

Protests, Terrorism, and Development: On Ethiopia’s State of Emergency

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On October 8, 2016, the Ethiopian government officially declared a nationwide state of emergency in response to a year-long protest by members of Ethiopia’s two largest ethnic groups, the Oromo and the Amhara. The Directive issued to implement the state of emergency institutes a new normative regime, astonishing in scope and scale, in which the de jure reversal of the relationship between the rule and the exception has culminated in a new legal reality. This Article argues that Ethiopia’s de jure emergency is merely the latest manifestation of the de facto state of emergency in operation since the new Constitutional order was set in motion. Drawing on Giorgio Agamben and Carl Schmitt, I argue that the state of emergency, the defining feature of which is the temporary suspension of the norm, where the rule of man replaces the rule of law and the Leviathan reigns supreme, has been the central paradigm of government in Ethiopia since the Constitution came into force. Although this Article considers theoretical and jurisprudential questions around states of emergency, the main thrust of the analysis is to demonstrate the structural relationship between protest, terrorism, development, and the state of emergency in Ethiopia. In particular, this Article reflects on how national narratives of counterterrorism and development have provided the discursive and normative background for the blurring of the boundary between the rule and the exception, enabling the government to exercise power in increasingly violent ways.

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INTRODUCTION

On October 8, 2016, the Ethiopian government declared a state of emergency in response to a nationwide protest by Ethiopia’s two largest ethnic groups: the Oromo¹ and the Amhara.² The directive,³ which took effect amidst a crisis of legitimacy for the Ethiopian People’s Revolutionary Democratic Front (EPRDF), provided the military and security forces with sweeping new powers⁴ to counter what the government described as the threat posed by “anti-peace groups” working “in close collaboration with foreign elements.”⁵ As soon as the emergency was formally imposed, the government officially restricted access to the internet⁶ and some media outlets,⁷ banned protests,⁸ and detained more than 26,000 protestors⁹ in

1. *Ethiopia*, CIA: THE WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/print_et.html [<https://perma.cc/6MJ5-GBXB>].

2. *Id.*

3. State of Emergency Proclamation No. 1/2016, *supra* note **Error! Bookmark not defined.**. The Ethiopian House of Peoples’ Representatives endorsed this declaration on October 20, 2016. *See* Ratification Proclamation No. 984/2016, *supra* note **Error! Bookmark not defined.**, at 9369.

4. *See* Human Rights Watch, Ethiopia: State of Emergency Risks New Abuses (Oct. 31, 2016), <https://www.hrw.org/news/2016/10/31/ethiopia-state-emergency-risks-new-abuses> [<https://perma.cc/RS4G-8Q3N>].

5. Tesfaye Wolde, Letter to the Editor, *Ethiopia’s State of Emergency Will Work*, WASH. POST (Oct. 16, 2016), https://www.washingtonpost.com/opinions/ethiopias-state-of-emergency-will-work/2016/10/16/52f87c0a-923b-11e6-bc00-1a9756d4111b_story.html [<https://perma.cc/XFQ8-R3F2>].

6. *See Seven Things Banned Under Ethiopia’s State of Emergency*, BBC NEWS (Oct. 17, 2016), <http://www.bbc.com/news/world-africa-37679165> [<https://perma.cc/AUU5-KC9J>].

7. *Id.*

8. *See id.*; *see also* Amnesty Int’l & Open Observatory of Network Interference [OONI], *Ethiopia Offline: Evidence of Media Blocking and Internet Censorship in Ethiopia*, AI Index AFR 25/5312/2016, at 13 (2016), <https://www.amnesty.org/download/Documents/AFR2553122016ENGLISH.pdf> [<https://perma.cc/S6LM-S7XK>] (noting that State of Emergency Directive No. 1/2016 banned

“rehabilitation camps.”¹⁰

Faced with the government’s mass arrests and overwhelming use of force¹¹ which resulted in the deaths of close to 700 protestors,¹² the unrest subsided, giving way to an uneasy calm.¹³ Despite the apparent restoration of order and stability, the Ethiopian Parliament extended the state of emergency by another four months in March 2017,¹⁴ with it finally expiring in early August 2017.¹⁵

The preceding year had seen the boiling over of separate, long-simmering conflicts between the government and the various ethnic groups that make up the Ethiopian state.¹⁶ The protests in the regional state of Oromia that ultimately led to the formal declaration of a state of emergency started in response to the Addis Ababa Integrated Development Master Plan (“the Master Plan”), which called for the expansion of the capital city

“all unauthorized protests and assemblies”).

9. U.N. News Ctr., In Ethiopia, UN Rights Chief Urges Authorities for Greater Freedoms; Space for Critical Voices (May 4, 2017), <http://www.un.org/apps/news/story.asp?NewsID=56682> [<https://perma.cc/B58G-JFTG>].

10. See Felix Horne (Sr. Researcher, Horn of Africa, Human Rights Watch), Ethiopia Lifts Some State of Emergency Restrictions (Mar. 16, 2017), <https://www.hrw.org/news/2017/03/16/ethiopia-lifts-some-state-emergency-restrictions> [<https://perma.cc/999N-DENC>] (noting the government’s use of “rehabilitation camps”); see also Human Rights Watch, *Legal Analysis of Ethiopia’s State of Emergency* (Oct. 30, 2016), <https://www.hrw.org/news/2016/10/30/legal-analysis-ethiopia-state-emergency> [<https://perma.cc/25NE-7LXG?type=image>] [hereinafter *Human Rights Watch Analysis of Ethiopia’s State of Emergency*] (discussing the Ethiopian government’s “rehabilitation” practices).

11. See Human Rights Watch, Addressing the Pervasive Human Rights Crisis in Ethiopia (June 2, 2017), <https://www.hrw.org/news/2017/06/02/addressing-pervasive-human-rights-crisis-ethiopia> [<https://perma.cc/PG8N-7RTA>].

12. See *Report: 669 Killed in Ethiopia Violence Since August*, AL JAZEERA (Apr. 18, 2017), <http://www.aljazeera.com/news/2017/04/report-669-killed-ethiopia-violence-august-170418164259637.html> [<https://perma.cc/RS4G-8Q3N>].

13. See Paul Schemm, *Despite Outward Calm, Ethiopia Extends State of Emergency*, WASH. POST (Mar. 30, 2017), https://www.washingtonpost.com/world/despite-outward-calm-ethiopia-extends-state-of-emergency/2017/03/30/b5544098-1529-11e7-ada0-1489b735b3a3_story.html [<https://perma.cc/RR3H-GMKR>] (“Since the emergency was declared, however, protests have dropped off dramatically, though with social media blocked, it is often difficult to determine the situation in the remote countryside.”).

14. *Id.*; see also *Ethiopia Extends State of Emergency by Four Months*, AL JAZEERA (Mar. 30, 2017), <http://www.aljazeera.com/news/2017/03/ethiopia-extends-state-emergency-months-170330110807086.html> [<https://perma.cc/B4ZZ-4Q62>].

15. The State of Emergency officially ended on August 4, 2017. See Aaron Maasho, *Ethiopia Lifts Emergency Rule Imposed Last October After Months Of Unrest*, REUTERS (Aug. 4, 2017), <https://www.reuters.com/article/us-ethiopia-politics-idUSKBN1AK0QV> [<https://perma.cc/5Y4C-38UL>]; Felix Horne (Sr. Researcher, Horn of Africa, Human Rights Watch), *State of Emergency Ends in Ethiopia* (Aug. 7, 2017), <https://www.hrw.org/news/2017/08/07/state-emergency-ends-ethiopia> [<https://perma.cc/M489-RG2A>]. This Article was written while the State of Emergency was still in effect, although final revisions and formatting occurred after the Ethiopian government chose not to extend the state of emergency further.

16. The EPRDF, as discussed *infra* Part III, is a coalition created by the Tigray Peoples Liberation Front (TPLF), a political group that purports to represent the Tigray people. Yet note that the Tigray make up only a little more than six percent of Ethiopia’s population. See *Ethiopia*, *supra* note 1.

into neighboring Oromo towns and villages.¹⁷ In response to this expansion and the threat the Master Plan posed to the cultural and economic wellbeing of the community, people throughout Oromia took to the streets.¹⁸ Ethiopian security forces met the protesters with violence,¹⁹ branding them as terrorists and anti-development forces bent on destabilizing the country.²⁰ This cycle of government violence and escalating protests continued over the next eleven months.²¹

As the government scrambled to contain the protests gripping Oromia, which is the largest region in the country, members of Ethiopia's second largest ethnic group, the Amhara, took to the streets on July 12, 2016.²² As was the case in Oromia, there have been long simmering tensions between the Amhara and their Tigrayan neighbors to the north.²³ The Amhara, whose elite dominated Ethiopia's political and cultural life until the EPRDF reconfigured the country's ideological and institutional structure along ethnolinguistic lines, have long accused the EPRDF of marginalizing them politically and economically.²⁴ The Ethiopian government's arbitrary arrest of the Welkait Amhara Identity Committee ("Welkait Committee"), a steering group established by ethnic Amharas to coordinate longstanding disputes over land,²⁵ proved to be the final straw.²⁶ When the government

17. See Human Rights Watch, UN Human Rights Council General Debate Under Item 4: Human Rights Crisis in Ethiopia (Mar. 15, 2016), <https://www.hrw.org/news/2016/03/15/un-human-rights-council-general-debate-under-item-4> [<https://perma.cc/B5AY-D5YA>].

18. See Jacey Fortin, *Ethiopians on Edge as Infrastructure Plan Stirs Protests*, N.Y. TIMES (Dec. 16, 2015), <https://www.nytimes.com/2015/12/17/world/africa/ethiopia-addis-ababa-urban-plan-romia.html> [<https://perma.cc/8L7Q-XXR8>].

19. Amnesty Int'l, Ethiopia: Anti-Terror Rhetoric Will Escalate Brutal Crackdown Against Oromo Protesters, (Dec. 16, 2015), <https://www.amnestyusa.org/press-releases/ethiopia-anti-terror-rhetoric-will-escalate-brutal-crackdown-against-oromo-protesters> [<https://perma.cc/2NXS-E8G4>].

20. *Id.*; see also Amnesty Int'l, Ethiopia: End Use of Counter-Terrorism Law To Persecute Dissenters and Opposition Members (June 2, 2016), <https://www.amnesty.org/en/latest/news/2016/06/ethiopia-using-counter-terrorism-law-to-persecute-dissenters> [<https://perma.cc/BC9D-W2KM>] [hereinafter End Use of Counter-Terrorism Law].

21. See Amnesty Int'l, Ethiopia: After a Year of Protests, Time To Address Grave Human Rights Concerns (Nov. 9, 2016), <https://www.amnesty.org/en/latest/news/2016/11/ethiopia-after-a-year-of-protests-time-to-address-grave-human-rights-concerns> [<https://perma.cc/MM2E-TPMW>].

22. René Lefort, *Ethiopia's Crisis*, OPENDEMOCRACY (Nov. 19, 2016), <https://www.opendemocracy.net/ren-lefort/ethiopia-s-crisis> [<https://perma.cc/PQX7-PVUL>].

23. For a discussion of these tensions, see Kidane Mengisteab, *State-building in Ethiopia*, in BEYOND STATE FAILURE AND COLLAPSE: MAKING THE STATE RELEVANT IN AFRICA 99, 107-110 (George Klay Kieh, Jr. ed., 2007) (discussing ethnic tensions in Ethiopia since the late 1990s); see also Human Rights Watch, Ethiopia: Hidden Crackdown in Rural Areas (Jan. 11, 2006), <https://www.hrw.org/news/2006/01/11/ethiopia-hidden-crackdown-rural-areas> [<https://perma.cc/TU5X-CZYQ>] (discussing government crackdowns on Oromo and Amhara regions in 2006).

24. CLAUDE E. WELCH, JR., PROTECTING HUMAN RIGHTS IN AFRICA: STRATEGIES AND ROLES OF NONGOVERNMENTAL ORGANIZATIONS 19-20 (1995).

25. See Achamyeleh Tamiru, *An Open Letter to Al Jazeera English from an Amhara Ethiopian*, WELKAIT.COM (Aug. 24, 2016), <http://welkait.com/?p=5709> [<https://perma.cc/HKQ9-WHL4>].

arrested the Welkait Committee's leadership and local residents, thousands of Amhara protested,²⁷ further intensifying the threat to the regime and its governing ideologies.

By August of 2016, observers had already begun to note the unique scale and scope of protests.²⁸ While unrest and violence had been common fixtures of Ethiopian political life over the previous twenty-five years of EPRDF rule, the simultaneous Oromo and Amhara protests represented a unique crisis of legitimacy and demonstrated the failure of the government's divide-and-rule strategy. This failure was particularly apparent when Amhara protestors began to declare solidarity with the Oromo, their historic adversaries,²⁹ using such rallying cries as: "we are all Oromos," "I am not Oromo but I stand with my Oromo brothers," and "the blood that flows in Oromia is our blood too."³⁰

As it had done with previous protest movements, the EPRDF branded the Amhara protests as the work of terrorists and anti-peace forces³¹ and authorized the military and security forces to use all means necessary to bring them to an end.³² These tactics did not work, however. After clashes

(explaining the role of the steering committee).

26. See Salem Solomon, *What Is Fueling Ethiopia's Protests?*, VOA NEWS (Aug. 10, 2016), <http://www.voanews.com/a/what-is-fueling-ethiopia-protests/3459102.html> [<https://perma.cc/6KB9-EJ8V>] (noting that the arrests of Welkait Committee members sparked protests, clashes with police, and destruction of property).

27. Amnesty Int'l, *Ethiopia: Dozens Killed as Police Use Excessive Force Against Peaceful Protesters* (Aug. 8, 2016), <https://www.amnesty.org/en/latest/news/2016/08/ethiopia-dozens-killed-as-police-use-excessive-force-against-peaceful-protesters> [<https://perma.cc/BE2R-H2CC>].

28. See, e.g., AFP, *Unprecedented Ethiopia Protests Far from Over: Analysts*, DAILY MAIL (Aug. 10, 2016), <http://www.dailymail.co.uk/wires/afp/article-3732964/Unprecedented-Ethiopia-protests-far-analysts.html> [<https://perma.cc/622W-HYT8>]; *Ethiopia: Unprecedented Protests Creep Towards the Capital*, STRATFOR: WORLDVIEW (Oct. 5, 2016) <https://www.stratfor.com/snapshots/ethiopia-unprecedented-protests-creep-toward-capital> [<https://perma.cc/U35E-WQPY>].

29. See DAWIT SHAFAW, *THE DIARY OF TERROR: ETHIOPIA 1974 TO 1991*, at 211 (2012) (noting that historical animosity between the Oromo and Amhara is more than a century old).

30. See Jill Craig, *Ethiopia Protests Highlight Growing Solidarity Between Oromia, Amhara Regions*, VOA NEWS (Aug. 9, 2016), <http://www.voanews.com/a/ethiopia-protests-oromia-amhara-regions/3457240.html> [<https://perma.cc/V876-328J>]; see also Awol Allo, "The Blood Flowing in Oromia Is Our Blood Too": Why Oromo-Amhara Solidarity Is the Greatest Threat to the Ethiopian Government, AFR. ARGUMENTS (Sept. 27, 2016), <http://africanarguments.org/2016/09/27/the-blood-flowing-in-oromia-is-our-blood-too-why-oromia-amhara-solidarity-is-the-greatest-threat-to-the-ethiopian-government> [<https://perma.cc/B5AN-25N9>].

31. See Matthew Tempest, *Ethiopian Ambassador: 'Anti-Peace Elements' Took Advantage of Oromia, Amhara Protests*, EURACTIV.TV (Oct. 5, 2016), <http://www.euractiv.com/section/development-policy/interview/ethiopian-government-answers-critics-over-oromia-amhara-protest-deaths> [<https://perma.cc/Y3JR-EJ3P>].

32. See, e.g., Amnesty Int'l, *supra* note 27 (discussing the Ethiopian government's use of excessive force against Amhara and Oromo protesters during the summer of 2016); Ismail Akwei, *Ethiopia: Several Killed, Dozens Arrested, as Anti-Government Protests Continue*, ALL AFR. NEWS (Aug. 7, 2016), <http://www.africanews.com/2016/08/07/ethiopia-several-killed-dozens-arrested-as-anti-government-protests-continue> [<https://perma.cc/KU52-HBYL>] (discussing the continued crackdown on protesters, including "reports of heavy gunfire" in the capital of the Amhara region; Moses Karanja, Maria Xynou & Arturo Filastò, *How the Ethiopia*

between protestors and security forces set off a deadly stampede at the October 2016 Irreecha festival in Oromia,³³ movement leaders called for “five days of rage”³⁴ and, in a shift of tactics, began attacking government buildings and corporate investments throughout the region.³⁵

On October 8, 2016, the Council of Ministers declared a state of emergency³⁶ to restore “peace and order”³⁷ and to preserve “the integrity of the country.”³⁸ On October 20, 2016, the Ethiopian House of Peoples’ Representatives approved the October 8th Proclamation of a State of Emergency.³⁹

The framing of opposition as a national security threat or as a threat to the country’s developmental ambitions has been—and continues to be—a common tactic used by the Ethiopian government⁴⁰ to silence and intimidate their opposition, while also legitimizing the violent responses of the government.⁴¹ Protests, particularly by Oromos, have long been viewed by the government through the prism of security. As I will demonstrate in this Article, many of the measures that the Ethiopian government implemented under this state of emergency represent long-standing

Protests Were Stifled by a Coordinated Internet Shutdown, QUARTZ (Aug. 14, 2016), <https://qz.com/757824/how-the-ethiopia-protests-were-stifled-by-a-coordinated-internet-shutdown> [<https://perma.cc/M9GF-M3LX>] (discussing the Ethiopian government’s shutdown of internet access in August 2016).

33. See *Ethiopia: ‘Several’ Killed in Oromia Festival Stampede*, AL JAZEERA (Oct. 2, 2016), <http://www.aljazeera.com/news/2016/10/ethiopia-killed-romia-festival-stampede-161002100716026.html> [<https://perma.cc/3M5Y-6BMH>]; Human Rts Watch, Q&A: Recent Events and Deaths at the Irreecha Festival in Ethiopia (Oct. 8, 2016), <https://www.hrw.org/news/2016/10/08/qa-recent-events-and-deaths-irreecha-festival-ethiopia> [<https://perma.cc/V4VS-6HS7>]. The number of deaths caused by the stampede is in dispute. See *id.* While the government has claimed that around 52 people died, the opposition Oromo Federalist Congress Party has claimed that more than 678 people were killed as a result of the stampede. #*IrreechaMassacre: The Day that Changed the Game*, ADDIS STANDARD, Oct. 2016, at 5, <http://addisstandard.com/wp-content/uploads/2016/11/Special-Edition-on-Irreecha-Oct.-2016-2.pdf> [<https://perma.cc/3HYG-NTV2>].

34. *Ethiopia: Unrest Continues a Day After Deadly Stampede*, AL JAZEERA (Oct. 3, 2016), <http://www.aljazeera.com/news/2016/10/ethiopia-unrest-continues-day-deadly-stampede-161003130002688.html> [<https://perma.cc/U5D5-8ABX>].

35. John Aglionby & Edith Honan, *Ethiopian Protesters Ramp Up Attacks on Foreign Companies*, FIN. TIMES (Oct. 6, 2016), <https://www.ft.com/content/a1ceca0e-8b11-11e6-8cb7-e7ada1d123b1> [<https://perma.cc/N9AC-Z2CD>].

36. State of Emergency Proclamation No. 1/2016, *supra* note **Error! Bookmark not defined.**

37. Implementation Directive for State of Emergency Proclamation No. 1/2016 (Oct. 15, 2016) (Eth.), *translated in* Ethiopia State of Emergency Directive – October 15, 2016, AFR. ICT POL’Y DATABASE <http://www.ictpolicy.org/blog/wp-content/uploads/2016/10/Ethiopia-State-of-Emergency-Directive-October-15-2016.pdf> [<https://perma.cc/3M48-UU6Q>].

38. Elias Meseret, *AP Explains: Why Ethiopia Is Under a State of Emergency*, ASSOCIATED PRESS (Oct. 11, 2016), <https://www.apnews.com/47c58595becf4039be8970ee7e5a6d77> [<https://perma.cc/R6EK-QV9K>] (quoting Prime Minister Desalegn as claiming, “[t]he recent developments in Ethiopia have put the integrity of the nation at risk.”).

39. See Ratification Proclamation No. 984/2016, *supra* note **Error! Bookmark not defined.**, at 9369.

40. See Tobias Hagmann & Jon Abbink, *The Politics of Authoritarian Reform in Ethiopia, 1991 to 2011*, 5 J. E. AFR. STUD. 579, 585 (2011).

41. *Human Rights Watch Analysis of Ethiopia’s State of Emergency*, *supra* note 10.

government policies and practices.

This Article unfolds in five stages. In Part I, I provide a theoretical and jurisprudential overview of the state of emergency and its distinguishing elements. This analysis takes as its starting point Carl Schmitt and Giorgio Agamben's exploration of the state of emergency and its ambiguous relationship with law and sovereignty. In Part II, I briefly discuss the state of emergency provisions of the Ethiopian Constitution and argue that the Constitution and its commendable provisions have been coopted and used as a normative instrument to achieve malign outcomes. Instead of constraining executive power, the Constitution has served as a weapon used to camouflage the ruling party's ploy to build a highly authoritarian system that thrives on patronage, rent-seeking, divide-and-rule tactics, and violence, rendering the state of emergency provision a conceptual anomaly. In Part III, I elucidate the ways in which the Ethiopian government has weaponized the 1995 Constitution to conceal its increasingly authoritarian and violent exercise of power, culminating in the obliteration of the distinction between the rule and the exception, the temporary and the indefinite. By tracing this pathology to the asymmetries of power and structural instabilities at the heart of the post-Derg state building project, I argue that the state of emergency, the defining feature of which is the temporary suspension of the normative order, has been the central paradigm of government in Ethiopia since the Constitution came into force. In Part IV I focus on two governing narratives—the "Ethiopia Rising" narrative and the "National Security" narrative—critical to the framing, structuring, and legitimation of this *de facto* state of emergency both at home and abroad. Finally, in Part V, I turn to the mass protests that have gripped the country and the violent response of the government, arguing that the *de jure* state of emergency is driven less by the need to safeguard the vital interests of the state than by a desire to protect the political and economic hegemony of the ruling elite.

I. STATE OF EMERGENCY IN THEORY AND LAW

A. Conceptual Background

A state of emergency, variously known as a "state of exception," a "state of siege," or "martial law,"⁴² is a juridico-political regime that comprises "governmental action taken during an extraordinary national crisis that usually entails broad restrictions of human rights."⁴³ When confronted by a national crisis that threatens the life of the nation, such as

42. Claudio Grossman, *A Framework for the Examination of States of Emergency Under the American Convention on Human Rights*, 1 AM. U. J. INT'L L. & POL'Y 35, 35 (1986); U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS & INT'L BAR ASSOC., HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS 813 (2003).

43. Grossman, *supra* note 42, at 36.

war or other forms of social upheaval,⁴⁴ governments can limit or suspend the enjoyment of some human rights in order to quell the crisis and restore the normal state of the nation.⁴⁵ So understood, the state of emergency is predicated on the conceptual distinction between normalcy and emergency. Normalcy signifies the general rule, the permanent and normal state of things. Emergency, on the other hand, denotes the exception and therefore only confers temporary, limited power.⁴⁶ Further examination, however, reveals the ambiguous nature of the state of emergency, situated at the intersection of legality and illegality.

As Carl Schmitt notes, the state of emergency has a tense relationship with liberal constitutional theory. In *Dictatorship*, written in the aftermath of the First World War and the Russian Revolution, Schmitt draws on the distinction between sovereign dictatorship and commissarial dictatorship to show the irreconcilability of liberalism with the state of exception. Arguing against Rousseau, who views exceptional emergency power as compatible with the general will,⁴⁷ Schmitt asks an important question: who decides the threshold at which the constitution must be suspended and a commissarial dictatorship summoned?⁴⁸

Critical to understanding Schmitt's view of emergency is his conception of sovereignty. In *Political Theology*, Schmitt defines the sovereign as "he who decides on the exception."⁴⁹ For Schmitt, any analysis of the state of emergency must begin not from the norm but from the exception.⁵⁰ "The

44. See Euro. Comm. for Dem'y Through Law, *Rep. on Emergency Powers by Mr. Ergun Özbudun and Mr. Mehmet Turhan*, at 3, Doc. No. CDL-STD(1995) 012 (noting that public emergency situations include war, emergencies that threaten the life of a nation, or public dangers threatening a nation's security of independence).

45. See International Covenant on Civil and Political Rights (ICCPR) art. 4(1), *opened for signature* Dec. 19, 1966, S. EXEC. DOC. No. E, 95-2 (1978), 999 U.N.T.S. 171 [hereinafter ICCPR] (discussing the ability of States Parties to the ICCPR to limit their compliance with the ICCPR during an officially declared public emergency). Ethiopia ratified the ICCPR in 1993. U.N. Treaty Collection, Multilateral Treaties Deposited with the Secretary-General, Chapter IV: Human Rights, 4. International Covenant on Civil and Political Rights, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf> [<https://perma.cc/V2AK-G9GY>].

46. See JAIMEE ORAA, HUMAN RIGHTS IN STATES OF EMERGENCY IN INTERNATIONAL LAW 21-22 (1992).

47. On this issue, Rousseau writes:

If, on the other hand, the peril is of such a kind that the paraphernalia of the laws are an obstacle to their preservation, the method is to nominate a supreme ruler, who shall silence all the laws and suspend for a moment the sovereign authority. In such a case, there is no doubt about the general will, and it is clear that the people's first intention is that the State shall not perish. Thus the suspension of the legislative authority is in no sense its abolition; the magistrate who silences it cannot make it speak; he dominates it, but cannot represent it. He can do anything, except make laws.

JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 86 (G.D.H. COLE TRANS., DOVER BOOKS 2003) (1762).

48. CARL SCHMITT, *DICTATORSHIP* 109-11 (Michael Hielzl & Graham Ward trans., Polity Press 2014).

49. CARL SCHMITT, *POLITICAL THEOLOGY - FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 5 (George Schwab trans., 2005) (1985).

50. *Id.* ("The definition of sovereignty must therefore be associated with a borderline case and not with routine.")

rule," he insists, "proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception."⁵¹

From here, Schmitt claims that a formal legal order exists only when a normal situation exists,⁵² yet the existence of a normal situation cannot be subject to normative regulation.⁵³ It is the sovereign, who, in the last instance, decides whether this normal situation actually exists.⁵⁴ Faced with an exception that is fundamentally at odds with the sacred status of liberal democratic values of limited government, the rule of law, and human rights, liberal constitutionalism necessarily gives way to authoritarianism.⁵⁵ For Schmitt, a liberal democracy with a state of emergency is nothing but an oxymoron.⁵⁶

In his landmark work, *State of Exception*, Giorgio Agamben draws on Schmitt's writings to offer a rich and sustained conceptual account of state of emergency without endorsing Schmitt's authoritarian positions.⁵⁷ Exploring conceptions of sovereign authority, Agamben identifies two main strands of thought on the relationship between law and the state of emergency.⁵⁸ The first strand traces its roots to the emergence of the revolutionary-democratic tradition and locates the state of exception "within the sphere of the juridical order."⁵⁹ For those who subscribe to this view, the norm and the exception are distinguishable and the legal regime of emergency can be objectively regulated by law.⁶⁰ This view, referred to as the rule of law model of state of emergency, represents the view entrenched in modern constitutions and international human rights instruments.⁶¹

By contrast, the second strand of thought which Agamben identifies

51. *Id.* at 15.

52. *Id.* at 13.

53. *Id.*

54. *Id.*

55. *See id.* at 12 ("What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes.").

56. *See id.* ("The tendency of liberal constitutionalism to regulate the exception as precisely as possible means, after all, the attempt to spell out in detail the case in which law suspends itself. From where does the law obtain this force, and how is it logically possible that a norm is valid except for one concrete case that it cannot factually determine in any definitive manner?").

57. GIORGIO AGAMBEN, *STATE OF EXCEPTION* 22-23 (Kevin Attell trans., 2005). For a brief discussion of these critiques, see Scott P. Sheeran, *Reconceptualizing States of Emergency Under International Human Rights Law: Theory, Legal Doctrine, and Politics*, 34 MICH. J. INT'L L. 491, 501-02 (2013).

58. AGAMBEN, *supra* note 57, at 22-23.

59. *Id.* at 22-23. Agamben lists Santi Romano, Maurice Hauriou, and Constantino Mortati as scholars who belong to this category. *Id.* For a modern consideration of this line of thought, see Bruce Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029 (2004).

60. Ferejohn and Pasquino, in their attempt to craft clear typologies for post-9/11 emergency thought, describe this strand of thought as both dualist and realist. *See* John Ferejohn & Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 INT'L J. CONST. L. 210, 226 (2004).

61. *See* Sheeran, *supra* note 57, at 500-01.

questions the very possibility of a normative distinction between the rule and the exception.⁶² These thinkers view a state of emergency—and the necessity that underpins it—as “something prior to or other than the law,”⁶³ rejecting “the pretense of regulating by law”⁶⁴ what is “essentially extrajudicial.”⁶⁵ They insist, *a la* Alexander Hamilton, that “the circumstances that endanger the safety of nations are infinite; and for this reason, no constitutional shackles can be imposed on the power to which the care of it is committed.”⁶⁶ As such, the sovereign, to whom the care of the constitutional order is entrusted, must have unlimited power to restore the constitutional order.⁶⁷

Agamben rejects the inside-outside opposition implicit in the above conceptualizations of the relationship between law and the state of exception.⁶⁸ He asks, “If the state of exception’s characteristic property is a (total or partial) suspension of the juridical order, how can such a suspension still be contained within it?”⁶⁹ Agamben reasons that any constitutional provision that prescribes the terms by which the constitution is itself suspended represents a legal contradiction:

If exceptional measures are the result of periods of political crisis and, as such, must be understood on political and not juridico-constitutional grounds . . . , then they find themselves in the paradoxical position of being juridical measures that cannot be understood in legal terms, and the state of exception appears as the legal form of what cannot have legal form.⁷⁰

Agamben argues that the state of exception is “neither internal nor external to the juridical order, and the problem of defining it concerns . . . a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other.”⁷¹ It is by definition

62. Ferejohn & Pasquino, *supra* note 60, at 226 (“Some other thinkers (let’s call them ‘skeptics,’ or we may call them Schmittians) claim that there is no absolute evidence of the existence of an exceptional situation, that people will inevitably disagree about its existence, and thus we need to attribute to some agency (organ or institution) the epistemic authority to declare the exception.”). Agamben includes in this category jurists such as Paolo Biscaretti de Buffa, Giorgio Balladore-Pallieri, and Raymond Carré de Malberg. AGAMBEN, *supra* note 58, at 23.

63. Stephen Humphreys, *Legalizing Lawlessness: On Giorgio Agamben’s State of Exception*, 17 EURO. J. INT’L. L. 677, 678 (2006).

64. AGAMBEN, *supra* note 57, at 10.

65. *Id.* at 23. These scholars recognize that the state of exception produces legal effects. However, they believe the state of exception is nevertheless a phenomenon too contingent and ambivalent to be exhausted within the juridical domain. *Id.*

66. THE FEDERALIST No. 23 (Alexander Hamilton). Stephen Humphreys makes this same observation. See Humphreys, *supra* note 63, at 678.

67. See Humphreys, *supra* note 63, at 678.

68. AGAMBEN, *supra* note 57, at 23.

69. *Id.*

70. *Id.* at 1 (citation omitted).

71. *Id.* at 23.

located within a blurred, undefinable, “non-place” with regard to the law.⁷² To locate this ambivalent juridico-political regime as fully outside or inside the juridical order, to approach it simply as a question of interiority or exteriority or to conceive it simply as law or politics, is to misunderstand the groundless nature of the juridical order and its performative inauguration.

So understood, Agamben notes that the state of exception occupies a “juridically empty space,”⁷³ comprising “a *fictio iuris* par excellence, which claims to maintain the law in its very suspension.”⁷⁴ The state of exception, a central aporia in politics and public law, determines the threshold at which legality and illegality blur, and the threshold at which the sovereign’s violence creeps into law, and the sovereign’s law degenerates into violence.

B. States of Emergency in Law

Although scholars have traced the history of states of emergency to the Roman Republic,⁷⁵ the contemporary legal regime of emergency has its origin in the French Revolution.⁷⁶

Although the state of emergency traces its history to the Roman republic,⁷⁷ the contemporary legal regime of emergency has its origin in the French Revolution.⁷⁸ For the first time, the contemporary notion of state of emergency found legal expression in a 1789 Decree of the French Constituent Assembly.⁷⁹ Distinguishing between a ‘state of peace’ and a

72. *Id.* at 51; see also Saul Newman & Michael P. Levine, *War, Politics and Race: Reflections on Violence in the ‘War on Terror,’* 53 THEORIA 23, 24 (2006) (noting that Agamben’s state of emergency exists in a “sort of gray zone or no-man’s-land between law and lawlessness; between the rule of law and its abrogation”).

73. GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 36 (Daniel Heller-Roazen trans., Stan. U. Press 1998) (1995).

74. AGAMBEN, *supra* note 57, at 59 (emphasis in original).

75. For a discussion of the state of emergency’s Roman connections and an introduction to other historical context, see JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND THE FIRST AND SECOND DISCOURSES* 242-43 (Susan Dunn ed., 2002); Bernard Manin, *The Emergency Paradigm and the New Terrorism*, in LES USAGES DE LA SÉPARATION DES POUVOIRS—THE USES OF THE SEPARATION OF POWERS 136, 137-52 (Sandrine Baume & Biancamaria Fontana eds., 2008).

76. AGAMBEN, *supra* note 58, at 59; see also Humphreys, *supra* note 63, at 678-79 (2006) (recounting Agamben’s discussion of the history of states of emergency).

⁷⁷ QQ For a discussion of state of emergency’s Roman connections, see JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND THE FIRST AND SECOND DISCOURSES* 242-43 (Susan Dunn ed., 2002); Bernard Manin, *The Emergency Paradigm and the New Terrorism*, in LES USAGES DE LA SÉPARATION DES POUVOIRS—THE USES OF THE SEPARATION OF POWERS 136, 137-140 (Sandrine Baume & Biancamaria Fontana eds., 2008). For further history, see *id.* 140-152.

⁷⁸ Stephen Humphreys, *Legalizing Lawlessness: On Giorgio Agamben’s State of Exception*, 17 EURO. J. INT’L. L. 677, 679 (2006).

⁷⁹ *Id.*

'state of siege', the Assembly assigned 'all the functions entrusted to the civilian authority for maintaining order and internal policing ...to the military commander, who [shall] exercise them under his exclusive responsibility.'⁸⁰ In 1848, the Constitution of the Second French Republic recognized state of emergency as a constitutional norm by authorizing parliament to declare a state of siege 'establishing ... the occasions, forms, and effects of siege.'⁸¹

In contemporary liberal democracies, the state of emergency is conceived as an exceptional moment that calls for extraordinary state measures to secure the vital interests of the state.⁸² In his post-World War II survey of the responses of liberal democracies to the state of emergency, Clinton Rossiter argues that "in time of crisis, a democratic, constitutional government must temporarily be altered to whatever degree is necessary to overcome the peril and restore normal conditions."⁸³ According to this view, when a vital interest of a democratic society is at stake, governments should have the authority to use extraordinary powers to remove the threat and restore the "constitutional order wherein such rights can be *freely enjoyed* and *duly guaranteed* without discrimination."⁸⁴ In providing for exceptional state measures at the threshold of necessity and the rule of law, modern, liberal democratic constitutions assume the inevitability of crisis that calls for exceptional measures, even conceding that "most human rights are not absolute but rather reflect a balance between individual and community interests."⁸⁵ Yet, even with this assumption, the predominant objective of such measures remains the expeditious restoration of the democratic order in which full respect of human and democratic rights can be secured.⁸⁶

Most general international human rights treaties allow state parties to derogate from many of their human rights obligations in times of emergency,⁸⁷ while at the same time setting stringent safeguards against

⁸⁰ *Id.*

⁸¹ See Agamben, *supra* note 44 at 12.

⁸² Anna Khakee, *Policy Paper No. 30: Securing Democracy? A Comparative Analysis of Emergency Powers in Europe*, GENEVA CTR. FOR THE DEMOCRATIC CONTROL OF ARMED FORCES 5 (2009), https://www.files.ethz.ch/isn/99550/PP30_Anna_Khakee_Emergency_Powers.pdf [<https://perma.cc/5MEF-BZVG>]; see also *id.* annex 1 (summarizing, in table form, the main aspects of constitutional emergency provisions and conditions in EU member states, Norway, and Switzerland).

⁸³ CLINTON ROSSITER, *CONSTITUTIONAL DICTATORSHIP: CRISIS GOVERNMENT IN THE MODERN DEMOCRACIES* 5 (1963).

⁸⁴ ANNA-LENA SVENSSON-MCCARTHY, *THE INTERNATIONAL LAW OF HUMAN RIGHTS AND STATES OF EXCEPTION: WITH SPECIAL REFERENCE TO THE TRAVAUX PREPARATOIRES AND CASE-LAW OF THE INTERNATIONAL MONITORING ORGANS* 3 (1998) (emphasis in original).

⁸⁵ Dominic McGoldrick, *The Interface Between Public Emergency Powers and International Law*, 2 INT'L J. CONST. L. 380, 383 (2004); see also *id.* at 383-86 (discussing the overlap and differences between limitations and derogations, as well as the wide acceptance of derogations under at least some circumstances).

⁸⁶ See SVENSSON-MCCARTHY, *supra* note 84, at 3.

⁸⁷ See, e.g., ICCPR, *supra* note 45, art. 4; Convention for the Protection of Human Rights

abuse.⁸⁸ The International Covenant on Civil and Political Rights (ICCPR), a universal treaty which affirms “the inherent dignity . . . of all members of the human family [as] the foundation of freedom, justice and peace in the world,”⁸⁹ recognizes the right of state parties to derogate from Covenant obligations in times of national crisis. When confronted by a “public emergency which threatens the life of the nation,”⁹⁰ governments may take measures to “the extent strictly required by the exigencies of the situation.”⁹¹

Article 4 of the ICCPR outlines the circumstances under which State parties may derogate from protecting and fulfilling these rights.⁹² Generally speaking, States can avoid running afoul of their ICCPR commitments provided that (1) the state faces a “public emergency which threatens the life of the nation,”⁹³ (2) the measures undertaken are those “strictly required

and Fundamental Freedoms art. 15, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222; American Convention on Human Rights art. 27, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 123. Note, however, that the African Charter on Human and Peoples' Rights, *opened for signature* June 27, 1981, 1520 U.N.T.S. 218, is the only general or regional human rights treaty without a derogation clause. See *Media Rights Agenda v. Nigeria*, Nos. 105/93-128/94-130/94-152/96, Decision, Afr. Comm'n on Human and Peoples' Rights [Afr. Cm. H.P.R.], ¶¶ 67-68 (Oct. 31, 1998), http://www.achpr.org/files/sessions/24th/comunications/105.93-128.94-130.94-152.96/achpr24_105.93_128.94_130.94_152.96_eng.pdf [<https://perma.cc/6W5W-D7PC>] (“The African Charter does not contain a derogation clause. Therefore the limitations on the rights and freedoms enshrined in the charter cannot be justified by emergencies and special circumstances. The only legitimate reasons for limitations to the rights and freedoms of the Charter are found in article 27 (2).”).

88. See, e.g., ICCPR, *supra* note 45, art. 4(1)-(2) (noting limitations on measures, as well as some rights absolutely protected from derogation).

89. *Id.* p.mbl.

90. *Id.* art 4(1).

91. *Id.*

92. See *id.* art. 4(1)-(3). Note that, even under a declared state of emergency, the ICCPR does not allow parties to derogate from many fundamental human rights:

Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: Article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion).

Human Rights Comm., General Comment No. 29: States of Emergency (Article 4) ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001).

93. While states enjoy a wide margin of appreciation in determining whether there exists “a public emergency that threatens the life of the nation,” not every crisis constitutes a public emergency that warrants derogation. See Human Rights Comm., *supra* note 92, ¶ 3 & n. 1. The travaux préparatoires of the ICCPR make clear “that the right to derogate was not intended to be used by authoritarian regimes seeking to eliminate human rights and that it cannot be used to save a specific Government.” U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS & INT'L BAR ASSOC., *supra* note 42, at 821. Although the European human rights system allows states a wide margin of appreciation in determining the existence of emergencies and the type of measures appropriate to restore normalcy, it reserves the right to supervise whether

by the exigencies of the situation,"⁹⁴ (3) "such measures are not inconsistent with their other obligations under international law"⁹⁵ and (4) they "do not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin."⁹⁶ In its General Comment elucidating the scope and normative content of the ICCPR's state of emergency clause, the Human Rights Committee states that "the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant."⁹⁷

II. THE STATE OF EMERGENCY UNDER THE ETHIOPIAN CONSTITUTION

The emergency provision of the Ethiopian Constitution⁹⁸ reflects many of the central tenets of emergency regimes in the ICCPR and liberal constitutions. Article 93 states:

1. (a) The Council of Ministers of the Federal Government shall have the power to decree a state of emergency should an external invasion, a break down of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur. . . .

. . . .

4. (a) When a state of emergency is declared, the Council of Ministers shall, in accordance with regulations it issues, have all necessary power to protect the country's peace and sovereignty, and to maintain public security, law and order;

(b) The Council of Ministers shall have the power to suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that required the declaration of a state of emergency.

derogating states have remained within the confines of the Convention and its case law. *See, e.g.,* *Lawless v. Ireland* (No. 3), App. No. 332/57, 1 Eur. Ct. H.R. (ser. A) (1961) (interpreting the phrase 'public emergencies' as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed."); *Denmark, Norway, Sweden and the Netherlands v. Greece* ("The Greek Case"), App. Nos. 3321/67; 3322/67; 3323/67; 3344/67, 12 Y.B. Eur. Conv. On H.R. 1 (1969) (Euro. Comm'n on H.R.) (rejecting claims by Greek authorities that the military coup constituted a public emergency due to the fact that the coup was undertaken by the military itself).

94. ICCPR, *supra* note 45, art. 4(1).

95. *Id.*

96. *Id.*

97. *See* Human Rights Comm., *supra* note 92, ¶ 1.

98. THE CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA [hereinafter FDRE CONST.], Dec. 8, 1994, art. 93. For a list of non-derogable rights under the Ethiopian Constitution, see *id.* art. 93(4)(c).

(c) In the exercise of its emergency powers the Council of Ministers cannot, however, suspend or limit the rights provided for in Articles 1, 18, 25, and sub-Articles 1 and 2 of [A]rticle 39 of this Constitution.⁹⁹

If the government's use of emergency powers really extended only as far as these constitutional provisions allow, Ethiopia's political situation would be largely consistent with most modern liberal constitutions and international human rights treaties. In practice, however, the Ethiopian Constitution is simply not a meaningful constraint on the exercise of political power. The government, which has remained in power since the 1991 downfall of Marxist-Leninist military dictatorship known as the Derg, holds an iron grip over the population, controlling almost all aspects of public, social, and even of private life.¹⁰⁰ At present, the ruling party controls a hundred percent of the seats in the federal parliamentary and regional assemblies.¹⁰¹ Civil liberties, the rule of law, and other institutions of democracy that the Constitution purports to entrench have never effectively constrained the power of the government. Rather than serving as an instrument of limitation and accountability, the Constitution provides the normative and institutional framework within which a diverse network of programs, tactics, mechanisms, and analyses are mobilized to sustain and preserve an all-powerful interventionist state.

In the last twenty-five years, these practices have crystallized into a political order in which the complete suspension of the Constitution's purported restraints and the discretionary enforcement of extraordinary state measures came to be the norm, not the exception. Thus, the recent state of emergency proclaimed by the Ethiopian government, which culminated in the *de jure* reversal of the relationship between the norm and the exception, is merely the latest manifestation of the *de facto* state of emergency that has been the central paradigm of government in Ethiopia for the last twenty-five years.

99. *Id.* Regarding art. 93(4)(c), Article 1 refers to the name and the base structure of the government ("Nomenclature of the State"); Article 18 refers to the "Prohibition against Inhuman Treatment"; Article 25 refers to the "Right to Equality"; and Article 39(1)-(2) refers to the rights of "Every Nation, Nationality and People in Ethiopia" to the "unconditional right to self-determination" and the right to secession, as well as the right to language, culture, and history. *Id.* arts. 1, 18, 25 & 39(1)-(2).

100. See Human Rights Watch, *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, at 4 (2010), <https://www.hrw.org/sites/default/files/reports/ethiopia1010webwcover.pdf> [<https://perma.cc/Z4NG-AKRM>] ("Led by the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF), the government has used donor-supported programs, salaries, and training opportunities as political weapons to control the population, punish dissent, and undermine political opponents—both real and perceived. Local officials deny these people access to seeds and fertilizer, agricultural land, credit, food aid, and other resources for development.").

101. Agence France-Presse, *Ethiopia's Ruling Party Wins by Landslide in General Election*, THE GUARDIAN (June 22, 2015), <https://www.theguardian.com/world/2015/jun/22/ethiopia-ruling-party-win-clean-sweep-general-election> [<https://perma.cc/P5N5-PDU9>].

III. ETHIOPIA'S MARCH TOWARD DE JURE EMERGENCY

A diverse “nation of nations” comprising more than eighty ethnic groups,¹⁰² Ethiopia has long lived under governments that legitimize their rule based on tradition, violence, or a combination of the two.¹⁰³ Until the 1974 Revolution, Ethiopia had been subject to highly centralized rule by monarchs who elevated the Amhara, Ethiopia's second largest ethnic group, to political and cultural dominance.¹⁰⁴ Ethnic domination and cultural subordination, coupled with long-standing disputes over land, form the two major sources of political strife in Ethiopia. The political repression, cultural subordination, and violent land-grab policies that characterized much of Imperial Ethiopia were the central causes of the 1974 Revolution, which brought the Derg into power.¹⁰⁵ During its initial years of rule, the Derg nationalized all rural land and eliminated private land ownership.¹⁰⁶ The Derg also adopted the Program for the National Democratic Revolution, which, at least on paper, recognized Ethiopia's various nationalities' right to self-determination.¹⁰⁷ Despite these measures, the Derg was nevertheless a Marxist autocracy, “unitarist and universalist in the extreme.”¹⁰⁸ Ultimately, the Derg was unable to accommodate claims of self-rule, cultural justice, and autonomy by ethno-national groups, and

102. John Abbink, *The Ethiopian Second Republic and the Fragile “Social Contract,”* 44 AFR. SPECTRUM 3, 4 (2009).

103. See Tsegaye Regassa, *The Making and Legitimacy of the Ethiopian Constitution: Towards Bridging the Gap Between Constitutional Design and Constitutional Practice*, 23 AFRIKA FOCUS 85, 114 (2010). (“In Ethiopia's history, constitutional legitimation of power was rare. Historically, legitimacy is endowed on a regime by force, religion, and tradition. The polity was a product of an amalgam of force and evolution.”).

104. See Paul H. Brietzke, *Ethiopia's “Leap in the Dark”: Federalism and Self-Determination in the New Constitution*, 39 J. AFR. L. 19, 19 (1995) (“Rather than creating a constitutional monarchy, Haile Selassie's Constitutions of 1931 and 1955 amounted to monarchical constitutions. A small Amhara elite from Shoa Province, a group whose successors are now in political eclipse, obtained patronage-access to land, office, and the many other perks within the Emperor's gift-but all effective power remained in Haile Selassie's hands.”); see also DONALD LEVINE, GREATER ETHIOPIA: THE EVOLUTION OF A MULTI-ETHNIC SOCIETY 70-86 (outlining how Amhara culture and politics came to dominate Ethiopia prior to the Derg).

105. See Vijay Gupta, *The Ethiopian Revolution: Causes and Results*, IND. Q. 158, 158-60 (1978). On the history of land issues, see generally Teshome Chala, *Analysis of Politics in Land Tenure System: Experience of Successive Ethiopian Regimes Since 1930*, 10 AFR. J. POL. SCI. & INT'L REL. 111 (2016). Note that both land issues and the rights of ethnic nations and nationalities were problems during the drafting of the 1995 Constitution. See Brietzke, *supra* note 104, at 25 (noting that “[t]he head of the [Constitutional Drafting] Commission, Kifle Wodajo, stated that the controversial issues were the secularization of the state, land ownership and the rights of nations/nationalities”).

106. See Brietzke, *supra* note 104, at 23; see also HAILELEUL GETAHUN, ASSAULT ON RURAL PROPERTY: THE CASE OF ETHIOPIA 51-53 (2001); A Proclamation to Provide for the Public Ownership of Rural Lands, FED. NEGARIT GAZETA No. 31 (July 26, 1975) (Eth.); A Proclamation to Provide for the Public Ownership of Urban Lands and Extra Urban Houses, FED. NEGARIT GAZETA No. 47 (1975).

107. Edmond J. Keller, *Constitutionalism, Citizenship and Political Transitions in Ethiopia: Historic and Contemporary Processes*, in SELF-DETERMINATION AND NATIONAL UNITY: A CHALLENGE FOR AFRICA 57, 71 (Francis M. Deng ed., 2010).

108. Brietzke, *supra* note 104, at 20.

the regime ultimately collapsed after seventeen years of bloody civil war.¹⁰⁹

With the downfall of the Derg came the real possibility of a break with the country's violent past and new path toward a liberal constitutional order. The Transitional Period Charter adopted immediately after the collapse of the Derg promised "a new chapter in Ethiopian history in which freedom, equal rights, and self-determination of all the peoples shall be the governing principles of political, economic and social life."¹¹⁰ The Constitution, which came into force in 1995, contained language that reflected the spirit of the Transitional Period Charter, with its framers describing themselves in the preamble as "[w]e, the Nations, Nationalities and Peoples of Ethiopia, strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order."¹¹¹ A highly centralized and assimilationist state that had long celebrated a single culture and identity¹¹² became a federation of ethnonational groups.¹¹³ These federating units were granted "the right to self-determination, including the right to secession."¹¹⁴

The 1995 Constitution also enshrines an extensive list of civil and political rights as well as economic, social, and cultural rights.¹¹⁵ It charges all levels of government with "the responsibility and duty to respect and enforce" the human rights provisions of the Constitution,¹¹⁶ which largely mirror international human rights treaties.¹¹⁷ The Constitution further requires those fundamental rights to be understood as conforming to "the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia."¹¹⁸

Although the written text of the Constitution represented a radical reorientation of the normative landscape and the political discourse, the undemocratic process by which the Constitution was drafted and adopted

109. Keller, *supra* note 107, at 71-76.

110. Transitional Period Charter of Ethiopia, Proclamation No. 1, FED. NEGARIT GAZETA Year 50, No. 1, (July 22, 1991), pmb. (Eth.).

111. FDRE CONST., *supra* note 94, pmb.

112. The policy of centralization and homogenization of such a diverse society by subsequent regimes rendered Amhara culture and identity the Ethiopian culture and identity par excellence, culminating in the assimilation of other ethnonational groups and the erasure of their memories and experiences from mainstream perspectives. See LEVINE, *supra* note 104, at 70-86.

113. FDRE CONST., *supra* note 94, art. 47 (listing the states of the Federal Democratic Republic of Ethiopia); see also Comm. on the Elimination of Racial Discrimination, Response of the Government of the Federal Democratic Republic of Ethiopia to questions raised by the Committee on the Elimination of Racial Discrimination, ¶ 8, U.N. Doc CERD/C/ETH/CO/15/Add.1 (June 3, 2008) (describing the basis for the federal states).

114. *Id.* art. 39.

115. See *id.* arts. 13-44 (listing fundamental rights and freedoms).

116. *Id.* art. 13(1).

117. Comm. on the Elimination of Racial Discrimination, *supra* note 113, ¶ 8 ("The various provisions of the [1995 Constitution] also took inspiration from existing international human rights instruments and norms.").

118. FDRE CONST., *supra* note 94, art. 13(2).

blemished its progressive and liberal contents. The drafting, which took roughly four years,¹¹⁹ was dominated by the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of four ethnonational political parties created and led by the Tigray Peoples Liberation Front (TPLF) in the final years of the war.¹²⁰ The other three constituent parties of the EPRDF, the Oromo People's Democratic Organization (OPDO), the Amhara National Democratic Movement (ANDM), and the Southern Ethiopian People's Democratic Movement (SEPDM), were not autonomous movements representing and expressing the collective free will of their respective communities.¹²¹ Makau wa Mutua, an eminent African legal scholar, summarizes the political consideration behind creating the EPRDF:

In the mid-1980s, the TPLF realized its inability to govern Ethiopia alone once Mengistu Haile Mariam was overthrown. It therefore orchestrated the establishment of satellite organizations to broaden its national appeal beyond Tigray. To neutralize Amhara opposition, it helped set up the Ethiopian People's Democratic Movement (EPDM). In an attempt to undercut the independent OLF and gain support among the Oromo who make up half the country's population, the TPLF also helped form the Oromo People's Democratic Organization (OPDO)¹²²

The TPLF used these parties not only to bolster its legitimacy but also to "squench real opposition and exclude competitors from the political process,"¹²³ particularly autonomous ethnic-based parties like the Oromo Liberation Front (OLF) and the All Amhara Peoples Organization (AAPO).¹²⁴

The Ethiopian government continues to present this Constitution to the international community as a social contract constituted through a "painstaking and participatory" democratic process.¹²⁵ Many, including the

119. Gedion T. Hessebon, *The Precarious Future of the Ethiopian Constitution*, 57 J. AFR. L. 215, 219 (2013).

120. See, e.g., Human Rights Watch, *Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia's Oromia Region*, at 8 (May 2005), <https://www.hrw.org/reports/2005/ethiopia0505/ethiopia0505.pdf> [<https://perma.cc/D9V9-VJH7>] (noting that "[t]he political vacuum that was created by the Derg's collapse was immediately filled by the TPLF-controlled Ethiopian People's Revolutionary Democratic Front (EPRDF) coalition, which has remained in power through the present day"); see also Leonardo R. Arriola & Terrence Lyons, *Ethiopia: The 100% Election*, 27 J. DEMOCRACY 76, 76 (2016); CHRISTOPHE VAN DER BEKEN, UNITY IN DIVERSITY: FEDERALISM AS A MECHANISM TO ACCOMMODATE ETHNIC DIVERSITY: THE CASE OF ETHIOPIA, 101-02 (2012); Regassa, *supra* note 103, at 115.

121. See Merera Gudina, *Elections and Democratization in Ethiopia, 1991-2010*, 4 J. E. AFR. STUD. 664, 669.

122. Makau wa Mutua, *Ethiopia: An Oppressed Opposition*, 38 AFR. REP. 50, 51 (Nov. 1, 1993).

123. *Id.* at 50.

124. See Jon Abbink, *Breaking and Making the State: The Dynamics of Ethnic Democracy in Ethiopia*, 13 J. CONTEMP. AFR. STUD. 149, 154-55 (1995).

125. See Comm. on the Elimination of Racial Discrimination, *supra* note 113, ¶ 8 ("During the transitional period, a Constitutional Drafting Commission was established. After a

Chairman of the Constitutional Assembly, refute these claims.¹²⁶ From the 1991 Peace Conference that led to the adoption of the Transitional Charter to the drafting and ratification of the 1995 Constitution by the Constitutional Assembly, the TPLF, through the EPRDF, dominated the process and dictated the terms of engagement.¹²⁷ James C.N. Paul, a legal scholar and the founding dean of Ethiopia's first law school, argues that the TPLF's domination of the negotiations and the choice to move forward without opposition parties served as "an ingenious 'divide and rule' political strategy which enabled the TPLF . . . to legitimate its powers."¹²⁸ As Professor Jon Abbink summarizes:

The drafting of a new constitution, although announced as a democratic process whereby all the civilians would have a significant say, was dominated by the TGE (i.e. EPRDF) and the commission it had appointed. Open discussions in the k'belles (the urban dwellers' associations and the peasants' associations) did not yield substantial changes, nor were they meant to. The meetings themselves were only visited by an estimated five percent of the total population. Even so, they allowed for the voicing of serious criticism of the draft constitution, yet they made no significant impact upon the final text. Since the discussions started in the media and in the Constituent

painstaking and participatory process, a constitutional document was adopted on December 8, 1994.").

126. See *Ethiopia's Constitution: Can it Stand the Test of Time*, ADDIS STANDARD (Mar. 11, 2016), <http://addisstandard.com/ethiopias-constitution-can-it-stand-the-test-of-time> [https://perma.cc/DD9Y-2Q9E] (providing the view of Dr. Negaso Gidada, Chairperson of the Constituent Assembly and the President who signed the final and official copy of the Constitution into law, that the Constitutional drafting process failed to be sufficiently inclusive, participatory, or democratic); see also Regassa, *supra* note 103, at 115 ("Because the drafting, discussion, and adoption was overseen by the Transitional government which was dominated by the EPRDF, to that extent, the original legitimacy of the FDRE is undermined."); Ugo Mattei, *The New Ethiopian Constitution: First Thoughts on Ethnical Federalism and the Reception of Western Institutions*, in TRANSPLANTS, INNOVATION, AND LEGAL TRADITION IN THE HORN OF AFRICA – MODELLI AUTOCTONI E MODELLI D'IMPORTAZIONE NEI SISTEMI GIURIDICI DEL CORNO D'AFRICA 111, 117 (Elisabetta Grande ed., 2009); Tsegaye R. Ararssa, *Ethiopia's Constitution: Fractured Legitimacy & The Urgency of Constitutional Transfiguration*, ADDIS STANDARD (Mar. 18, 2016), <http://addisstandard.com/ethiopias-constitution-fractured-legitimacy-the-urgency-of-constitutional-transfiguration> [https://perma.cc/H4KF-2N9G] ("Designing a legitimate constitution requires a conducive political climate. Ours was a constitution-making process without a real constitutional moment. The epiphany needed to constitute oneself as a polity was conspicuously absent. The lack of inclusion of all the relevant political actors almost at all of the relevant stages, the lack of transparency of the mode of appointment to the Drafting Commission, the lack of free and fair election to the Constituent Assembly (that ended up reproducing the EPRDF dominated COR), the non-involvement of the public in a form of 'ratification' (through a referendum or otherwise) marred the process to a great extent. This flaw in the process – coupled with disaffection in relation to the content and disregard of some important socio-cultural, economic and political contexts of the constitution – gave the constitution an unceremonious birth in a polity that was yet to be (re-) constituted into becoming a democracy whose state-society relation was fundamentally transfigured.").

127. See Regassa, *supra* note 103, at 115.

128. James C.N. Paul, *Ethnicity and the New Constitutional Orders of Ethiopia and Eritrea*, in AUTONOMY AND ETHNICITY 173, 189 (Yash Ghai ed., 2000).

Assembly, the clauses on the land law, on ‘the right to secession’ of disaffected ethno-regions and on some religious rights for Christians, proved controversial. But they were not rescinded or reformulated in the final version, approved in December 1994.¹²⁹

The exclusionary nature of this Constitutional drafting process then carried over into Constitutional rule.¹³⁰ The TPLF, through the ERPDP, controlled the first election and the Constitutional Assembly, creating “de facto one-party rule, [and] marginalizing Amhara and Oromo opposition.”¹³¹ This one-party rule of a small group over the larger Oromo and Amhara ethnic groups has continued¹³² and the TPLF “remain[s] the strongest and dominant core of the ERPDP to date.”¹³³

The frequent failure of the EPRDF to respect the terms of the Constitution in the years since its passage is a well-documented phenomenon. Reports from within the United Nations¹³⁴ and African Union¹³⁵ systems, as well as reports by international NGOs¹³⁶ and Ethiopian civil society,¹³⁷ chronicle systematic ethnic discrimination and grave human rights violations, including torture, arbitrary detention, extrajudicial executions, rape in military custody, sexual violence, and politically-motivated prosecutions of opposition politicians and journalists.¹³⁸ These reports have included the systematic targeting of several ethnic groups (in particular the Anuak, Somali, Gambella, Sidama, and Oromo peoples).¹³⁹ Amnesty International has characterized the

129. Abbink, *supra* note 124, at 155.

130. See Paul, *supra* note 128, at 189, 193-94.

131. *Id.* at 187.

132. See Human Rights Watch, *supra* note 100, at 22 (“In fact, Ethiopia is a one-party state, where government action in nearly every sphere is directed at promoting EPRDF’s political control, repressing opponents, and suppressing dissent. . .”).

133. Regassa, *supra* note 103, at 87.

134. See, e.g., Comm. Against Torture, Concluding Observations of the Committee Against Torture: Ethiopia, U.N. Doc. CAT/C/ETH/CO/1 (Jan. 20, 2011).

135. See e.g., African Commission on Human & People’s Rights [Afr. Comm’n H.P.R.], Concluding Observations and Recommendations on the 5th and 6th Periodic Report of the Federal Democratic Republic of Ethiopia (adopted at 18th Extraordinary Session, July 29 to Aug. 7, 2015), http://www.achpr.org/files/sessions/18th-eo/conc-obs/5-2009-2013/concluding_observations_ethiopia_eng.pdf [https://perma.cc/24TH-L7KR].

136. See, e.g., Human Rights Watch, Country Summary: Ethiopia (Jan. 2017), https://www.hrw.org/sites/default/files/ethiopia_1.pdf [https://perma.cc/8VV4-EWZJ]; Freedom in the World 2017: Ethiopia, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2017/ethiopia> [https://perma.cc/H2UM-ZKJK].

137. See, e.g., 140th Special Report: Stop Immediately the Extra-Judicial Killings, Illegal Detentions, Beatings, Intimidation and Harassment Committed by Government Security Forces!!!, ETH. HUMAN RIGHTS COUNCIL (March. 14, 2016), <https://www.ehrco.org/wp-content/uploads/2016/05/140-Special-Report-English-scanned.pdf> [https://perma.cc/7SVP-2YEP].

138. See Human Rights Watch, *Collective Punishment War Crimes and Crimes against Humanity in the Ogaden Area of Ethiopia’s Somali Regional State* 63 (June 2008), <https://www.hrw.org/sites/default/files/reports/ethiopia0608webwcover.pdf> [https://perma.cc/CJ9Q-8Q5T].

139. See Comm. on the Elimination of Racial Discrimination, Concluding Observations of

government's repression of perceived dissent as "sweeping in its scale and often shocking in its brutality."¹⁴⁰

Thus, while the Transitional Period Charter and the 1995 Constitution reflected lofty ideals of a transformed society, in reality they yielded a brutal system of one-party rule that cloaked the government's domination under the veneer of a liberal constitution.¹⁴¹ This suspension of the Constitution and the de facto emergency that prevailed brought about a depoliticization of the democratic public sphere that has exacerbated fractures in Ethiopian society, effectively destroying what Hannah Arendt calls "the essential human condition of plurality, the acting and speaking together, which is the condition of all forms of political organization."¹⁴²

To obscure its authoritarian practices and rationalize the continued use of extraordinary powers that can only be justified under conditions of emergency, the Ethiopian government made extensive use of two narratives, that of "Ethiopia Rising" and that of "National Security." These two narratives—essentially Orwellian newspeaks¹⁴³—helped the government generate and embed a set of frames, images and beliefs that bestow salience and credibility on the government's policy proposals. The next section will explore how these narratives operate.

IV. TWO GOVERNING NARRATIVES: "ETHIOPIA RISING" AND "NATIONAL

the Committee on the elimination of Racial Discrimination: Ethiopia, ¶ 19, U.N. Doc. CERD/C/ETH/CO/15 (June 20, 2007).

140. "Because I am Oromo": *Sweeping Repression in the Oromia Region of Ethiopia*, AMNESTY INT'L, AI Index AFR 25/006/2014, at 7-13 (2014), <https://www.amnesty.org/download/Documents/4000/afr250062014en.pdf> [<https://perma.cc/8QRU-8UHP>] [hereinafter "Because I am Oromo"] (describing the brutality of the crackdown); see also *Ethiopia 'Ruthlessly Targeted' Oromo Ethnic Group, Report Finds*, AL JAZEERA AM. (Oct. 28, 2014), <http://america.aljazeera.com/articles/2014/10/28/ethiopia-oromo-amnesty.html> [<https://perma.cc/MQ2Z-CS66>].

141. Abbink, *supra* note 102, at 7 ("The Constitution of 1994 . . . [is] often in contradiction with the governing ideology (and practices) of the EPRDF regime, which . . . relies often on non-constitutional techniques . . .").

142. HANNAH ARENDT, *THE HUMAN CONDITION* 202 (1958) (summarizing—and agreeing with—arguments first put forth by Montesquieu).

143. In George Orwell's *Nineteen Eighty-Four*, the Ministry of Truth implores Winston to be attentive to the economy of language and language's constitutive hold over reality. The character in the novel encourages Winston to abandon oldspeak and acquire newspeak to "grasp the beauty of the destruction of words." GEORGE ORWELL, *NINETEEN EIGHTY-FOUR* 52-53 (Harcourt, Brace & World 1949). According to Orwell, "the whole aim of Newspeak is to narrow the range of thought." *Id.* at 53. In newspeak land:

You believe that reality is something objective, external, existing in its own right. You also believe that the nature of reality is self-evident. When you delude yourself into thinking that you see something, you assume that everyone else sees the same thing as you. But I tell you, Winston, that reality is not external. Reality exists in the human mind, and nowhere else. Not in the individual mind, which can make mistakes, and in any case soon perishes: only in the mind of the Party, which is collective and immortal. Whatever the Party holds to be the truth, *is* truth. It is impossible to see reality except by looking through the eyes of the Party. That is the fact that you have got to relearn, Winston. It needs an act of self-destruction, an effort of the will. You must humble yourself before you can become sane.

Id. at 252.

SECURITY"

Ethiopia's government has made extensive use of two interdependent governing narratives—"Ethiopia Rising" and "National Security"—to justify many of its practices. Ethiopia Rising paints an image of a country undergoing an economic renaissance and frames the ruling party as committed to lifting millions out of poverty through development. National Security frames Ethiopia as "an island of stability in a troubled region," whose peace and security is being threatened by nefarious elements from within and abroad.¹⁴⁴¹⁴⁵

In *Governing Narratives: Symbolic Politics and Policy Change*, Hugh Miller demonstrates how such narratives of public policy discourse acquire their coherence, credibility, and salience.¹⁴⁶ Miller explains that public policy discourse and the performance of the public interest are both political¹⁴⁷ and fraught with symbolic meaning.¹⁴⁸ Miller's analysis deconstructs governing narratives into signs, ideographs, and narratives.¹⁴⁹ Ideographs are "constellation[s] of connotations capable of generating meaningful coherence, especially when tied together with story lines into a policy narrative."¹⁵⁰ Those who deploy ideographs intentionally utilize existing connotations that fit their ideological goals, incorporating local, historical, and cultural contexts.¹⁵¹ The resulting symbols are powerful, "pull[ing] together multiple signs, references, and images to signify an understanding that is imbued with cognition, emotional resonance, situational awareness,

144. Reed Kramer, *Ethiopian Prime Minister: 'We Are an Island of Stability in A Troubled Region,'* THE GUARDIAN (Mr. 9, 2016), <https://www.theguardian.com/global-development/2016/mar/09/ethiopian-prime-minister-hailemariam-desalegn-island-of-stability-troubled-region> [<https://perma.cc/66JQ-S6NN>].

145. In reality, however, these narratives operate in contingent and complex ways to embody a set of carefully crafted expectations, ideations and practices to amplify one policy position over another, ultimately depoliticizing society and intensifying state power.

146. See generally HUGH MILLER, *GOVERNING NARRATIVES: SYMBOLIC POLITICS AND POLICY CHANGE* (2012).

147. *Id.* at 61 ("In practice, public administration and politics are tightly intertwined, and it would be wrong to think of administration as politically neutral or policy free. In discourse theory, politics is inherent in the contestable vocabularies used in the organization, the practices that have been adopted that might one day be changed, the techniques utilized, and the narratives that dominate or are challenged. Operations inside the organization are inherently political and, moreover, the external politics never goes away.").

148. *Id.* at 92 ("Narratives and their ideography are connotative and holistic, important not for their denotative precision so much as their integration of meaning into a form of coherence. Meanings can be changed, through new or altered associations among signs, ideographs, and narratives. When meanings change, the symbiotic relations between narrative and practice changes the way tasks are accomplished or understood. The legitimacy and appropriateness of social practices change when meanings change.").

149. See *id.* at 4-9.

150. *Id.* at 3. Miller's use of ideographs builds on the work of Michael C. McGee. *Id.* at 3-4. McGee's work is very explicit about the ideological elements of ideographs. "[An ideograph] is a high-order abstraction representing collective commitment to a particular but equivocal and ill-defined normative goal." Michael C. McGee, *The "Ideograph": A Link between Rhetoric and Ideology*, 66 Q.J. SPEECH 1, 15 (1980).

151. MILLER, *supra* note 146, at 5.

and values."¹⁵²

Narratives of public policy can be understood as the weaving together of ideographs as parts of "story lines and arguments"¹⁵³ that shape a broader narrative.¹⁵⁴ But narratives can transcend their symbolic elements or particular instantiations: Narratives can shape identity, express affirmations or condemnations of values, promote an "us versus them" mentality, suggest heroes and villains, stoke particular emotions, capture metaphorical meaning, and guide individuals to take particular political actions.¹⁵⁵ As Miller explains, the political actions sought through these narratives can be those seeking change or those defending institutions and the status quo.¹⁵⁶ Furthermore, governing narratives can legitimate proposed public policy as necessary for social "order and regularity."¹⁵⁷

The Ethiopia Rising and National Security narratives incorporate several ordinary-language ideographs.¹⁵⁸ The Ethiopian government deploys terms like "terrorism," the "war on terror," "anti-peace," "developmental democracy," "poverty reduction," "anti-development," and "rent-seekers" to pursue an assortment of economic and military objects that conceal or suppress the structural anomalies at the heart of the Ethiopian multinational federal experiment. As I explain below, such resonant ideographs, as elements of Ethiopian governing narratives, institutionalize and normalize the current government's authoritarian grip on society and give it a rather vast field of maneuver. These narratives depoliticize society, widen social gaps, justify the government's use of violent repression,¹⁵⁹ and entrench the power of "an unquestioned political elite which 'is always right.'"¹⁶⁰

The mobilization of these narratives and their respective ideographs evoke emotional responses that can arouse people's passions, flatter their apprehensions, and move them to action. These narratives call upon the people to feel love for the nation and also to feel injured by those who deviate from the vision of change set out by the ruling party. In this way, these narratives function to align society with key ideological and institutional pillars of the developmental state. In sum, these governing narratives deepen, legitimize, and sustain a de facto state of emergency in

152. *Id.* at 91.

153. *Id.* at 5.

154. *Id.* at 7.

155. *Id.* at 7-8.

156. *Id.* at 67-71.

157. *Id.* at 67 ("Public policy is often itself an attempt to marshal order and regularity for a society. Public policy making explicitly reveals knowledge, rationales, and operations that justify, explain, and legitimate the prevailing regime of social practices. Indeed, these are the functions of policy discourse. Proposals to change those same legitimately established practices are also justified and legitimated through a discursive policy process.").

158. See McGee, *supra* note 150, at 15 (noting that "an ideograph is an ordinary-language term found in political discourse.").

159. See *id.* ("[An ideograph] warrants the use of power, excuses behaviour and belief, which might otherwise be perceived as eccentric or antisocial, and guides behaviour and belief into channels easily recognized by a community as acceptable and laudable.").

160. Abbink, *supra* note 102, at 16.

Ethiopia.

A. The “Ethiopia Rising” Narrative

Economic development has always been a central aspect of the EPRDF’s claims of legitimacy. Meles Zenawi, the EPRDF’s ideological beacon who led Ethiopia from the fall of the Derg until his death in 2012, argued that the primary objectives of his leadership was ensuring rapid economic growth and tackling poverty.¹⁶¹ A fierce critic of the neoliberal Washington Consensus and its prescriptions, Prime Minister Zenawi rejected the sovereignty of the market and unregulated free enterprise, mounting a vigorous defense of the developmental state model in which “an activist state . . . will allocate state rents in a productive manner.”¹⁶²

Central to Zenawi’s model of a “developmental state” is the belief in the primacy of economic development and the subsidiary nature of political freedoms. For Zenawi’s “developmental state” project, economic development is nothing less than an existential challenge: “I am convinced that we will cease to exist as a nation unless we grow fast and share our growth.”¹⁶³ In his view, economic development also brings with it the social capital which is a prerequisite for political freedom and democracy.¹⁶⁴ As he put it, “there is no sustainable democracy in a society characterized by pervasive rent seeking. We need value creation to be dominant for there to be a foundation for democracy, for politics to be more than a zero sum game, a competition to control state rents.”¹⁶⁵

Although Zenawi dismissed the democratic ideals and policy prescriptions of neoliberal institutions and western donors, his government nonetheless became one of their most popular partners. Ethiopia remains the leading recipient of official development assistance in sub-Saharan Africa¹⁶⁶ and has entered into deep partnerships with multilateral institutions like the World Bank¹⁶⁷ and private foundations like the Bill and Melinda Gates Foundation.¹⁶⁸ Much of this success has to do with Zenawi’s ability to market his government and practices to the world, largely by

161. Alex de Waal, *The Theory and Practice of Meles Zenawi*, 112 AFR. AFF. 148, 150-51 (2012).

162. *Id.* at 148, 152.

163. *Id.* at 154.

164. *Id.*

165. *Id.* at 153-154.

166. World Bank Group, Net Official Development Assistance and Official Aid Received (Current US \$), <http://data.worldbank.org/indicator/DY.ODA.ALLD.CD> [<https://perma.cc/6KHF-NLCK>].

167. See, e.g., Eth. Country Mgmt. Unit, World Bank Group, *Country Partnership Strategy for the Federal Democratic Republic of Ethiopia* (Aug. 29, 2012), <http://documents.worldbank.org/curated/en/561281468031489534/pdf/718840CAS0P1300se0Only090Box370115B.pdf> [<https://perma.cc/EU69-RFUR>].

168. See Press Release, Bill & Melinda Gates Foundation, Ethiopia: Bill & Melinda Gates Foundation Confirms Long Term Commitment and Partnership for Development with Ethiopia (Nov 18, 2015), available at *Ethiopia: Bill & Melinda Gates Foundation Confirms Long Term Commitment and Partnership for Development with Ethiopia*, ALLAFRICA (Nov. 18, 2015), <http://allafrica.com/stories/201511180859.html> [<https://perma.cc/W4S3-75UB>].

telling the West what it wants to hear.¹⁶⁹ For instance, at least on paper, he has made it appear that this development model is working quite well: GDP growth has averaged over 10% for the past decade, while the poverty rate was nearly halved between 2000 and 2011.¹⁷⁰ Additionally, as the World Bank outlines,

[o]ver the past two decades . . . primary school enrollments have quadrupled, child mortality has been cut in half, and the number of people with access to clean water has more than doubled. These gains, together with more recent moves to strengthen the fight against malaria and HIV/AIDs, paint a picture of improved well-being in Ethiopia.¹⁷¹

The EPRDF operationalizes the development state through a hybrid of centralized state planning (a holdover of the Derg's model of governance) and decentralized program administration. Starting with the 1993 Agricultural Development Led Industrialization Strategy, the government has published national-level plans, typically on five-year increments, that outline economic development priorities for the nation and dedicate the resources to accomplishing them.¹⁷² The most recent two five-year plans are known as Growth and Transformation Plans I and II (GTPs I and II), with GTP II covering the 2015 to 2020 period.¹⁷³

In a country where roughly 80% of the population lives in rural areas,¹⁷⁴ a core aspect of the government's national development strategy is its agenda for "agriculture and rural transformation," by which it aims to increase the productivity of Ethiopia's agriculture sector and to better connect agricultural products to commercial outlets.¹⁷⁵ In order to execute this and other ambitious development objectives, the Ethiopian

169. For an example of Zenawi's abilities in this area, see Magnus Taylor, *Diary: The Meles Zenawi Show - World Economic Forum on Africa, 2012*, AFRICAN ARGUMENTS (May 15, 2012), <http://africanarguments.org/2012/05/15/diary-the-meles-zenawi-show-the-world-economic-forum-on-africa-2012-by-magnus-taylor> [https://perma.cc/7H48-YXWM].

170. World Bank Group, *Economic Overview - Ethiopia* (Apr. 24, 2017), <http://www.worldbank.org/en/country/ethiopia/overview> [https://perma.cc/63LF-34SN].

171. *Id.*

172. See Davide Chinigò & Emanuele Fantini, *Thermidor in Ethiopia? Agrarian Transformations Between Economic Liberalization and the Developmental State*, 31 ECHOGÉO 1, 9-10 (2015) (outlining the various agricultural development plans, starting with the 1993 ADLI strategy); see also *Agricultural Transformation Agenda Progress Report: Covering 2011-2015 in the GTP I Period*, ETH. AGIRC. TRANSFORMATION AGENCY, at 20 (Nov. 2015), <http://www.ata.gov.et/download/agricultural-transformation-agenda-progress-report-gtp-i-2011-15/#> [https://perma.cc/V8V7-UJBP] [hereinafter *ATA Progress Report*] (providing an overview of the past few decades' national strategic plans and, specifically, their agricultural development components); Nat'l Planning Comm'n, *Growth and Transformation Plan II (GTP II) 2015/16-2019/20*, FED. DEMOCRATIC REPUBLIC OF ETHIOPIA (May 2016), http://dagethiopia.org/new/docstation/com_content/article/100/gtpii_english_translation_final_june_21_2016.pdf [https://perma.cc/6BBT-5TWV] [hereinafter *GTP II*].

173. See *GTP II*, *supra* note 172, at ix.

174. World Bank Group, *Rural Population (% of Total Population)*, <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS> [https://perma.cc/4NC4-7BQC].

175. *GTP II*, *supra* note 172, at 120.

government has created a vast administrative infrastructure, with programs aimed at improving agricultural practices, access to inputs, storage, grower marketing power, and commercial linkages.¹⁷⁶ Other programs have aimed to attract large-scale commercial investors with an eye toward generating much needed foreign exchange through export to international buyers.¹⁷⁷ For instance, the Productive Safety Net Programme (PSNP), aimed at reducing chronic food insecurity through direct cash or food transfers, has been found to both improve food security¹⁷⁸ and stimulate rural economies.¹⁷⁹ Other programs, such as agricultural hotlines, input voucher systems, and a fertilizer information system, have increased agricultural yields and improved the livelihoods of involved farmers.¹⁸⁰

While these programs have helped to sustain double-digit economic growth and have generated international acclaim, they have also proven potent tools of social control. A 2010 Human Rights Watch report based on more than 200 interviews in several regions and covering a wide cross-section of Ethiopian society found that “[t]he government has used donor-supported programs, salaries, and training opportunities as political weapons to control the population, punish dissent, and undermine political opponents—both real and perceived. Local officials deny these people access to seeds and fertilizer, agricultural land, credit, food aid, and other resources for development.”¹⁸¹ Typically, this politicization of government programs has taken place at the local level (known as the “kebele”), where provision of government services, access to inputs, or membership in cooperatives has been conditioned upon EPRDF membership.¹⁸² Those unwilling to join the party or already suspected of being opposition supporters are framed as anti-development or “rent-seekers.”¹⁸³ Other

176. See *ATA Progress Report*, *supra* note 172, at 34-43 (outlining all agricultural “deliverables” from the GTP I period); see also Human Rights Watch, *supra* note 100, at 4 (providing further detail on a broader subset of rural programs—extending beyond just agricultural development—and outlining how they have been used as tools of repression by the EPRDF).

177. See Editorial, *Ethiopia: Promoting Agricultural Investment for Economic Growth*, ETH. HERALD (Feb. 23, 2016), <http://www.ethpress.gov.et/herald/index.php/editorial-view-point/item/3832-promoting-agricultural-investment-for-economic-growth> [<https://perma.cc/6HST-LSND>] (providing a broad overview of commercial agriculture in Ethiopia); see also *ATA Progress Report*, *supra* note 172, at 9 (crediting agriculture with 84% of Ethiopia’s export earnings).

178. See World Bank Group, *Ethiopia’s Productive Safety Net Program (PSNP) – Integrating Disaster and Climate Risk Management*, at 15 (Jun. 2013), <http://documents.worldbank.org/curated/en/893931468321850632/pdf/806220WP0P12680B0x0379812B00PUBLIC0.pdf> [<https://perma.cc/U3V6-EK3W>].

179. See Mateusz Filipski et al., *Synopsis: Economy-Wide Impacts of the Productive Safety Net Programme (PSNP)*, INT’L FOOD POL’Y RES. INST. (2016), <http://www.ifpri.org/cdmref/p15738coll2/id/130466/filename/130677.pdf> [<https://perma.cc/STW9-AGRB>].

180. *ATA Progress Report*, *supra* note 172, at 35-43.

181. *Id.* at 4.

182. See *id.* at 47-48.

183. *Id.*; see also Human Rights Watch, *supra* note 100, at 50 n. 161 (“The EPRDF frequently refers to opposition parties derogatorily as ‘rent seekers,’ meaning supporters of a liberal economic system in which an upper class seeks rents from the labor of the poor.”).

sources have largely corroborated those claims.¹⁸⁴ Davide Chinigò and Emanuele Fantini summarize these dynamics as “agricultural commercialization . . . underpinned by a project of social engineering with clear political objectives.”¹⁸⁵

Despite these clearly discriminatory practices, the Ethiopian government has remained a top recipient of foreign development assistance.¹⁸⁶ That continued international support in a large part traces to the government’s unique ability to camouflage its political practices behind the technocratic language of development agencies and by framing complex, multidimensional questions, with real ethnic and redistributive consequences, as focused only on simple, uncontroversial objectives, like poverty reduction. Anthropologist James Ferguson observed a similar depoliticization of development during his study of Lesotho in the early 1980s, finding:

By uncompromisingly reducing poverty to a technical problem, and by promising technical solutions to the sufferings of powerless and oppressed people, the hegemonic problematic of ‘development’ is the principal means through which the question of poverty is de-politicized in the world today. At the same time, by making the intentional blueprints for ‘development’ so highly visible, a ‘development’ project can end up performing extremely sensitive political operations involving the entrenchment and expansion of institutional state power almost invisibly, under cover of a neutral, technical mission to which no one can object.¹⁸⁷

This language is amply on display in Ethiopia’s Growth and Transformation Plans, which reduce the entire government’s activities to a combination of development jargon and quantifiable “targets.”¹⁸⁸ These plans sanitize questionable categories of activities (given the government’s track record), using such ideographs as “developmental good governance

184. See Luis Flores, *Development Aid to Ethiopia: Overlooking Violence, Marginalization, and Political Repression*, OAKLAND INSTITUTE (2013), https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Brief_Development_Aid_Ethiopia.pdf [<https://perma.cc/35T6-WAFE>] (summarizing evidence of repression through development programs, as reported by a variety of sources).

185. Chinigò & Fantini, *supra* note 172, at 10.

186. Sorting by 2015 recipients, the World Bank Group lists Ethiopia as the fourth largest recipient of “net official development assistance and official aid received” in current U.S. dollars. World Bank Group, Net Official Development Assistance and Official Aid Received (Current US\$) (sorting by 2015 figure), http://data.worldbank.org/indicator/DT.ODA.ALLD.CD?year_high_desc=true [<https://perma.cc/GK3Y-SY3N>].

187. JAMES FERGUSON, *THE ANTI-POLITICS MACHINE* 256 (1994).

188. QSee, e.g., Nat’l Planning Comm’n, *Growth and Transformation Plan II (GTP II) (2015/16 – 2019/20) – Volume 2 Policy Matrix*, FED. DEMOCRATIC REPUBLIC OF ETHIOPIA (July 2016), http://dagethiopia.org/new//docstation/com_content/article/100/gtp_ii_policy_matrix_english_final__august_2016.pdf [<https://perma.cc/7WS2-JM5B>] (reducing each objective of GTP II to a set of quantifiable, annual targets).

and building a democratic system” and “human development and technology capacity building.”¹⁸⁹ Other reports from the World Bank, USAID, and Ethiopia echo this language, framing the programs they support as largely apolitical.¹⁹⁰

In order to embark on this social engineering, the EPRDF has increasingly localized implementation responsibilities for some of its key programs, which allows it to better harness government resources as tools of political control.¹⁹¹ At first glance, many of these programs may sound innocuous. For instance, one uses Ethiopia’s sizeable agricultural extension resources to train a set of “model farmers” who are then paired with five other peasants. The idea is that those model farmers can share their new knowledge with other farmers and facilitate their access to inputs.¹⁹² The problem, however, is that these “model farmers” are typically either party members or closely affiliated to it.¹⁹³ These “model farmers” represent the last link in a long chain that ties peasant farmers to the EPRDF’s ideological leadership.¹⁹⁴ As René Lefort outlines in his study of “model farmers,” delegation of power to local officials and, in turn, to “model farmers” occurs in a manner that leaves little room for interpretation. He describes the “developmental state in practice” as operating, at least in part, as follows:

Local officials almost universally regard the vast majority of the peasants as ‘backward,’ ‘uneducated’ and even ‘like disabled persons.’ This attitude bolsters a strictly top-down approach, and, contrary to the official credo, precludes any form of participatory approach. Decisions taken at the top, and which middle-ranking and local officials must endorse, are deliberately presented in a maximalist manner, leaving a small margin for ‘discussion’ with those that are implicated, so that they can be scaled down and become less excessive. This marginal negotiation process, where only the means of implementation are partially up for discussion, allows the authorities to claim that the final decisions have been taken ‘by the people.’¹⁹⁵

189. GTP II, *supra* note 172, at ii-iv.

190. For examples of how such programs are framed apolitically, see generally *Ethiopia Country Development Cooperation Strategy 2011 -2016: Accelerating the Transformation Toward Prosperity*, USAID (Mar. 2012), https://www.usaid.gov/sites/default/files/documents/1860/Ethiopia_CDCCS_June_2017.pdf [<https://perma.cc/CT2R-VTBT>]; Eth. Country Mgmt. Unit, *supra* note 167; *ATA Progress Report*, *supra* note 172.

191. Human Rights Watch notes that

The linking of livelihoods to political affiliation has been part of an overarching EPRDF strategy since the 2005 electoral debacle, when the party underestimated support for the opposition. The EPRDF multiplied its membership from 700,000 in 2005 to over 5 million by 2010 (one in seven of the adult population).

Human Rights Watch, *supra* note 100, at 67.

192. Chinigò & Fantini, *supra* note 172, at 6-7.

193. *Id.*

194. *See id.* at 6 (“Model farmers are linked to the party structure.”).

195. René Lefort, *Free Market Economy, “Development State” and Party-Stage Hegemony in*

Thus, while ERPDF's policies appear decentralized, these policies ultimately help to reinforce streamlined, top-down decision-making and political control.

Decentralization has proven popular among aid agencies, who have framed such local control as a way of bypassing the authoritarian central government and placing control over programs in the hands of those who are more directly "accountable" to local citizens.¹⁹⁶ In fact, after the World Bank and the rest of the Development Assistance Group (DAG) suspended direct federal budget support in response to the government's crackdown in the wake of the 2005 election, they shifted their funds into a new, locally-administered program called Protection of Basic Services (PBS).¹⁹⁷ The problem, of course, was that, while these programs were administrated at the local level, local politicians took their orders from the ERPDF's national leaders.¹⁹⁸ Accordingly, the PBS program made it harder to track funds while accomplishing little else. As Human Rights Watch explains, "[w]hile Ethiopia's national government created the repressive policies, district governments actually implemented them; meanwhile foreign donors found it hard to monitor and detect misuse of funds at the local level."¹⁹⁹

Moreover, the "Ethiopia Rising" narrative also served as a powerful instrument of disabling democratic organizing and collective mobilization. By adopting ambitious development plans such as the five-year GTPs and embarking on highly visible development projects such as the Grand Ethiopian Renaissance Dam (GERD), the largest hydro-electric plant in Africa, the government embraced a pan-Ethiopian nationalist rhetoric to lure a numerically vital constituency.²⁰⁰ Contra the politics of identity and difference that were recognized—and, in fact, celebrated, by the Constitution's model of multinational federalism²⁰¹—the GERD and projects like it represent a move towards a pan-Ethiopian nationalism with wider "Neo-Pan-Africanist ideals of renaissance."²⁰² As one commentator writes in the blog *Horn Affairs*:

Ethiopia: The Case of the "Model Farmers," 50 J. MODERN AFR. STUD. 681, 695 (2012). Lefort goes on to discuss how the "mission of the developmental state is fulfilled by the ruling party and not the state, despite its title.... The main feature of the developmental state is that it mobilises the peasant in his capacity as 'vanguard' to an infinitely greater extent than as model farmer." *Id.* at 695-696.

196. See, e.g., Social Protection Sector, World Bank Group, *Improving Basic Services for the Bottom Forty Percent - Lessons from Ethiopia: Results of the Poverty and Social Impact Assessment of Decentralized Basic Service Delivery in Ethiopia* (2014), <https://openknowledge.worldbank.org/bitstream/handle/10986/17838/842150WP0P14950Verson0of0PBS0PSIA.pdf> [<https://perma.cc/DR9Q-EJR3>].

197. See Human Rights Watch, *supra* note 100, at 19-22.

198. See *id.* at 66-68.

199. *Id.* at 20-21.

200. Dalia Abdelhad et al., *The Nile and the Grand Ethiopian Renaissance Dam: Is There a Meeting Point between Nationalism and Hydrosolidarity?*, 155 J. CONTEMP. WATER RESEARCH & EDUC. 73, 74 (2015).

201. See discussion in *supra* Part II.

202. Dalia Abdelhad et al., *supra* note 200, at 74.

We should tell everyone—both at home and abroad—that when it comes to [the GERD], either you are with our humiliation or our salvation! This is why anyone who threatens our dam—our salvation, our future Ethiopia—should be reminded, time and again, that “no one who has tried that has lived to tell the story!”²⁰³

This narrative of national humiliation, which echoes the broader “Ethiopia Rising” narrative, draws on ideographs complete with historical references—national pride, national humiliation, national disappointment, national renaissance, and national salvation—to evoke emotional and moral responses. These ideographs, which in turn depend on existing historical and cultural repertoires, speak of Ethiopia’s lost age of glory, of Axumite civilization and the cradle of humanity, of the victories of its kings over European colonial powers, and other hegemonic articulations of Ethiopian history, each brimming with associations and implications. By embedding these ideographs into its narrative about the resurgent developmental state that is driving fast economic growth to wipe out the humiliation of the old and restore its lost historical eminence, the government has transformed the “Ethiopia Rising” narrative into an imperative.²⁰⁴ Furthermore, the government has justified authoritarian developmental policies on the grounds that a threat to the country’s developmental programs is more than just a national humiliation: it constitutes a threat to Ethiopia’s national survival. As one commentator notes, “[a]ny threat to the GERD is no less than an active invasion on our nation.”²⁰⁵

Although the use of development discourses as a tool of legitimation is not a particularly Ethiopian phenomenon, few countries have been as successful as Ethiopia in garnering international support for such efforts.

203. Merkeb Negash, *Renaissance Dam’s Unnoticed Impact on Ethiopian Psyche*, HORN AFF. (May 18, 2013), <http://hornaffairs.com/2013/05/18/nile-renaissance-dam-impact-ethiopian-psyche> [https://perma.cc/SV32-MRJJ]. Prime Minister Zenawi himself took a hard line on foreign opponents to the project:

I am not a believer in conspiracy theories but if I were I would conclude that these people want Africa to remain as it currently is with all its misery and poverty so that they can come and visit nature in its pristine state in the winter every so often.

Daniel Berhane, *‘Hydropower Extremists Borderline Criminal’ – Text of Meles Zenawi speech at Hydro-power Conference*, HORN AFF. (Apr. 1, 2011), <http://hornaffairs.com/2011/04/01/hydropower-extremists-borderline-criminal-text-of-meles-zenawi-speech-at-hydro-power-conference-un-eca> [https://perma.cc/K3FZ-K7CH]. Zenawi went on to call those who opposed such projects as “borderline criminal.” *Id.*; see also Barry Malone, *Ethiopia PM Says Anti-Dam Groups Keep Africa Poor*, REUTERS (Mar. 31, 2011), <http://www.reuters.com/article/ozatp-ethiopia-dam-idAFJ0E72U0V720110331> [https://perma.cc/WM5E-PB4K] (summarizing the speech and replicating the cited quotes).

204. For a very useful summary of the ways in which *The Reporter*, an Ethiopian daily newspaper, framed the narratives around the GERD, see generally Yeshiwas Degu Belay, *Mass Media in Nile Politics: The Reporter Coverage of the Grand Ethiopian Renaissance Dam*, 4 J. MASS COMMUNICATION & JOURNALISM (2014).

205. Negash, *supra* note 203.

As the largest aid recipient in sub-Saharan Africa,²⁰⁶ Ethiopia under Zenawi (and now under Desalegn) has largely been able to set the terms of foreign assistance. As one European official remarked to Human Rights Watch, “[o]ften we all say, ‘what are we doing supporting this government? We should get out.’ But no one is going to leave. What is the alternative? They have made good strides on the Millennium Development Goals—we help them with that, but it is a big compromise.”²⁰⁷ Thus, despite the government’s well-known and well-documented abuses, the “Ethiopia Rising” narrative entrenches the EPRDF’s power and substantiates its international legitimacy.

In sum, Ethiopia’s development narrative operates in complex ways, at several levels of society. Internationally, it mobilizes international aid, which the government then funnels to serve simultaneous political and developmental ends. Nationally, megaprojects galvanize nationalist sentiments and result in an “othering” of those who do not support such projects. And locally, the government’s firm grip on land, inputs, and other key monopolies – holdovers from the Derg’s Marxist reign – combined with local officials’ discretion in allocating development funds, weaponize development programs, even while such programs are communicated back to donors in benign, technocratic terms. Furthermore, at all levels of society, this development narrative creates a dichotomous relationship between those aligned with the party and therefore in favor of economic development and those who are against the party and therefore anti-developmental “rent-seekers.”

B. The “National Security” Narrative

While the “Ethiopia Rising” Narrative has proven to be a powerful approach to generating domestic and international legitimacy, national security has perhaps proven an even more potent tool in the government’s attempts to legitimize its extra-legal powers.

The “National Security” narrative casts the Ethiopian state as an oasis of stability in a cauldron of fire. Under this view, Ethiopia is surrounded by fragile states that could descend into chaos, becoming safe havens for extremists committed to destroying Ethiopia’s peace and tranquility. Framed as such, the narrative situates Ethiopia within the ideography of the Global War on Terror and the good versus evil framework within which the values, images, connotations, and meanings associated with terrorism are enacted and institutionalized. Within this framework, “terrorists” are fundamentalist zealots who are out to destroy Western civilization and the landscape of rights and freedoms. The “terrorist,” whatever the motivation, is an embodiment of evil and a harbinger of much greater chaos.

By casting terrorism and terrorists as an undifferentiated and cohesive

206. World Bank Group, *supra* note 186.

207. Human Rights Watch, *supra* note 100, at 69.

whole motivated by a singular apocalyptic vision of the world, the narrative embeds fear and endorses the view that “to defeat evil, we may have to traffic in evils.”²⁰⁸ In this way, the “National Security” narrative mobilizes the Global War on Terror to provide salience and credibility to its repressive goals, leaving Ethiopians and the West with the stark choice of either accepting political repression or risking an onslaught of violent extremism.

As the war on terror became a centrepiece of American foreign policy, governments around the world began to situate their own internal and regional conflicts within the conceptual and ideological structure of the war on terror.²⁰⁹ This is particularly true of authoritarian countries, where democratic institutions are either non-existent or integrated into the executive arm of the state. Building on the writings of Agamben and Foucault, Saul Newman and Michael Levine observe the effects of this proliferation and appropriation of the discourse of terrorism:

‘The war on terror’ has to be seen as a *total war*: not only an external war directed at shadowy terrorist groups, but also an internal war that has as its aim the control, regulation and surveillance of populations. Rhetoric and innuendo endeavour to see to it, when advantageous, that the two aims are perceived as coalescing.²¹⁰

To Newman and Levine, this discourse has a hegemonic nature, with states constantly evoking this “anti-terror” logic to justify increasingly repressive actions:

The ‘war on terror’ has become a hegemonic discourse in which we are all potentially implicated: not only as targets of terrorist attacks, but also as potential terrorists ourselves (terrorists ‘living in our midst’). The response of governments to this perceived terrorist threat is to evoke the logic and rhetoric of the state of siege/state of war at every turn.²¹¹

As the U.S.-led war intensified in scope and magnitude, Ethiopia began to appropriate the categories, connotations, and symbols associated with the Global War on Terror to legitimize, vindicate, and affirm the power and authority of the state.²¹² Prime Minister Zenawi made no secret of the

208. Michel Ignatieff, *Lesser Evils*, N.Y. TIMES MAG. (May 2, 2004), <http://www.nytimes.com/2004/05/02/magazine/lesser-evils.html> [<https://perma.cc/ZAM4-L5MD>].

209. Michael Levine & Saul Newman, *Sacred Cows and the Changing Face of Discourse on Terrorism: Cranking it Up a Notch*, 10 INT’L J. OF HUM. RTS. 359, 365 (2006).

210. See Newman & Levine, *supra* note 72, at 23.

211. *Id.* at 26.

212. For a detailed account of how Ethiopia used its anti-terrorism laws and the anti-terrorism discourse more generally, see *Ethiopia’s Anti-Terrorism Law: A Tool to Stifle Dissent*, OAKLAND INST. & ENVTL. DEFENDER LAW CENT. (2015), https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Ethiopia_Legal_Brief

advantages that this Global War on Terror provided him, at one point telling U.S. Senator Arlen Specter that it was “something of a godsend.”²¹³ For Zenawi and his government, the “National Security” narrative served two broad policy objectives. First, it created opportunities for deeper strategic partnership with the U.S. and the broader West, enabling it to access enormous technological, diplomatic, and financial resources in the name of counterterrorism. As the U.S.-led proxy war against al-Shabab and other terrorist groups in East Africa expanded, Ethiopia’s longstanding relationship with the U.S. entered a new phase, with the National Security Agency (NSA) establishing “a network of clandestine eavesdropping outposts designed to listen in on the communications of Ethiopians and their neighbors across the Horn of Africa in the name of counterterrorism.”²¹⁴ In 2002, the NSA set up the Deployed Signals Intelligence Operations Center in Addis Ababa, conducting mission from “12 workstations.”²¹⁵ By 2005, the operation had expanded to “46 multifunctional workstations”, involving US military personnel and three remote sites based outside Addis Ababa.²¹⁶ The intelligence cooperation, in which Ethiopia supplies local knowledge and its strategic location in return for “technology and training integral to electronic surveillance,” was so vital for both countries that, in 2011, the U.S. Air Force ‘upgraded’ an airfield in the South of the country to fly armed drones on counterterrorism missions.²¹⁷

When Ethiopia invaded Somalia in 2006, it billed the invasion as a global counter-terrorism operation.²¹⁸ State Department cables published on Wikileaks show that such an explanation is, at best, incomplete; Ethiopia’s ongoing proxy war with Eritrea provided significant impetus to carry out the invasion.²¹⁹ Professor Alex de Waal, a prominent authority on the Horn

_final_web.pdf [https://perma.cc/FBU2-UDVS]; see also Amnesty Int’l, Ethiopia: End Use of Counter-Terrorism Law to Persecute Dissenters and Opposition Members, *supra* note 20 (outlining how Ethiopia continued “to arbitrarily detain and prosecute scores of peaceful protestors for exercising their rights, using the broad provisions of the ATP to criminalise peaceful expressions of dissent.”).

213. ELIZA GRISWOLD, *THE TENTH PARALLEL* 128 (2010).

214. Nich Turse, *How the NSA Built A Secret Surveillance Network For Ethiopia*, *THE INTERCEPT* (Sep. 13, 2017), <https://theintercept.com/2017/09/13/nsa-ethiopia-surveillance-human-rights> [https://perma.cc/4NC2-XEWG].

215. *Id.*

216. *Id.*

217. Craig Whitlock, *Air Force Flying Missions From Drone Base in Ethiopia*, *WASH. POST* (Oct. 28, 2011), https://www.washingtonpost.com/world/national-security/us-drone-base-in-ethiopia-is-operational/2011/10/27/gIQAzKwMM_story.html [https://perma.cc/FQB7-ALDL]. Note that the United States closed the base in early 2016. Craig Whitlock, *Pentagon Shuttles African Drone Base, Moves Aircraft to Other Hotspots*, *WASH. POST* (Jan. 4, 2016), <https://www.washingtonpost.com/news/checkpoint/wp/2016/01/04/pentagon-shuttles-african-drone-base-moves-aircraft-to-other-hotspots> [https://perma.cc/QRD3-46MZ].

218. See Alex de Waal, *Why Obama’s \$5 Billion Counterterrorism Fund Will Actually Support Terrorism*, *BOS. REV.: BLOG* (Jun. 11, 2014), <http://bostonreview.net/blog/alex-de-waal-obamas-5-billion-counterterrorism-fund> [https://perma.cc/AXG6-G3ZV].

219. See Jeffrey A. Lefebvre, *Choosing Sides in the Horn of Africa: Wikileaks, the Ethiopia Imperative, and American Responses to Post-9/11 Regional Conflicts*, 23 *DIPLOMACY & STATECRAFT* 704, 712-23 (2012) (recounting, through analysis of State Department cables, the discussions,

of Africa, concludes that the United States “bought the [counter-terrorism] ruse and ended up as partner and sponsor in a military mission.”²²⁰ As the security partnership and intelligence-sharing arrangements between the U.S. and regional allies deepened, policymakers in Western capitals began to view the country as a critical partner on the front line,²²¹ making it one of the key beneficiaries of both the Counterterrorism Partnership Fund and the State Department’s East Africa Regional Strategic Initiative.²²²

The partnership provided Ethiopia with the financial and technical resources to build its own surveillance infrastructure to carry out its own intelligence operations at home and abroad.²²³ In its report titled *They Know Everything We Do*, Human Rights Watch notes that the country “has acquired some of the world’s most advanced surveillance technologies” since 2010.²²⁴ In a country in which “essentially anyone that opposes or expresses dissent against the government is considered to be an ‘anti-peace element’ or a ‘terrorist,’” this technology is not merely used to fight terrorism.²²⁵ It is also an integral element of the country’s architecture of repression. Together with the government’s complete monopoly over telecom and internet services, these capabilities have enabled the surveillance and monitoring of the political opposition and critical voices at home and abroad.²²⁶

In short, the Global War on Terror has provided an ideological and normative cover for a specifically Ethiopian narrative of “terrorism” in which oppressive political agendas are synchronized with the law to justify the government’s increasingly violent exercise of power. The 2009 Anti-Terrorism Proclamation (ATP)²²⁷ represents the pinnacle of Ethiopia’s deployment of the “National Security” narrative as an instrument of de-

policies, and considerations that led to Ethiopia’s 2006 invasion of Somalia).

220. De Waal, *supra* note **Error! Bookmark not defined.**

221. LAUREN PLOCH, CONG. RESEARCH SERV., R41473, COUNTERING TERRORISM IN EAST AFRICA: THE U.S. RESPONSE 47-48 (Nov. 3, 2010) (“With one of the largest standing armies in Sub-Saharan Africa, Ethiopia’s relative strength and its active counterterrorism role have led the U.S. government to view it as a key ally in a turbulent region.”).

222. See *Counterterrorism Partnerships Fund – Department of Defense Budget (Fiscal Year 2017)*, OFFICE OF THE UNDER SEC’Y OF DEFENSE (COMPTROLLER) (Feb. 2016), http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/FY2017_CTPF_J-Book.pdf [<https://perma.cc/ULV4-XRBJ>] (outlining the fund’s budget for East Africa, identifying Ethiopia as a recipient, and listing key activities to be funded); see also PLOCH, *supra* note **Error! Bookmark not defined.**, at 23-26, 47-48 (outlining multilateral and bilateral support programs to Ethiopia).

223. See *Counterterrorism Partnerships Fund – Department of Defense Budget (Fiscal Year 2017)*, *supra* note **Error! Bookmark not defined.**, at 5-7.

224. Human Rights Watch, *They Know Everything We Do: Telecom and Internet Surveillance in Ethiopia*, at 3 (2014), https://www.hrw.org/sites/default/files/reports/ethiopia0314_ForUpload_1.pdf [<https://perma.cc/H53H-PPH2>].

225. Nick Turse, *supra* note 214 (quoting Felix Horne, Senior Researcher on Ethiopia and Eritrea at Human Rights Watch).

226. See Human Rights Watch, *supra* note 224, at 1-4; see also *id.* at 34-87 (describing these measures in greater detail).

227. Anti-Terrorism Proclamation No. 652/2009 [ATP], FED. NEGARIT GAZETA, 15th Year, No. 57 (Aug. 28, 2009).

legitimization and political repression. The law gives the police and security forces sweeping new powers and effectively suspends core constitutional guarantees and fundamental human rights recognized by international human rights treaties ratified by Ethiopia.²²⁸ One of the Proclamation's most worrying features is its overly broad definition of "terrorist acts" which includes not just violent acts but also peaceful protests that might "endanger . . . any public service" or the provision of "moral support" to terrorist groups.²²⁹ Additionally, the law appears to proscribe broad swaths of political and non-political speech; to effectively (if not explicitly) legalize the use of torture to extract evidence; to allow for the admission of hearsay, indirect evidence, and anonymous intelligence reports as evidence in court proceedings; to give security forces virtually unlimited power to conduct warrantless searches; and to grant judges broad discretion in sentencing those found guilty of terrorist acts (including use of the death penalty).²³⁰

Although a detailed analysis of the constitutionality of the ATP is beyond the scope of this Article, most, if not all, of the features mentioned above are inconsistent with the plain language of the Constitution and the principles of human rights treaties it incorporates by reference in Article 13.²³¹ In practice, the government's actions pursuant to the ATP make this contradiction with the Constitution and human rights principles even more obvious: under the pretext of "fighting terrorism," the regime has prosecuted and convicted several opposition leaders, religious leaders, activists, journalists, and bloggers.²³² According to the Ethiopia Trial Tracker, at least 765 individuals have been charged with terrorism since 2009.²³³

This bad-faith use of the Global War on Terror and the ATP reached its zenith when the government proscribed three major Ethiopian political movements—the Oromo Liberation Front (OLF), the Ogaden National Liberation Front (ONLF), and Ginbot 7—as terrorist organizations.²³⁴ The

228. In addition to its subjective and dangerously vague and broad formulations, the ATP contravenes several human rights provisions including non-derogable rights such as equality before the law, the prohibition against torture (Art. 18), and the right to fair trial (Arts. 19 & 20). See ATP arts. 3, 4, 5, 6, 14, 15, 20, 23. For a more detailed account of the Proclamation, see Human Rights Watch, *Legal Analysis of Ethiopia's Anti-Terrorism Proclamation* (Jun. 30, 2009), <https://www.hrw.org/news/2009/06/30/analysis-ethiopia-draft-anti-terrorism-law> [<https://perma.cc/WJP7-ULXL>]; see also Hiruy Wubie, *Some Points on the Ethiopian Anti-Terrorism Law from Human Rights Perspective*, 25 J. ETH. L. 24 (2012) (assessing the benefits and drawbacks of the ATP and finding significant scope for abuse and grounds for constitutional challenges).

229. ATP Arts. 3, 5(1)(b)-(c); see also Human Rights Watch, *supra* note 228.

230. Human Rights Watch, *supra* note 228.

231. See FDRE CONST., arts. 13-44 (listing fundamental and human rights guaranteed under the Ethiopian Constitution).

232. See End Use of Counter-Terrorism Law, *supra* note 20; Human Rights Watch, *supra* note 228.

233. Updated: *Terrorism charges in Ethiopia: Aggregate Table*, ETHIO TRIAL TRACKER (Jun. 26, 2017), <https://ethiotrialtracker.org/new-terrorism-charges-in-ethiopia-aggregate-table> [<https://perma.cc/5MF8-BBF7>].

234. See Human Rights Watch, *Ethiopia*, in WORLD REPORT 2012: EVENTS OF 2011, at 121, 121

OLF represents the political aspirations of the Oromo people and had actually co-authored the Transitional Charter with the EPRDF before withdrawing from the transitional arrangement due to “the absence of a level playing field.”²³⁵ The ONLF represents the ambitions for self-determination of many in the Somali region and had been pushed out of the transitional arrangement after it unsuccessfully tried to hold a referendum on the future of the Somali region.²³⁶ Ginbot 7, also known as the Movement for Justice, Freedom, and Democracy, is a movement seeking democratic reform and is the offspring of the widely disputed 2005 election and the violence that followed.²³⁷ All three political movements garner considerable appeal among Oromos, Somalis, and Pan-Ethiopian nationalists (including most Amharas) and collectively represent the aspirations of a significant portion of the Ethiopian population.

The lawful exercise of the rights to freedom of expression, association, and assembly by individuals belonging to these constituencies are often distorted, reinterpreted, and presented at official levels as conclusive evidence of support for one or more of these organizations.²³⁸ For example, in a major study of large-scale repression of dissent in Oromia, Amnesty International found that a “significant majority of Oromos arrested for their actual or suspected opposition to the government are accused of supporting the Oromo Liberation Front (OLF).”²³⁹ The designation of these three major movements as terrorist organizations serves not only as a pretext for large-scale repression but also as a way to magnify public perceptions of an existential threat. Within this context, one may understand the ATP not as legislative act designed to protect national security or enforce the international obligations of Ethiopia but as one normative instrument in the vast assemblage of military, security, institutional, and bureaucratic regimes, a “hostile act” carefully designed to stretch the state’s power beyond constitutional limits.²⁴⁰

This narrative has allowed the government to target and eliminate its adversaries while legitimizing disproportionate policing, prosecution, and

(Jan. 2012), https://www.hrw.org/sites/default/files/world_report_download/wr2012.pdf [<https://perma.cc/4KVU-Q9NW>].

235. ASNAKE KEFALE, *FEDERALISM AND ETHNIC CONFLICT IN ETHIOPIA: A COMPARATIVE REGIONAL STUDY* 25-26 (2013).

236. *See id.* at 80.

237. Australian Government Refugee Review Tribunal, *Country Advice Ethiopia*, at 3-4 (Sep. 10, 2010), <http://www.refworld.org/pdfid/4d998f2b2.pdf> [<https://perma.cc/4N22-HEHS>].

238. *See* Al Jazeera English, *Talk to Al Jazeera - Hailemariam Desalegn: Democracy ‘Not Only an Election’*, YOUTUBE (May 22, 2015), <https://youtu.be/VwimUr2C7mY> (arguing that bloggers and journalists use their profession as a mask to conceal their terrorist ambitions); *see also* Amnesty Int’l, *Ethiopia: 25 years of Human Rights Violations*, AFR Index 25/4178/2016 (June 2, 2016), <https://www.amnesty.org/download/Documents/AFR2541782016ENGLISH.pdf> [<https://perma.cc/6E42-KSFU>].

239. “*Because I am Oromo*,” *supra* note 140, at 19.

240. As Judith N. Shklar writes, “[a] persecutive law does not aim at punishing, it is an ‘hostile act,’ an individualized act of war in which guilt and responsibility matter little, since prevention by elimination is, as in war, the end.” JUDITH SHKLAR, *LEGALISM: LAW, MORALS, AND POLITICAL TRIALS* 216 (1964).

conviction of its opponents, all in the name of the Global War on Terror. The Ethiopian government has used counter-terrorism operations as justification to jail opposition politicians, silence independent voices, shrink the civic space, decimate civil society, suspended judicial guarantees, muzzle the free press, and entrench a de facto emergency. The hundred percent sweep by the ERPDF in the 2015 parliamentary election²⁴¹ is the result of these authoritarian practices that have been enabled and justified by the war on terror and the concomitant securitization of political life.²⁴²

Newman and Levine, channeling Agamben, summarize this narrative in a way that perfectly summarizes the Ethiopian context:

The danger also lies in the term 'terrorism' itself: this is a mobile term that can be potentially extended and applied to virtually any form of anti-state or dissident activity. The 'war on terror' thus becomes an ideological tool for governments to repress protest movements. Terrorism reaffirms the power and authority of the sovereign state by allowing it to marginalize its enemies, real or imagined: terrorism thus seems to work in a sort of structural relationship to the state, allow the state to extend its powers and function . . . it has become . . . the ultimate standard of political legitimacy.²⁴³

This narrative and the anti-terrorism law that it engendered have proven remarkably effective, but, as I will show in the next section, proved insufficient as the 2016 Oromo and Amhara protests gathered momentum.

V. THE RECENT PROTESTS: A CRISIS OF SOVEREIGNTY, RESULTING IN A DE JURE STATE OF EMERGENCY

The protests of the last five years by the Oromo, the Amhara, and by Muslim Ethiopians represented a crisis of legitimacy for the Ethiopian government and demonstrate both the dangers and vulnerabilities of its governing narratives.

Protests by members of Ethiopia's Muslim community began in December of 2011, when representatives of the Muslim community from across the country gathered in Addis Ababa to protest the government's interference in their religious affairs, laying the basis for a nationwide

241. Felix Horne (Sr. Researcher, Horn of Africa, Human Rights Watch), *Dispatches: Alarm Bells for Ethiopia's 100% Election Victory* (June 23, 2015), <https://www.hrw.org/news/2015/06/23/dispatches-alarm-bells-ethiopias-100-election-victory> [<https://perma.cc/YGY9-HYDF>].

242. Arriola & Lyons, *supra* note 120, at 76; Jacey Fortin, *Government in Ethiopia Is on Track To Win with 100% of Vote*, N.Y. TIMES (Jun. 22, 2015), <https://www.nytimes.com/2015/06/23/world/africa/government-in-ethiopia-is-on-track-to-win-with-100-of-vote.html> [<https://perma.cc/62AV-F6EL>]. Although these sources note that the 100% election was completed through the election of EPRDF and its allied parties, those familiar with the inner workings of the government and Ethiopian politics seldom, if ever, make a distinction between them.

243. Newman & Levine, *supra* note 72, at 27.

movement.²⁴⁴ By early 2012, a 17-member Arbitration Committee was formed²⁴⁵ to coordinate the struggle and to liaise with the government regarding its demands.²⁴⁶

Sadly, the government responded to the movement's demands with demonization and fearmongering. In the months that followed, the government and state media blamed protestors for violence and linked them with major terrorist groups such as al-Shabab and Boko-Haram.²⁴⁷ Speaking in Parliament, Prime Minister Meles Zenawi denounced the protest movement as the work of "extremist Salafi elements" and linked it to al-Qaeda.²⁴⁸ Following Zenawi's remarks, the government arrested the Arbitration Committee and other leading members of the Muslim community.²⁴⁹ After a lengthy pre-trial detention (during which some defendants alleged ill-treatment),²⁵⁰ these leaders were tried under the

244. See M. Zuhdi Jasser, Comm'r, U.S. Comm'n on Int'l Religious Freedom, Remarks on Conditions of Religious Freedom in Ethiopia at the Council on Foreign Relations (Feb. 14, 2013), <http://www.uscirf.gov/news-room/speeches/remarks-commissioner-m-zuhdi-jasser-us-commission-international-religious-freedom> [<https://perma.cc/26X4-4UZM>].

245. See *id.*

246. The Committee presented three core demands. First and foremost, the program of forcible indoctrination of orthodox Muslims had to stop; second, the Ethiopian Islamic Affairs Council had to be replaced with an institution that was freely elected by the Muslim community; and, third, the government needed to refrain from further intervening in the affairs of the nation's only Islamic college and to grant it institutional independence. See Jon Abbink, *Religious Freedom and the Political Order: The Ethiopian 'Secular State' and the Containment of Muslim Identity Politics*, 8 J. E. AFR. STUD. 346, 354 (2014); see also Jasser, *supra* note 244 (noting that the Arbitration Committee's goals were to "negotiate with the government about respecting the constitution's religious freedom guarantees, ending the imposition of al-Ahbash on Ethiopian Muslims, reopening and returning schools and mosques to their original imams and administrators. The Committee also asked that new elections be held for the [Ethiopian Islamic Affairs Council] and that the voting take place in mosques, rather than in government community centers.").

247. See William Davidson, *Ethiopia Airls Jihadi Film Amid Sensitive Muslim Protest Trial*, CHRISTIAN SCI. MONITOR (Feb. 14, 2013), <https://www.csmonitor.com/World/Africa/2013/0214/Ethiopia-airls-jihadi-film-amid-sensitive-Muslim-protest-trial> [<https://perma.cc/F9UU-DYSL>] (discussing the airing of a film on state TV during peak hours that "associates local Muslim protesters now on trial with militant groups such as Nigeria's brutal Boko Haram movement and Somalia's Al Shabab, as well as unrelated Ethiopian militants").

248. Prime Minister Meles Zenawi's Address to Parliament, delivered in Amharic, is available at Mechachal, *PM Meles Zenawi Answers Parliament Members Questions April 17, 2012 (Ethiopian TV) - Part 3. Topics Discussed are Religious Extremism, Ethiopian Muslims, Ethiopian Christians*, ETHIOTUBE (Apr. 17, 2012), <https://www.ethiotube.net/video/19271/PM-Meles-Zenawi-answers-parliament-members-questions-April-17-2012--Part-3>. For a discussion of the content of these remarks, see Awol Allo & Abadir M. Ibrahim, *Redefining Protest in Ethiopia: What Happens to the 'Terror' Narrative when Muslims Call for a Secular State?*, OPENDEMOCRACY (Oct. 23, 2012), <https://www.opendemocracy.net/awol-allo-abadir-m-ibrahim/redefining-protest-in-ethiopia-what-happens-to-terror-narrative-when-musl> [<https://perma.cc/7Y82-8ST3>].

249. See Human Rights Watch, *Ethiopia: Prominent Muslims Detained in Crackdown* (Aug. 15, 2012), <https://www.hrw.org/news/2012/08/15/ethiopia-prominent-muslims-detained-crackdown> [<https://perma.cc/3T7U-E7R2>].

250. Human Rights Watch, *Ethiopia: Muslim Protesters Face Unfair Trial* (Apr. 2, 2013), <https://www.hrw.org/news/2013/04/02/ethiopia-muslim-protesters-face-unfair-trial> [<https://perma.cc/R8LV-J5VP>].

country's sweeping anti-terror laws for "terrorism and conspiracy to create an Islamic state."²⁵¹ A three-year show trial²⁵² resulted in prison sentences of between 7 and 21 years.²⁵³

The Oromo protests, which began in November of 2015 and ultimately led to the imposition of the de jure emergency in October of 2016, trace their origins to a long history of ethnic subordination—first at the hands of the Amhara and now at the hands of the Tigray-dominated EPRDF. The immediate trigger, the Addis Ababa Master Plan, which called for the expansion of the capital's territorial boundaries into Oromo lands,²⁵⁴ is directly tied to the EPRDF's "Ethiopia Rising" narrative. For a government that relies on economic development to legitimize its authority and sees the manufacturing sector as critical to its development agenda,²⁵⁵ territorial expansion into Oromo lands was an existential imperative. For the Oromo, however, decades of land grabbing meant this was already a step too far.²⁵⁶

As the Oromos took to the streets in 2015 to protest this expansion, they sought to frame their grievances in human rights and constitutional terms.²⁵⁷ They pointed to the language of the Constitution itself, which

251. Ethiopia Jails Muslims Convicted of Terror Plot, BBC (Aug. 3, 2015), <http://www.bbc.com/news/world-africa-33759946> [<https://perma.cc/S33B-375X>].

252. See Human Rights Watch, *supra* note 249 (quoting Lelsie Lefkow, Deputy Africa Director of Human Rights Watch, as saying that "[t]he government's treatment of these Muslim leaders bears the hallmarks of a politically motivated prosecution.").

253. See Mahlet Fasil, *An Ethiopian Court Jailed Muslim Leaders, Activists, to Lengthy Terms*, ADDIS STANDARD (Aug. 3, 2015), <http://addisstandard.com/an-ethiopian-court-jailed-muslim-leaders-activists-to-lengthy-terms> [<https://perma.cc/4H3J-K9KA>].

254. See Fortin, *supra* note 18; Amnesty Int'l, *supra* note 21. The Master Plan called for a twenty-fold expansion in Addis Ababa's administrative boundaries. Human Rights Watch, "Such a Brutal Crackdown," *Killings and Arrests in Response to Ethiopia's Oromo Protests*, at 13 (Jun. 2016), https://www.hrw.org/sites/default/files/report_pdf/ethiopia0616web.pdf [<https://perma.cc/V87T-EXJE>] [hereinafter "Such a Brutal Crackdown"].

255. See GTP II, *supra* note 172, at 2; see also, *Ethiopian Industrial Development Strategic Plan (2013-2025)*, FDRE MINISTRY OF INDUS. 20 (Sep. 2013), <http://www.moin.gov.et/documents/93482/133019/57+English+MoI++Strategic+plan-.pdf/38dbde1f-9721-4df8-8c9b-f9c8e81d35c9> [PERMA] (outlining the Ministry of Industry's industrial zone development strategy, placing most such zones within a 100 km radius of Addis Ababa); see also Mulu Gebreeyesus, *Industrial Policy and Development in Ethiopia: Evolution and Present Experimentation*, BROOKINGS INST. (Learning to Compete, Working Paper No. 6) (2016), https://www.brookings.edu/wp-content/uploads/2016/07/L2C_WP6_Gebreeyesus-1.pdf [<https://perma.cc/8M6J-7YJW>] (detailing recent developments in Ethiopia's manufacturing sector, most of which have taken place near Addis Ababa).

256. See "Such a Brutal Crackdown," *supra* note 254 ("Protesters fear the expansion will further displace Oromo farmers without consultation or adequate compensation. Addis Ababa has already experienced significant growth over the past 10 years, resulting in significant displacement of Oromo farmers from land around the city. On the rare occasions that authorities have provided compensation, the funds are usually inadequate to make up for lost livelihoods and farmers rarely receive alternate land. There is little recourse for the losses in courts or other institutions.").

257. See, e.g., ODF Statement on Ethiopia's Current Situation, OROMO DEMOCRATIC FRONT (Feb. 17, 2016), http://oromodemocraticfront.org/wp-content/uploads/2016/02/ODF-Statement-On-The-Current-Crisis-In-Ethiopia_Feb-2016.pdf [<https://perma.cc/AN2H-SD62>]; Letter to U.S. Secretary of State, John Kerry, from Oromo Democratic Front (Dec. 15, 2015), <http://oromodemocraticfront.org/wp-content/uploads/2015/12/ODF-Letter-to-US->

recognizes that “[t]he special interest of the state of Oromia with respect to supply of services or the utilization of resources or administrative matters arising from the presence of the city of Addis Ababa within the state of Oromia shall be protected”²⁵⁸ and requires the federal government to enact laws determining the particulars.²⁵⁹ More than two decades after the Constitution’s ratification, however, no legislative framework is yet in place, an omission which arguably renders the capital’s expansion and the concomitant land-grabs unconstitutional.²⁶⁰

The Oromos also questioned the political motivations behind the Addis Ababa Master Plan.²⁶¹ According to the government, the purpose of the plan was to integrate the capital city and Oromia through infrastructure projects, in the process ensuring effective provision of basic social services,²⁶² a framing that one advocacy group argued was designed to mask the government’s single-minded focus on annexation to fuel Addis Ababa’s growth.²⁶³ If implemented, the Oromos felt that the Master Plan would accelerate the displacement and eviction of Oromo farmers from

Secretary-John-Kerry.pdf [https://perma.cc/C25H-9PH6]; see also Tsegaye R. Ararssa, *Why Resist The Addis Abeba Master Plan? – A Constitutional Legal Exploration*, ADDIS STANDARD (Aug. 20, 2015), <http://addisstandard.com/why-resist-the-addis-abeba-master-plan-a-constitutional-legal-exploration> [https://perma.cc/XR57-JE6G](laying out a constitutional case to resist the Master Plan).

258. FDRE CONST. art. 49(4).

259. *Id.*

260. For further explanation of this conclusion, see Tsegaye R. Ararssa, *Commentary, The Interest That is Not So Special: Addis Ababa, Oromia, and Ethiopia*, ADDIS STANDARD (Jan. 18, 2017), <http://addisstandard.com/the-interest-that-is-not-so-special-addis-abeba-oromia-and-ethiopia> [https://perma.cc/EDA3-7D4Y].

261. In a popular song titled “Maaster Plaanii” (“Master Plan”), Oromo artist Caala Bultume says, “Maaster plaanii jedhanii sanyii si duguuguuf malaanii” (“They called you a master plan to carryout ethnic cleansing in disguise” translation mine). CAALAA BULTUMEE, MAASTER PLANIII (2015), available at Independent Oromia, *Caalaa Bultumee (Qeerransoo) – 2015 “Maaster Pilaanii,”* YOUTUBE (Nov. 30, 2015) <https://www.youtube.com/watch?v=MUu0z9W1U6E>. For further discussion of how the Addis Ababa Master Plan is understood is understood as more than just a development plan, see Jason Burke, *‘It’s Life and Death’: How the Growth of Addis Ababa has Sparked Ethnic Tensions*, THE GUARDIAN (Mar. 13, 2017), <https://www.theguardian.com/cities/2017/mar/13/life-death-growth-addis-ababa-racial-tensions> [https://perma.cc/6MKG-9DXV]; see also *‘Foreign Firms Attacked’ as Ethiopia Protests Continue*, AL JAZEERA (Sept. 2, 2016), <http://www.aljazeera.com/news/2016/09/firms-attacked-ethiopia-protests-continue-160902064459286.html> [https://perma.cc/MM6J-E7KY].

262. Endalk Chala, *Violence Clashes in Ethiopia over ‘Master Plan’ to Expand Addis*, THE GUARDIAN (Dec. 11, 2015), <https://www.theguardian.com/world/2015/dec/11/ethiopia-protests-master-plan-addis-ababa-students> [https://perma.cc/DG6W-PP3P] (noting that the Ethiopian government’s claim “that the plan was intended only to facilitate the development of infrastructure such as transportation, utilities and recreation centres”); see also World Bank Group & Global Facility for Disaster Reduction & Recovery, *Addis Ababa, Ethiopia: Enhancing Urban Resilience*, at 27 (July 2015), <http://documents.worldbank.org/curated/en/559781468196153638/pdf/100980-REVISED-WP-PUBLIC-Box394816B-Addis-Ababa-CityStrength-ESpread-S.pdf> [https://perma.cc/6AGV-2L3L] (discussing the lack of basic services in Addis Ababa and mapping elements of the Master Plan).

263. *The Agenda Behind the “Integrated Regional Development Plan (IRDP),”* ADVOCACY4OROMIA, <https://advocacy4oromia.org/forum/the-agenda-behind-the-integrated-regional-development-plan-irdp> [https://perma.cc/D5KK-98BD].

their ancestral lands,²⁶⁴ ultimately cleansing the area of Oromo culture and identity.²⁶⁵ Note, however, that the protestors did not call on the government to cease expansion of Addis Ababa entirely. Rather, they called on the government to pursue inclusive and coherent development policies through fair processes.

The protestors' demands and their reference to the Ethiopian legal framework starkly contrasted with the government's response. Situating the protests within specifically Ethiopian narratives of terrorism and development, then-Government Communications Minister Getachew Reda argued that "an organized and armed terrorist force aiming to create havoc and chaos have begun murdering model farmers, public leaders and other ethnic groups residing in the region."²⁶⁶ Prime Minister Desalegn condemned the protests as "destructive forces" and issued an ultimatum, stating that the government "will take merciless legitimate action against any force bent on destabilizing the area."²⁶⁷ The government followed through with that threat, and its forceful response resulted in the deaths of hundreds.²⁶⁸

Intimidation, however, was met with more protests.²⁶⁹ Frustrated by a government that had failed to live up to the ideals set forth in its own Constitution, angered by its increasingly repressive practices, and disillusioned by their attempts at reform, protestors were now united in their calls for a change to the regime itself.²⁷⁰ After the October Irreecha stampede killed at least fifty-two protestors,²⁷¹ the protests reached their most intense levels. Responding to this tragedy, organizers called for "five days of rage"²⁷² and, in a shift of tactics, began damaging government property and corporate investments throughout the region.²⁷³ Oromos who were forced off their land by the government's developmental imperative were now attacking the "Ethiopia Rising" narrative at its source,²⁷⁴ aware

264. 'Foreign Firms Attacked' as Ethiopia Protests Continue, *supra* note 261.

265. See BULTUMEE, *supra* note 261.

266. Human Rights Watch, Ethiopia: Lethal Force Against Protesters: Military Deployment, Terrorism Rhetoric Risk Escalating Violence (Dec. 18, 2015), <https://www.hrw.org/news/2015/12/18/ethiopia-lethal-force-against-protesters> [<https://perma.cc/GG27-YLFB>].

267. *Id.*

268. See Report: 669 Killed in Ethiopia Violence Since August, *supra* note 12.

269. See "Such a Brutal Crackdown," *supra* note 254 (noting that, "[a]s the protests continued into December and early 2016, protestors also increasingly voiced anger and frustration at the brutal response of the security forces to the protests - the killings and mass arrest of protestors and the suppression of Oromo associations and political parties.").

270. Conor Gafney, *Can Ethiopia's New Cabinet Address the Oromo Protests?*, NEWSWEEK (Nov. 8, 2016), <http://www.newsweek.com/can-ethiopia-new-cabinet-address-oromo-protests-518375> [<https://perma.cc/3UAD-Z2LD>].

271. See discussion and sources cited, *supra* note 33.

272. Ethiopia: 'Several' Killed in Oromia Festival Stampede, *supra* note 33.

273. Aglionby & Honan, *supra* note 35.

274. See Aaron Maasho, *Ethiopian Protesters Attack Factories in Africa's Rising Economic Star*, REUTERS (Oct. 7, 2016), <http://www.reuters.com/article/us-ethiopia-unrest/ethiopian-protesters-attack-factories-in-africa-rising-economic-star-idUSKCN1270MX> [<https://perma.cc/EN3E-TL2A>]; see also 'Foreign Firms Attacked' as Ethiopia Protests Continue,

that, without the support of foreign investments (and development assistance), the EPRDF would be left without the resources to achieve the development objectives on which it had staked so much of its legitimacy.²⁷⁵

Looking beyond Oromia, simultaneous protests in Amhara significantly escalated the threat against the ERPDF's brutal one-party rule. When Amhara protestors took to the streets to express their own grievances,²⁷⁶ the geographic scope and intensity of the protest suddenly expanded and deepened. In their protests, the Amharas did not merely express their grievances but also expressed solidarity with the Oromos,²⁷⁷ their historic adversaries,²⁷⁸ representing a truly formidable challenge to the rule of the EPRDF.²⁷⁹ This budding expression of solidarity between the two communities, which represent around 60% of Ethiopia's population,²⁸⁰ and the unprecedented scope and intensity of the protests, sent shockwaves through the entire EPRDF establishment.

The government's response was to maintain its rule through any means necessary, invoking Article 93 to declare the country's first ever formal state of emergency.²⁸¹ With the state of emergency taking on de jure status, the military and security forces officially gained sweeping new legal powers²⁸² and no longer has a reason to hide the brutality of its repression. Over the subsequent several weeks, the government authorized the army to operate throughout the country,²⁸³ restricted access to the internet, banned protests,

supra note 264.

275. *See id.* GTP II requires roughly \$120 billion in foreign exchange "through exports of goods and services, official transfers, foreign direct investment (FDI) and external borrowing is projected to reach \$115 [billion] during the plan period." GTP II, *supra* note 172, at 118. Note that FDI did, in fact, drop by 20% during the second half of 2016, as a result of these protests and the state of emergency. Nizar Manek, *Foreign Investment in Ethiopia Slumps After Business Attacks*, BLOOMBERG (Feb. 14, 2017), <https://www.bloomberg.com/news/articles/2017-02-15/foreign-investment-in-ethiopia-slumps-after-businesses-attacked> [<https://perma.cc/6YAJ-M89A>]. Finally, it is important to note that development officials are well aware of the regime's reliance on them. As one World Bank official said to Human Rights Watch, "I like to compare the current donors to the Italians who built roads for Haile Selassie [the emperor of Ethiopia in the early 20th century]. Without the Italian roads, the Emperor could not have controlled the state. Without the donors' money, Zenawi could not hold it together." Human Rights Watch, *supra* note 100, at 23.

276. *See sources cited supra* notes 22-27 and accompanying text.

277. *See supra* note 30 and accompanying text.

278. *See SHAFAW, supra* note 29, at 211 (noting that historical animosity between the Oromo and Amhara is more than a century old).

279. *See Ethiopia: Unprecedented Protests Creep Towards the Capital, supra* note 28 ("[G]iven the size of the Amhara and Oromo populations in Ethiopia, the threat they present should not be taken lightly. . . . If opposition to the government increases along ethnic lines, the ruling elite or even Ethiopia's security forces could fracture.").

280. *Ethiopia, supra* note 1. The Oromo and Amhara comprise 34.4% and 27% of Ethiopia's population, respectively. *Id.*

281. *See Ethiopia Declares State of Emergency Amid Continuing Protests*, NPR: ALL THINGS CONSIDERED (Oct. 9, 2016), <http://www.npr.org/2016/10/09/497292914/ethiopia-declares-state-of-emergency-amid-continuing-protests> [<https://perma.cc/VYV7-X6H4>] (noting that this was the first declaration of a state of emergency in Ethiopia in the past twenty-five years).

282. *See Ethiopia: State of Emergency Risks New Abuses, supra* note 4 (discussing analysis by Felix Horne, the Senior Africa Researcher for Human Rights Watch).

283. *Id.*

prevented access to some broadcast and print media, and detained more than 26,000 protestors in "rehabilitation camps."²⁸⁴

Although these measures largely succeeded in bringing an uneasy calm to the country,²⁸⁵ why the government needed to invoke Article 93 to apply these measures is not immediately apparent. Ethiopia was, after all, operating under a de facto state of emergency, during which the government had perpetrated a number of the same abuses. In the years preceding this declaration, the government was already regularly arresting journalists and opposition politicians and quashing political adversaries and protesters with excessive force.²⁸⁶

I believe we can dispel of the notion that the government declared this state of emergency to gain the necessary power to secure the vital interests of the state or to protect the Constitutional order. No public emergency threatened the life of the nation. Furthermore, the extreme measures taken by the government, including the detention of over 26,000 individuals, clearly exceeded those measures "strictly required by the exigencies of the situation."²⁸⁷ Rather, on its face, the invocation of public emergency merely aimed to do that which is clearly impermissible under the Constitution and under international human rights law: "to defend the government in power at the price of muzzling political opponents."²⁸⁸

VI. CONCLUSION

This Article has offered a theoretical and legal account of the state of emergency and its particular manifestations in Ethiopia. I have argued that, in post-1995 Ethiopia, the state of emergency has been the government's modus operandi, blurring any meaningful distinction between the rule and the exception, and between normalcy and emergency. The Constitution, which catalogues a wide-range of highly progressive rights, plays no meaningful role in the regulation of state-society relations. Civil liberties, the rule of law, independent judiciary, federalism, free press, and civil society, which are envisioned by the Constitution as the central pillars of the political order, form minor aspects of political life. Thus, from a normative constitutional point of view, the de jure state of emergency formally imposed on October 8, 2016, is nothing more than a recodification

284. See sources cited *supra* notes 7-11 and accompanying text.

285. See Schemm, *supra* note 13.

286. See generally Amnesty Int'l, *supra* note 234.

287. In times of emergency, any derogations from human rights protected by the ICCPR must be proportional and necessary; the specific measures legally allowable to states parties are only those "strictly required by the exigencies of the circumstances." ICCPR, *supra* note 45, art. 4(1). Accordingly, states parties to the ICCPR must "provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation." Human Rights Comm., *supra* note 92, ¶ 5. Note, however, that while the State of Emergency was enacted nationwide, the unrest was largely limited to two regions of the country. See Human Rights Watch, *Ethiopia, in* WORLD REPORT 2017: EVENTS OF 2016, at 251, 251 (2017) (noting the protests and crackdowns occurred in the Oromia and Amhara regions).

288. SVENSSON-MCCARTHY, *supra* note 84, at 240.

of the de facto state of emergency that has been in place since the Constitution came into force.

A closer examination of the two governing narratives—the “National Security” narrative and the “Ethiopia Rising” narrative—reveals how extra-constitutional state violence converges with propaganda, providing the government’s brutal use of force with a mantle of domestic and international legitimacy. That these narratives carry ethnic dimensions further demonstrates their insidious functions: they play a decisive ideological role in justifying the transformation of the norm into the exception, the temporary into the indefinite. In a country in which ethnic identity has become the basic principle of political competition and the main means of expressing dissent,²⁸⁹ these narratives play a powerful mediating role, enabling a series of strategic manoeuvres and masking structural inequalities, hierarchies, and asymmetries that are indexed to ethnicity and used in the interest of maintaining ethnic privileges. The notions of security and development prescribed by these narratives, the kind of peace and order defended by the ruling elites, are neither pacific nor orderly. Rather, they are a kind of coded war aimed at institutionalizing militarized kleptocracy and apocalyptic visions of security that annihilate the very possibility of democratic politics.

Against this background, I suggest that the 1995 Constitution, along with the ideological, normative, and institutional principles used to justify and legitimize the government’s rule, should be understood not as expressing the collective will of the Ethiopian people but rather as a juridical expression of a pre-existing relationship of inequality between the various ethnic groups. The fact that the protests that ultimately led to the de jure state of emergency were led by the country’s two major ethnic groups against a government dominated by a minority ethnic group requires us to pay a closer attention to the ethnicity-emergency nexus and the viability of the Ethiopian multinational federal experiment.

Although the de jure emergency is over, the deeper asymmetries and structural anomalies responsible for the underlying grievances still remain. Indeed, in the months since the emergency was lifted, there have been sporadic protests in Oromia, including a three-day market-boycott and “stay-at-home campaign.”²⁹⁰ More recently, there have been violent clashes between ethnic Oromos and Somalis along the border between their respective regional states, resulting in the killings of dozens and the displacement of at least 75,000 people.²⁹¹ It is widely believed that the

289. Abbink, *supra* note 124, at 152-153.

290. *Statement of the Oromo Qeerroo on the Market Boycott and Stay-at-Home Campaign in Oromia*, ROBE MEDIA NETWORK (Aug. 25, 2017), <https://www.robemedia.com/2017/08/25/statement-of-the-oromo-qeerroo-on-the-market-boycott-and-stay-at-home-campaign-in-oromia> [<https://perma.cc/CK9S-RPY5>].

291. Elias Meseret, *Ethiopia: 55,000 People Displaced Amid Ethnic Clashes*, ASSOCIATED PRESS (Sep. 17, 2017), <https://www.apnews.com/f410f3ff7945421faae684645cea19c8/Ethiopia:-55,000-people-displaced-amid-ethnic-clashes> [<https://perma.cc/PB2M-EATM>]; *What is Behind Clashes in Ethiopia's Oromia and Somali Regions?*, BBC NEWS (Sep. 18, 2017), <http://www.bbc.com/news/world-africa-41278618> [<https://perma.cc/QY2X-B72G>] (further

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conflict between the two regions was orchestrated by TPLF officials who dominate the nation's military and intelligence, signaling the government's intensification of militarized patronage and divide-and-rule policies after the de jure state of emergency.

Unless the government begins to confront the systemic and structural anomalies at the heart of the political order, and address the central political questions that continues to unsettle and destabilize it from under its normative mainstay, Ethiopia will remain under a perpetual state of emergency. As the relentless protests of the last few years have shown, the authoritarian tools that proved effective in the past can no longer guarantee the submission of an agitated and restless crowd calling for change.

outlining the origins and implications of this violence).