGV0YhQ) [<https://perma.cc/HN8J-LWKN>]. (“In 1991, Kurdish lawmaker Leyla Zana took the oath in parliament in the Kurdish language, causing an uproar. She was later stripped of her immunity, prosecuted on charges of separatism and links to the rebels, and served a decade in prison along with three other Kurdish legislators.”)

132. Stephen Kinzer, *Kurdish Rebel Links Revolt to Repression by Turkey*, N.Y. TIMES (June 24, 1999), <http://www.nytimes.com/1999/06/24/world/kurdish-rebel-links-revolt-to-repression-by-turkey.html?src=pm> [<https://perma.cc/8K24-UT5Q>].

133. *Id.*

134. U.S. DEP’T OF STATE, 2009 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES ON TURKEY, <https://www.state.gov/j/drl/rls/hrrpt/2009/eur/136062.htm>, [<https://perma.cc/JX23-NDYV>].

135. *Id.* (“On October 4, the Diyarbakir High Court convicted lawyer Eren Keskin, actor Murat Batgi, and author Edip Polat of ‘inciting hatred and hostility’ for using the terms ‘Kurds’ and ‘Kurdistan’ in a speech at the Culture and Art Festival in Diyarbakir in 2006. Each was sentenced to one year in prison. The court stated that their speeches showed ‘evidence of clearly emerging and immediate danger.’”)

136. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS 2015: TURKEY, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=252909> [<https://perma.cc/ZSD6-MP6P>].

137. Paul J. Magnarella, *The Legal, Political and Cultural Structures of Human Rights Protections and Abuses in Turkey*, 3 D.C.L. J. INT’L L. & PRAC. 439, 460 (1994) (Even in the 1990s, the Kurdish language couldn’t be spoken in Court or other official settings, Kurdish

hate crimes against Kurds or Kurdish-supporters continue to be frequently ignored. Even as late as 2015, Kurdish language press and websites were sometimes blocked on administrative orders backed by judicial support.<sup>140</sup> These restrictions on language represent the general repressive climate imposed on the Kurdish minority by the Turkish government.

### 1. European Court of Human Rights on the Rights of Kurds and Freedom to use Kurdish

Given the long-lived and widespread nature of Turkey's oppression of the Kurds, several cases relating to discrimination of Kurds and the Kurdish language specifically have reached the European Court of Human Rights (hereinafter "the Court").<sup>141</sup> In such cases, language is usually not the core of the claim, but often accompanies nationality persecution claims. This is not surprising as the Kurdish language is only discriminated against because of its ties to the Kurdish people. Language claims are also sometimes implicated in political or religious persecution claims, due to the general role of language in expression and communication.

Generally, the Turkish government has been known to respond with criminal sanctions to any outward manifestation of sym-

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families were forbidden to give their children Kurdish names, and Kurds have been known to have been detained and arrested for singing Kurdish weddings.).

138. *Id.* at 441. (Originally, Turkey government banned the use of minority languages in all "public discourse, educational institutions, broadcasts, and publications" in the early twentieth century.).

139. *Id.* at 462. (Scholars studying Kurdish culture and history being subject to arrest and convictions. Cultural anthropologist Ismail Besikci, Turk, who had researched and written on Kurdish culture, society, and history served 10 years in prison between 1971–1987 for his publications, which the court ruled constituted "separatist propaganda.").

140. AMNESTY INT'L, ANNUAL REPORT TURKEY 2015/2016, <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> [<https://perma.cc/Y6ME-ECPE>].

141. *See* Yaşa v. Turkey, App. No. 63/1997/847/1054, Eur. Ct. H.R. (1998) (Failure of Turkish governmental investigation and sufficient protection of applicants who had been victims of armed attacks for selling pro-Kurdish newspapers); Polat v. Turkey, App. No. 23500/94, Eur. Ct. H.R. ¶ 45 (1999) ("In short, the mere fact of referring to the existence of the Kurdish people in Turkey, defending their language and culture and reporting the torture and tyranny they had to endure amounted in the eyes of the authorities to separatism."); Case of H.S. and Others v. Cyprus, App. No. 41753/10, Eur. Ct. H.R. (2015) (discrimination of Kurds and Kurdish language); *Eğitim ve Bilim Emekçileri sendikası*, 2012-III Eur. Ct. H.R. ¶ 71 (language as deserving protection as a medium of expression under Article 10).

pathy or support for Kurds.<sup>142</sup> For example, *Karataş v. Turkey*<sup>143</sup> considered the case of an author who had been sentenced to eighteen months imprisonment for having “disseminated separatist propaganda”<sup>144</sup> by writing poems expressing “deep-rooted discontent with the lot of the population of Kurdish origin in Turkey.”<sup>145</sup> The Court concluded that Article 10 of the European Convention of Human Rights (freedom of expression)<sup>146</sup> had been violated by this disproportionate response.<sup>147</sup> Similarly, in *Polat v. Turkey*,<sup>148</sup> the Court again found a violation of Article 10 in the Turkish government’s criminal conviction of a writer who had published a book about the historical and current injustices faced by Kurds in Turkey.<sup>149</sup> In *HADEP and Demir v. Turkey*,<sup>150</sup> the Court considered the rights of Kurdish organizations under Article 11 (freedom of assembly and association)<sup>151</sup> in light of Article 10, finding that as “there can be no democracy without pluralism,”<sup>152</sup> there had been a violation of Article 11 in the Turkish government’s dissolution of HADEP (Halkin Demokrasi Partisi [People’s Democracy Party]), an organization that aimed to ensure Kurds’ rights to be educated in Kurdish, sustain their culture, participate in political life, and enjoy Kurdish language entertainment.<sup>153</sup> The Court has protected the freedom of Kurdish organiza-

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142. See e.g., *Birdal v. Turkey*, App. No. 53047/99, Eur. Ct. H.R. ¶¶ 6, 37 (2007), <http://hudoc.echr.coe.int/eng?i=001-82503> [<https://perma.cc/92BP-P9E7>]; *Ulusoy v. Turkey*, App. No. 52709/99, Eur. Ct. H.R. ¶ 13, 16, 47 (2007), <http://hudoc.echr.coe.int/eng?i=001-82030> [<https://perma.cc/S9RB-A6FU>]; *Şener v. Turkey*, App. No. 26680/95, Eur. Ct. H.R. ¶¶ 44-45 (2000), <http://hudoc.echr.coe.int/eng?i=001-58753> [<https://perma.cc/64G8-TTTH>].

143. *Karataş v. Turkey*, 1999-IV Eur. Ct. H.R. 81 (1999); *İbrahim Aksoy v. Turkey*, App. Nos. 28635/95, 30171/96, 34535/97, Eur. Ct. H.R. ¶ 60 (2000), <http://hudoc.echr.coe.int/eng?i=001-63409> [<https://perma.cc/PF62-RVUT>]; *Zana v. Turkey*, App. No. 69/1996/688/880, Eur. Ct. H.R. ¶ 55 (1997), <http://hudoc.echr.coe.int/eng?i=001-58115> [<https://perma.cc/XWT4-JPEY>]; *Incal v. Turkey*, App. No. 41/1997/825/1031, Eur. Ct. H.R. ¶ 58 (1998); *Savgın v. Turkey*, App. No. 13304/03, Eur. Ct. H.R. ¶ 44 (2010), <http://hudoc.echr.coe.int/eng?i=001-97102> [<https://perma.cc/3QDW-QNLU>].

144. *Karataş*, 1999-IV Eur. Ct. H.R., at 109–10.

145. *Id.* at 109.

146. European Convention on Human Rights, *supra* note 49, art. 10.

147. *Id.* §54.

148. *Polat*, App. No. 23500/94, Eur. Ct. H.R.

149. *Id.* ¶¶ 9, 40, 49.

150. *HADEP and Demir v. Turkey*, App. No. 28003/03, Eur. Ct. H.R. (2010), <http://hudoc.echr.coe.int/eng?i=001-102256> [<https://perma.cc/BBZ3-LYMV>].

151. European Convention on Human Rights, *supra* note 49, art. 11.

152. *HADEP and Demir*, App. No. 28003/03, Eur. Ct. H.R., ¶ 57.

153. *Id.* ¶¶ 46, 82.

tions, which often continue to face social, political, and criminal sanctions in Turkey, under Article 11 in several other cases as well.<sup>154</sup>

More specifically, repression of the Kurdish language may be the most visceral representation of the Turkish government's general repression of the Kurdish minority. In 1999, Kurdish rebel leader Abdullah Ocalan asserted that "restrictions on the use of the Kurdish language had led him and many other Kurds to conclude that they had to fight to preserve their culture and heritage" while detained at Imrali, a prison island.<sup>155</sup> Ocalan remarked further that the various oppressive measures by the Turkish government had led him to "rebellion and anarchy" with "the most important of these [being] the language ban, [which] provoke[d] this revolt."<sup>156</sup> As stated above, because language is so fundamental to identity, attacks on the status of minority languages inevitably arouse strong responses and potentially violent confrontations.

Some cases have dealt fairly squarely with the Kurdish language, especially within the political sphere, where the Court has defended the freedom to speak Kurdish under Article 10. For example, in *Semir Güzel v. Turkey*, the Court found a violation of Article 10 in the Turkish government's prosecution of a politician for failing to prevent delegates from speaking in Kurdish at a political party meeting he had been chairing.<sup>157</sup> The Court again considered the use of Kurdish in connection to Article 10 in *Şükran Aydın and Others v. Turkey*, where several applicants had been criminally sanctioned for speaking in Kurdish, their mother tongue, to Kurdish-speaking populations during their political campaigns.<sup>158</sup> The applicants claimed that they had been convicted and sentenced by the Turkish government solely for speaking Kurdish during their political campaigns, and not for any other misconduct. In its opinion, the Court stated that "in principle, States are entitled to regulate the use of languages by candidates and other persons during election campaigns and, if need be, to impose certain reasonable restrictions. However, a regulatory framework consisting of a total prohibition on the use of unofficial languages coupled with criminal sanctions cannot be held to be com-

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154. See e.g. *Yazar and Others v. Turkey*, 2002-II Eur. Ct. H.R. 395.

155. Kinzer, *supra* note 132.

156. *Id.*

157. European Convention on Human Rights, *supra* note 49.

158. *Şükran Aydın and Others v. Turkey*, App. Nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, Eur. Ct. H.R. ¶ 43 (2013), <http://hudoc.echr.coe.int/eng?i=001-116031> [<https://perma.cc/BEX7-3KDQ>].

patible with the essential values of a democratic society, which include freedom of expression as guaranteed by Article 10 of the Convention.”<sup>159</sup> Nonetheless, Kurdish continues to face restrictions both inside and outside the political sphere. For example, the Court found that banning production of a Kurdish play in a municipal building constituted a breach of freedom of expression under Article 10 in *Ulusoy and Others v. Turkey*.<sup>160</sup> Overall, these cases, alongside others, illustrate how the Kurdish language continues to be repressed in the public sphere, despite the loosening of official laws.

The Court has also accepted cases dealing with the right to speak Kurdish in educational contexts and private communications with family members. Within educational contexts, the Court considered claims brought by applicants who were subject to disciplinary sanctions after petitioning their universities to provide optional Kurdish language courses in *İrfan Temel and Others v. Turkey*.<sup>161</sup> The Court, considering the complaint under Article 2 of Protocol No. 1,<sup>162</sup> found that the university’s sanctioning of the applicants for merely petitioning for optional language courses was disproportionate and violated the applicant’s right to continue their education. However, the Court did not go further to consider whether the applicants had a right to Kurdish language courses or whether the university had a corresponding obligation to provide Kurdish classes. This case thus only confirmed that Turkish educational institutions had taken drastic measures in response to an innocuous request. The institution’s disproportionate response, however, reflects social discrimination against the Kurdish language; arguably, university authorities may not have deployed the same drastic response had students petitioned for optional classes of another language. The Court has also considered the right of Kurdish prisoners to use Kurdish in their communications with family members. The case of *Mehmet Nuri Özen and Others v. Turkey* considered an applicant who had been prohibited from sending letters in Kurdish from jail to relatives who only knew how to speak Kurdish.<sup>163</sup> The Court held that there had been a violation of Article 8 (right to respect for private and family life), stating

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159. *Id.* ¶ 55.

160. *Ulusoy and Others*, App. No. 34797/03, Eur. Ct. H.R.

161. *İrfan Temel and Others v. Turkey*, App. No. 36458/02, Eur. Ct. H.R. ¶ 27 (2009), <http://hudoc.echr.coe.int/eng?i=001-91532> [<https://perma.cc/AHA8-ZE7D>].

162. Protocol to the European Convention for the Protection Human Rights and Fundamental Freedoms, art. 2, Mar. 20, 1952, E.T.S. No. 9 (entered into force May 18, 1954) (“No person shall be denied the right to education.”).

163. *Mehmet Nuri Özen and Others v. Turkey*, App. Nos. 15672/08 et al., Eur. Ct. H.R. ¶ 137 (2011), <http://hudoc.echr.coe.int/eng?i=001-102711> [<https://perma.cc/Q638-V92C>].

that there was no legal basis for the prison's refusal to dispatch letters written in Kurdish. Many of these illustrative cases were decided post-2000. For example, *Mehmet Nuri Özen* was decided in 2013, implying that linguistic discrimination against Kurds continues to penetrate many aspects of Kurds' lives even today. In conclusion, the preceding sections have demonstrated how language is so essential to identity and how linguistic targeting and discrimination have evolved into such effective social tools.

#### IV. RECOMMENDATIONS

It is important to note that in most instances, language discrimination will be a marker of systemic marginalization of particular social groups based on their perceived membership in a particular nationality. In extreme circumstances, language rights violations alone may amount to persecution in light of the fundamental character of language in identity and human rights.<sup>164</sup> As seen above, laws and policies prohibiting the use of Kurdish in public must be analyzed within the context of ongoing discrimination, prejudice, and persecution of Kurds by the Turkish government and wider society.<sup>165</sup> Language discrimination cannot be seen in isolation, as it is likely to be reflective of the surrounding socio-political climate. Like the canary, language discrimination may be a less costly social loss that signals the need to take precautions to prevent the likelihood of escalating social costs that may result from social unrest and violence among different social groups. Accordingly, the refugee regime should be more sensitive to claims of language discrimination as they may represent warning signs or cumulative physical manifestations of larger systemic violations against certain nationality groups. This increased sensitivity to the social role of language sheds light on some avenues for improvement within the existing refugee regime, particularly in defining the boundaries of refugee status within the nationality category.

##### A. General Recommendations

First, there is a need for more empirical research into the lin-

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164. *Canada (Attorney General) v. Ward*, [1993] S.C.R. 689 (Can.) (The Canada Supreme Court ruled that persecution exists when human dignity is denied in any key way either due to a single act or cumulatively).

165. *See supra* Part II (B).

guistic demographics of particular countries. These linguistic statistics should then be considered alongside the State's existing official languages, linguistic laws, and policies. Such studies could help analyze root causes of systemic discrimination of minority groups. At the same time, once these analyses are compiled, they could assist in implementing systemic reform to help decrease the occurrence of linguistic discrimination and marginalization in the first instance, and prevent the accompanying need for marginalized linguistic minorities to seek refuge elsewhere. This could help reduce the current debilitating load on the refugee regime and allow resources to be spent more effectively. As language discriminatory practices may be a proxy for national discrimination, language policy reform may also be an effective way to indirectly decrease tensions and violence between different social groups.

Even without such new studies, evaluation of refugee claims may be improved simply by increased consideration of language issues. For example, lack of explicit official laws and policies providing for protection of minority languages offers some evidence of institutional disinclination to protect individual language rights and may even indicate a sanction of social discrimination and persecution of particular national groups. Likewise, insofar as there are no or few accommodations for minority languages,<sup>166</sup> laws designating official languages may create disproportionate burdens on certain groups as non-discrimination requires attention to language differences.<sup>167</sup> At minimum, lack of explicit recognition and protection of minority languages help provide an environment susceptible to social marginalization. Ergo, when an applicant claims difficulties on the account of language, asylum intake officers should give serious consideration as to the status of that applicant's nationality/social group in his/her COI.

Language issues are prone to be especially sensitive when they have roots in historical precedents or where language discrimination is linked with other identifying characteristics. For example, consider the ongoing concern in many Baltic and former Soviet Union countries concerning the status of Russian and other minority languages.<sup>168</sup> It is thus especially important to be sensitive to lan-

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166. De Varennes, *Ethnic Conflicts and Language in Eastern Europe and Central Asian States*, *supra* note 45, at 150; Fernand de Varennes, *Langue et discrimination au Canada*, 5 CAN. J. OF LAW AND JURISPRUDENCE 321 (1992); Bruno de Witte, *Linguistic Equality: A Study in Comparative Constitutional Law*, 3 REVISTA DE LENGUA I DRET 43 (1985).

167. South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa) (Second Phase), 1966 I.C.J. 284.

168. OSCE MISSION IN KOSOVO, COMMUNITY RIGHTS ASSESSMENT REPORT (2015),

guage issues in countries where linguistic groups have experienced discriminatory practices in the past.<sup>169</sup> The potential divisive role of language may also be amplified when it exists in combination with other group characteristics; for instance, if a particular language is also the language of the script of the minority group's religion. In the Croatian-Serbian conflict, for example, despite sharing the same oral language, Croats' and Serbs' respective use of Latin and Cyrillic script in their religious texts contributed to inter-ethnic tensions.<sup>170</sup> Accordingly, language based discrimination should receive special attention when it are rooted in historical ongoing conflicts or exist in conjunction with other claims, such as political or religious persecution.

On the other hand, countries that have recognized and made compromises for minority languages are likely to be better situated to provide protection to their minority linguistic groups. This is because tensions are more likely to accumulate into violent outbreak when language rights have been "avoided, suppressed, diminished or ignored."<sup>171</sup> Thus, in assessing asylum claims of national or ethnic persecution, the presence of any laws relating to the protection of minority languages in the relevant COI may be a useful starting point. Of course, even if such laws exist on the books, there is still a question of whether those laws can be relied upon in practice. Regardless, the State's official policies and practices regarding minority languages provide some insight into the State's ability and willingness to protect its minority groups. Accordingly, one way to assess claims of nationality violence may be to assess whether the COI has undertaken efforts to provide protections to its constituent minority groups.

Consequently, in considering the likely ability of COIs to provide protection for their minority nationality groups, there should be analysis of both formal and informal provisions protecting languages, as well as the implementation (or non-implementation) of

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<http://www.osce.org/kosovo/209956?download=true> [<https://perma.cc/V352-WFGA>].

169. De Varennes, *Ethnic Conflicts and Language in Eastern Europe and Central Asian States*, *supra* note 45, at 160–162.

170. *Id.*

171. Canada and Belgium are cases where the state's ignorance of the linguistic composition of their population. Hungarian-speaking Romanians and Russian-speaking Estonians are examples of minority groups that have been limited. *See generally* de Varennes, *Ethnic Conflict and Language in Eastern Europe and Central Asian States*, *supra* note 45, at 145–46; de Varennes, *Language, Ethnic Conflicts and International Law*, *supra* note 84, at 17; Yash Ghai, *Legal Responses to Ethnicity in South and South East Asia*, at 23, Paper delivered at CONFERENCE ON ETHNICITY, IDENTITY AND NATIONALISM IN SOUTH ASIA: COMPARATIVE PERSPECTIVES, Rhodes Univ., Grahamstown, South Africa, Apr. 20–24, 1993.

such laws and procedural protections.<sup>172</sup> For example, formal recognition of minority languages, as in the case of the South African Constitution's provision for eleven official languages,<sup>173</sup> and Sri Lanka's recognition of Tamil as an official language in its Thirteenth Amendment to the Constitution alongside other legal provisions for linguistic safeguards that were passed during the Sri Lankan Civil War,<sup>174</sup> are positive signs. However, attention should be paid not only to formal and procedural safeguards, but also to how the State is actively promoting minority languages and how these policies are being carried out in practice.<sup>175</sup> Mere formal recognition and stated

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172. See, e.g., The Māori Language Act 2016, s 2 (N.Z.), <http://www.legislation.govt.nz/act/public/2016/0017/29.0/DLM6174509.html> [<https://perma.cc/F5VC-GWWE>]; the recognition and promotion of indigenous languages, such as Quechua in Peru; Decreto Ley N° 21156 que reconoce el quechua como lengua oficial de la República (Peru), <https://peru.justia.com/federales/decretos-leyes/21156-may-27-1975/gdoc/> [<https://perma.cc/58YR-KKWV>]; Decreto Ley N° 29735 que regula el uso, preservación, desarrollo, recuperación, fomento y difusión de las lenguas originarias del Perú (Peru), <http://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-reglamento-de-la-ley-n-29735-decreto-supremo-n-004-2016-mc-1407753-5/> [<https://perma.cc/Y49T-VKMF>]; Status of French in Canada, see Official Languages Act, R.S.N.W.T. (Nu) 1988, c O-1, [www.canlii.ca/t/khkc](http://www.canlii.ca/t/khkc) [<https://perma.cc/T839-K2X2>]; indigenous languages in Greenland, see *Greenland's Language Success*, LANGCOMNU'S BLOG (June 4, 2010), <http://langcom.nu.ca/blog-entry/dshadbolt/greenlands-language-success> [<https://perma.cc/8XDP-JKCL>].

173. SOUTH AFR. HUM. RTS. COMM., LIST OF ISSUES REPORT TO THE HUMAN RIGHTS COMMITTEE ON SOUTH AFRICA'S IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 38–39 (2015), [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/INT\\_CCPR\\_ICO\\_ZAF\\_20239\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/INT_CCPR_ICO_ZAF_20239_E.pdf), [<https://perma.cc/UTY5-63D3>]; *Lourens v. President van die Republiek van Suid Afrika en Andere* 2010 (1) SA 1 (CC) (S. Afr.), [www.saflii.org/za/cases/ZAGPPHC/2010/19.html](http://www.saflii.org/za/cases/ZAGPPHC/2010/19.html) [<https://perma.cc/344R-Q835>]; South African Languages Bill 75 of 2011 (S. Afr.), <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/bills/111104b23-11.pdf> [<https://perma.cc/Z5ZS-NHBP>].

174. In addition to recognizing Tamil as an official language in the Constitution, Sri Lanka also provided for official publications and communications in Tamil. Moreover, the Official Languages Commission Act No. 18 of 1991 makes failure to comply with the language law a punishable offense. The Government has arguably, at least within its laws and policies, also provided for “promotional-oriented” rights via mandating the right to be educated in Tamil, providing language training for officials, and setting up a Department of Official Languages to monitor and ensure implementation of the language law. See COEXIST FOUNDATION, LANGUAGE DISCRIMINATION TO LANGUAGE EQUALITY: REPORT OF AN AUDIT OF THE STATUS OF THE IMPLEMENTATION OF THE OFFICIAL LANGUAGE POLICY IN SRI LANKA (2006); INT'L MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM (IMADR), REPORT TO THE 90<sup>TH</sup> SESSION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) (2016).

175. Heinz Kloss, *Language Rights of Immigrant Groups*, 5 INT'L MIGRATION REV. 250, 250–68 (1971); HEINZ KLOSS, THE AMERICAN BILINGUAL TRADITION. (1998).

commitment to ethnic and minority issues will likely be insufficient if the requisite civil and socio-political support do not accompany such formal declarations. Ongoing commitment by governments and institutions to maintain open communications with minority groups is also necessary.<sup>176</sup> For instance, even if there are laws providing for translations into minority languages so that such groups can access political and judicial processes, lack of sufficient translators and translated documents may render such declarations meaningless.<sup>177</sup> Consider South Africa, where despite formal recognition of minority languages, indigenous peoples and cultural and linguistic minorities continue to encounter major roadblocks when attempting to engage with and participate in public life.<sup>178</sup> It is thus important to consider the social context of when the laws were enacted and whether they are continuing to be enforced. In the case of Sri Lanka, despite laws enacted during the Civil War providing for official services in Tamil, it remains difficult for Tamil-speakers to access public services and public discourse.<sup>179</sup> More generally, violence and discrimination

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176. Kempin, *supra* note 92.

177. *Id.* at 383.

178. Lack of resources and non-recognition of lesser languages (besides the 11 official recognized languages) have led to “lack of adequate information on government activities in all of South Africa’s languages [that] has often resulted in people being shut out from engaging in government, and as a result their needs have gone unrecognized and underrepresented.” Even though the law also provides for procedural mechanisms meant to increase representation of minority groups, as in the provision for “the National House of Traditional Leaders,” in practice, minority groups, such as the indigenous Khoisan communities, continue to be unrepresented in government. Accordingly, while the recognition of eleven official languages is a significant victory, it is only the first step. *See* SOUTH AFR. HUM. RTS. COMM., *supra* note 173.

179. This is especially true in regions outside the North and East, where informational materials and signage are rarely in Tamil. Moreover, many state officials fail to fully implement the language law and many civilians are unaware of their language rights. In the background of ongoing discrimination, the Official Language Commission is largely silent, as it remains under-resourced and unwilling to inspect, monitor, or take legal actions to enforce protection of the Tamil language. Shreerupa Mitra-Jha, *Tamils continue to face racial discrimination in Sri Lanka, says UN Committee post review*, F. WORLD (Aug. 25, 2016), <http://www.firstpost.com/world/tamils-continue-to-face-racial-discrimination-in-sri-lanka-says-un-committee-post-review-2976326.html> [https://perma.cc/48SU-R35C]; International Convention on the Elimination of all Forms of Racial Discrimination, Nov. 20, 2000, CERD/C/357/Add.3 (reports submitted by states parties under article 9 of the convention. Ninth periodic reports of States parties due in 1999 Addendum Sri Lanka); OFFICIAL LANGUAGES COMMISSION, ANNUAL REPORT 2005 21 (2006); IMADR, *supra* note 174 (“Tamil speakers outside the North and East are unable to transact official business with State authorities in the Tamil language, either through correspondence or in person, signage and information materials in the Tamil-language are scarce and the Official Languages Commission is under-resourced, unable to inspect and monitor implementation of the

against Tamils continue as most of the protective laws remain without force.<sup>180</sup> The refugee regime should accordingly investigate the existence of both formal and informal mechanisms providing for language protection in respective COIs as well as the extent to which the laws are being carried out in practice. COI reports would benefit from including information relating to language rights as such information would (at least in part) reflect COIs' attitudes towards minorities and the extent of discrimination or marginalization encountered by individuals of different nationalities.

In addition to substantial claims of language discrimination and persecution in respective COIs, language is integral to the procedures of the asylum regime, and thereby the impact of language in various refugee procedures deserves greater scrutiny. For instance, refugees may continue to confront linguistic barriers within the refugee regime itself. Although access to the refugee regime should not depend on language,<sup>181</sup> in reality, lack of sufficiently translated documents and interpreters implies that language barriers may block access to the asylum registration process altogether<sup>182</sup> or severely limit the ability to fully articulate claims.<sup>183</sup> Such linguistic barriers can continue to hinder asylum procedures throughout communications with administrators, officers, governmental agencies, and the courts,<sup>184</sup> thereby compounding the problem. Thus, heightened sen-

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official languages law and unwilling to take legal action against recalcitrant public institutions.”).

180. Jason Burke, *Tamils want an end to Sri Lanka discrimination after election*, THE GUARDIAN (Apr. 4, 2010), <https://www.theguardian.com/world/2010/apr/04/sri-lanka-elections-tamil-minority> [<https://perma.cc/UFV9-P5TJ>].

181. European Convention on Human Rights, *supra* note 49 (includes explicit protection for nondiscrimination on the basis of language (Art. 14), and provides explicit linguistic protection of language rights in judicial proceedings such as the right to be informed promptly, in a language he or she understands, of the reasons for arrest (Art. 5.2), the nature and cause of any criminal charges (Art. 6.3(a)), and the right to a free interpreter if a defendant cannot speak or understand the language used in court (Art. 6.3(e)). *See also* Kemal Taşkın and Others v. Turkey, App. Nos. 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05, 45609/05, Eur. Ct. H.R. ¶ 13 (2010), <http://hudoc.echr.coe.int/eng?i=001-97088> [<https://perma.cc/D3HW-LL8Q>]; Kozlovs v. Latvia, App. No. 50835/99, Eur. Ct. H.R. (2002), <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2250835/99%22%7D> [<https://perma.cc/B7V6-9B86>].

182. Council of Europe, ECRI Report on Cyprus (fourth monitoring cycle), ¶ 186, adopted on Mar. 23, 2011 (“[S]ince most asylum seekers do not have sufficient command of the Greek language, it is almost impossible for them to formulate a successful legal aid application, particularly as regards the merits test.”).

183. Lee, *supra* note 118.

184. *Id.*

sitivity to the role of language in the refugee regime would hopefully spark greater attention to how linguistic barriers may be affecting refugees within asylum procedures as well.

There is a pressing need to more carefully consider the implications of the increasing practice of using linguistic analysis as an accepted means of verifying asylum seekers' claimed COI, genuineness, and credibility.<sup>185</sup> Linguistic analysis is frequently used as a means of determining COI and verifying the credibility of an asylum seeker's claimed reasons for seeking asylum. Even where explicit linguistic tests are not used, language, dialect, accents, and other identifying linguistic features are frequently used to classify individuals and establish, or unsettle, claimed membership in particular social groups or COI. However, alongside the increasing use of linguistic tools in the refugee context, linguists and scholars are increasingly raising concerns of overgeneralization and faulty assumptions.<sup>186</sup> The prevalence of these linguistic tools warrants increased attention, especially in light of linguists' growing concerns of the validity and accuracy of such tests, and as determinations of COI and credibility are pivotal in determining the success or failure of obtaining refugee status and procuring protection.

Certainly, the use of these tests may seem to be the logical conclusion, especially viewed in light of the earlier discussion of how a core, perhaps most predominant, defining characteristic of nationality is language.<sup>187</sup> However, it is also easy to see how language may not always perfectly capture nationality or origin, especially in the case of refugees who have often fled their COIs because of some distinct characteristic that set them apart from their society. Consider the fact that languages have a natural tendency to spread and change. Concurrently, national boundaries have also seen substantial redefinitions in the nineteenth and twentieth centuries. Problems relating to conflating language with nationality are highlighted in regions where

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185. Diana Eades, *Applied Linguistics and Language Analysis in Asylum Seeker Cases*, 26 *APPLIED LINGUISTICS* 503, 506 (2005); see Anne Reath, *Language Analysis in the Context of the Asylum Process: Procedures, Validity, and Consequences*, 1 *LANGUAGE ASSESSMENT Q.* 209, 209–210 (2004) (“Language Analysis in the Asylum Procedure (LAAP)” is an example of a specific linguistic analysis program used in at least ten countries for determining identification of asylum seeker.).

186. Eades, *supra* note 185, at 506–07; see Diana Eades et al., *Linguistic Identification in the Determination of Nationality: A Preliminary Report*, 2 *LANGUAGE POLICY* 179 (2003).

187. See *supra* Parts I and II.

national boundaries have been or are currently in flux,<sup>188</sup> which are often the regions that may be especially prone to be COIs for refugees. For example, consider the externally drawn national boundaries of Africa following European imperialism,<sup>189</sup> or how the collapse of multinational Yugoslavia and the Soviet Union led to substantial linguistic minorities in countries that have since mandated different official languages.<sup>190</sup> Ironically, it is often in these very situations, where boundaries are in flux and/or where political and social upheaval makes it difficult to provide verifiable means of identification concerning nationality or origin, that linguistic tests are regarded as reliable means of identifying origin.<sup>191</sup> Even if language is the sole or best method to determine COI, additional efforts are necessary to better account for margins of error via mechanisms such as increased involvement of linguists or appellate processes. In summary, language deserves greater attention due to its ongoing essential role in many asylum seekers' reasons for fleeing their COIs and within the refugee process as a means of identifying asylum seekers.

*B. Specific Recommendations in Relation to Refugee Status Determination (RSD)*

Structural changes to the refugee regime could also help ensure increased sensitivity to language. One possibility for greater protection is for individual countries to include "persecution on the basis of language" as a separate category of refugee qualification. Serbia and Montenegro have such laws,<sup>192</sup> as did Russia's previous

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188. See Finex Ndhlovu, *The Limitations of language and Nationality as Prime Markers of African Diaspora Identities in the State of Victoria*, 7 AFR. IDENTITIES 17 (2009).

189. *Id.* at 22 (arguing that using country or origin or language as a marker for different groups of people of Africa is especially problematic as "geographical boundaries of the more than 50 African countries as we know them today are the inventions of the nineteenth-century European colonial expansionist policies.").

190. See e.g., Chaim Kaufmann, *Possible and Impossible Solutions to Ethnic Civil Wars*, 20 INTERNATIONAL SECURITY 136, 149–150 (1996); Robert M. Hayden, *Constitutional Nationalism and the Wars of Yugoslavia* Paper prepared for the Conference on Post-Communism and Ethnic Mobilization 12-13 (1995); Rogers Brubaker, *Aftermaths of Empire and Unmixing of Peoples: Historical and Comparative Perspectives*, 18 ETHNIC AND RACIAL STUDIES 189 (1995).

191. A.A. and Others v. Sweden, App. No. 34098/11, Eur. Ct. H.R. ¶¶ 12, 43–44, 60 (2014), <http://hudoc.echr.coe.int/eng?i=001-111553> [<https://perma.cc/DBD4-22A5>].

192. Serbia: Law of 2007 on Asylum (Nov. 25, 2007) (Serb.), <http://www.refworld.org/docid/47b46e2f9.html> [<https://perma.cc/MWF2-KTS7>].

Law on Refugees.<sup>193</sup> Allowing refugees to claim language discrimination would provide more explicit consideration of language rights violations. Unfortunately, there is limited data on how effective such an explicit inclusion of language as a protected category would be. While there have been some cases of Ukrainian refugees claiming language discrimination as a reason for seeking asylum in Serbia, no case claiming language persecution has made it to the courts.<sup>194</sup> Still, it is important to remember that data drawn from Serbia's asylum applications do not provide a complete picture as Serbia tends to be a country of transit, meaning that most refugees do not start, much less complete, the asylum process in Serbia.<sup>195</sup> Consequently, there may be more cases of individuals fleeing from their COI due to language discrimination/persecution than are reflected in the formal records. Expanding the current five enumerated categories of refugee protection to include language persecution would likely increase the number of applicants applying on such grounds, which would help provide better understanding and data regarding language discrimination and persecution.

As argued throughout this Note, a more pragmatic approach would be to require explicit consideration of language rights when assessing claims of persecution on the basis of nationality. As shown above in Part I, language may often act as a predominant indicator of nationality, and indeed as illustrated in Parts II and III, asylum seekers fleeing their COIs due to language-related marginalization often seek refugee status on the basis of nationality persecution. Consequently, explicit consideration of language when considering nationality claims would not only help broaden the scope of protection for those deserving of refugee protection, but also help in defining the scope of the amorphous category of "nationality" within the 1951 Convention. There are multiple possibilities for how language could be included within nationality claims, thereby allowing sufficient flexibility to individual countries in how they would include consideration of language. For instance, language could be considered an explicit subcategory of nationality, and thus those showing persecution based on language could be afforded refugee protection. Another possibility would be whenever an applicant alleges nationality persecution, language marginalization could create a presumption of nationality persecution. More generally, however, language may also

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193. Federal Law No. 4528-I of Feb. 19, 1993 on Refugees, with the Latest Amendments of Dec. 22, 2014 (Russ.), <http://base.garant.ru/10105682/> [<http://perma.cc/9PNA-HC97>].

194. Lee, *supra* note 183.

195. *Id.*

easily be implicated in any of the other four protected categories due to the underlying role of language in all human interactions and as a means of identification. Thus, while a separate category of “language persecution” or mandatory consideration of language in nationality claims will assist in fleshing out cases of language persecution, overall increased attention to language within the refugee regime will be beneficial.

Another practical suggestion for better addressing linguistic minorities would be to amend the initial questionnaires asylum seekers are usually required to complete upon arrival in new countries. For example, Serbia’s initial registration document, called “expression of intention to seek asylum” contains twenty-one questions aimed to elicit basic biographical information, including COI and reasons for fleeing their country and seeking asylum.<sup>196</sup> Asylum seekers who are assisted by lawyers or other asylum services will likely be prompted to list “persecution or fear of persecution” on the basis of one of the five criteria, even if this means slightly amending their stories. Due to the often lengthy time gap between the first interview and the second interview, and because of the strain and nervousness that accompany such interviews, asylum seekers who were perhaps not as truthful in their questionnaires may end up giving conflicting information during their subsequent interactions with the authorities. This in turn increases the likelihood of receiving a negative asylum decision. While a negative decision is warranted if the applicant truly faced no fear of persecution or severe discrimination in their COIs, conflicting accounts alone will not always mean that the asylum seeker is not deserving of protection under the 1951 Convention. Rather, efforts to fit within the rather stringent refugee definition under the 1951 Convention could have harmed their chances of procuring protection. In this sense, from a service perspective, legal aid should increase efforts to fully explain the refugee definition and procedures to asylum seekers. However, there are severe limitations to the amount of time legal aid and other service personnel can spend with individual asylum seekers. A more comprehensive and dependable solution would be to alter the initial questions themselves to elicit the most relevant information. Even if individuals have the required knowledge, if they are not asked in a way that helps elicit such information, such information may remain unspoken. The questions of the initial questionnaire, while seemingly basic, are very important as the initial questionnaire is the entry point into the often overbur-

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196. BELGRADE CENTRE FOR HUM. RTS., REGISTRATION OF THE ASYLUM APPLICATION: SERBIA, <http://www.asylumineurope.org/reports/country/serbia/registration-asylum-application> [<https://perma.cc/VH3P-22EK>].

dened system and therefore often affects how fast the application proceeds. Moreover, the answers to the initial questionnaire provide a fundamental baseline of comparison when evaluating an asylum seeker's eligibility and credibility throughout the asylum process. Accordingly, a thoughtful overview and amendment to the initial questions so they provoke the most relevant and helpful information regarding the applicant's reasons for flight, including language issues, would be very valuable.

Some sample questions relating to language rights could be: what is the dominant language spoken in your region; what is the official language of your country; what language do you speak at home and in public; have you ever felt unsafe speaking your native language in public; have you ever been identified or targeted because of the language you speak; and have you faced any discrimination or other social obstruction due to your native language. Such questions could help prompt more concrete evidence of asylum seekers' circumstances in their COI. If the answers to such questions raise concerns, the applicant could be considered a candidate for asylum on the basis of persecution on the basis of nationality or ethnicity, or language, if such an additional category were to be available.

Undoubtedly, the inclusion of more exacting questions is likely to slow down the application timeline, which is not an insignificant concern, since many countries face tremendous burdens in even processing these initial application processes.<sup>197</sup> Still, such a change would hopefully speed up the process thereafter, decrease the occurrence of conflicting stories, and help respond more appropriately to asylum seekers who truly need protection. More complex questions may even help with evaluating credibility, because if asylum seekers were to fib during an initial interview, such lies would have to be more elaborate, which may diminish their ability to repeat such lies again in the future.

At minimum, asylum seekers should be asked to state which language they speak at home and which language is dominant in his/her society. If the applicant speaks a non-official language, it will at least help establish that he/she is a minority. Of course, this is not always perfectly true and moreover, status as a minority in no way corresponds to an individual also being a refugee. Nonetheless, knowing the language an asylum seeker speaks at home and the degree of protection that language is afforded in their COI could be use-

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197. Anita Orav, *At a Glance April 2016: Migration Across the Universe*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE (May 2016), [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/581962/EPRS\\_ATA\(2016\)581962\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/581962/EPRS_ATA(2016)581962_EN.pdf) [https://perma.cc/VC2B-FRYU].

ful in assessing claims of persecution due to nationality or membership of a particular social group.

## CONCLUSION

Language is at the core of identity and human interaction. At the same time, however, its very prevalence means that language may easily be overlooked, especially in the context of more explicit violent forms of discrimination. Because language is such a fundamental part of existence, language rights violations may act as warning signs, like a canary in a coal mine, signaling hostile attitudes towards linguistic minorities. Increased attention to language may help prevent escalations of outright violence and would help improve protection of marginalized and at-risk groups. As shown above, national and ethnic tensions have been escalating in the past decades and today, the majority of ongoing conflicts can be traced back to ethnic conflicts.<sup>198</sup> However, because each conflict is unique, it may be difficult to create tools of analysis that can be broadly applied. Focus on language issues may be useful and widely applicable considering its unique pervasive role in identity, culture, societal interaction, and human rights. Accordingly, increased sensitivity and research in relation to language may provide useful tools for examining societal dynamics.

In the refugee context, language rights are especially prone to be present in claims of persecution based on nationality, but may appear in any of the other enumerated grounds. While language rights violations may not amount to persecution on their own, they may act as warning signs of escalating discrimination or *prima facie* evidence of State and societal discriminatory attitudes and practices against particular social groups, specifically, national groups. Accordingly, the extent of linguistic freedom in a particular country may be a good gauge of the extent of freedom and equality that minority groups can expect to enjoy. As minority language speakers may be among the most socially excluded groups in their respective COIs, other nations should remain especially sensitive to their plight. More broadly, from a general “global cultural heritage” standpoint, protection of languages will help ensure linguistic diversity and protect against the loss of collective knowledge.<sup>199</sup> In this sense, increased attention to

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198. See Part II(A).

199. Fernand de Varennes and Elzbieta Kuzborska, *Language, Rights Opportunities: The Role of Language in the Inclusion and Exclusion of Indigenous Peoples*, 23 INT'L J. ON MINORITY AND GROUP RTS 281, 281–305 (2016).

language can only help the refugee regime by providing: (1) means to structure reform ex ante to create more peaceful coexisting pluralistic societies; (2) evidence of persecution on the basis of nationality; and (3) a method of analysis and verification of refugee claims.

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