Citizenship, Religion, and the State: Transnational Isma'ili Identity and
The Implementation of Economic, Social, and Cultural Human Rights in Tajikistan

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In the remotest regions of Tajikistan, Central Asia's poorest country, nearly every aspect of the lives of the Isma‘ili-majority population is governed—not by the state—but by the work of institutions funded and lead by their religious leader, the Aga Khan. Over 85% of the population of the Gorno-Badakhshan Autonomous Oblast (GBAO) in the Himalayan countryside now has access to electricity after a public-private partnership with the Isma‘ili-funded PamirEnergy corporation improved electrical infrastructure and expanded hydroelectric capacity.¹ 140,000 villagers, 40% of whom are women, oversee the administration of numerous development projects as members of Isma‘ili-facilitated and democratically modeled Village Organizations.² Also key to these institutions is the participation of Isma‘ilis from other, often more developed, countries. Their presence, inspired by a religious commitment to service, helps inculcate a sense of transnational Isma‘ili identity.

Nizari Isma‘ili Muslims are a minority sect of Shia Islam who recognize His Highness Prince Karim, or Aga Khan IV, as their 49th hereditary imam and a direct descendent of the Prophet Muhammad. The development work of Isma‘ili institutions is explicitly secular and corresponds to work undertaken by human rights organizations, including the promotion of women’s rights and access to education. However, despite the general harmony of values between the Isma‘ili community and the human rights regime, the language of human rights is not often invoked when describing this minority community or used as a tool to frame its development work.³ Considering that significant populations of Isma‘ilis live and carry out development projects in countries like Tajikistan, where the state is unable to fulfill the economic, social, and cultural (ESC) rights of its citizens, the absence of human rights language

² Ibid
³ I use the term “human rights regime” to refer to the institutions through which human rights as an idea translates into action and policy. This includes UN bodies and agencies, NGOs, practitioners, human rights law, etc.
in the case of Isma'ili institutions is a productive case study of the relationship between human rights and the state.

The transnational nature of Isma'ili development programming and service provision as it operates in Tajikistan challenges normative conceptions of the role of the state within human rights law and practice. These challenges are especially relevant in regards to the protection of religious identity, the fulfillment of ESC rights, and citizenship as a political relationship between state and individual. While human rights law assumes that state citizenship and religious identity peacefully coexist without compromise, the institutional structure of Isma'ilism that intertwines religion and secular development work complicates this dichotomous framework.

The human rights-based approach to development, built upon the legal foundations of human rights law regarding ESC rights, expects that a state is in control of service provision within its territory. In GBAO, however, this role is almost entirely fulfilled by non-state actors, including Isma'ili organizations and other NGOs. While the human rights regime is dependent upon states to protect and fulfill the rights of their citizens, it also assumes that the state is the primary source of allegiance for citizenship. Contrary to this understanding, the transnational nature of Isma'ilism in the context of weak, developing, and absent state government produces emergent forms of citizenship. Within a human rights framework, citizenship is understood as a legal definition related to a political relationship between an individual and a state. But for the transnational Isma'ili community in Tajikistan, it is a more flexible conception of identity that is not necessary tied to territorial political boundaries. While transnational citizenship identities are often considered particularly modern phenomena, religious traditions have united geographically disparate people in political communities long before the existence of nation-states.

The intention of this paper is to explore how the theoretical and conceptual dimensions of
human rights concerning religion, development, and ESC rights shape policy outcomes in the field. This project is not an example of a transgression or violation of rights that needs to be redressed, but instead an attempt to critically engage the normative methods by which human rights as a field of study approaches such questions. From a practitioner’s perspective, creating a mechanism within the human rights framework to legally recognize and provide accountability for the AKDN and other non-state actors involved in development work practically addresses some of the issues facing Isma'ilis in GBAO. However, this approach is akin to a doctor treating the symptoms of an illness rather than the illness itself. Unless underlying questions addressing the theoretical foundations of such policies are explored—including their relationship with the state—normative standards of efficacy and sustainability will remain potentially harmful or irrelevant to the values and lives of local populations. It is not enough to understand new political formations among individuals and communities in the same familiar terms. For a moral regime based in the humanity of its subjects, it is necessary for the complexities and flexibility of lived experience to serve as the foundation of its legal concepts.

While the topics of ESC rights, citizenship, and religion come together in the case of Isma'ili organizations in GBAO, the implications of this project are not limited to this community alone. Examples from Islamist political parties to court cases in Turkey, France, Quebec and others concerning the question of public religious dress demonstrate that Isma'ilism is not the only religious identity that complicates the traditional, dichotomous relationship between religion and state. Tajikistan is far from the only state reliant on non-state actors to provide basic services to its population, as evidenced by over twenty years of literature that calls for more attention to this concern. The work of the AKDN itself, too, takes place in countries as dissimilar as Afghanistan and Tanzania. Finally, transnational citizenship is not a theory unique
to Isma'ilis, but reflects the lived experiences of communities as diverse as Japanese housewives and indigenous first nation peoples. All three aspects of this particular case study represent separate trends and challenges to the conception of the state in human rights law and practice.

**Human Rights and Religion:**

The legal relationship between human rights and religion is emblematic of the state-centric approach of the regime more generally, providing insight into the conception of religious identity imagined within the human rights framework. A right to religion has been protected since the drafting of the Universal Declaration of Human Rights (UDHR). Similar to the civil and political rights to freedom of thought and conscious with which the right to religion is usually grouped, human rights instruments straightforwardly define religious identity as compatible with national citizenship. Four main documents provide the basis for religious protections within the human rights system: the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (Declaration on Religion), and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (Minorities Declaration). Additionally, the Concluding Document of the Vienna Follow-Up Meetings of Representatives of Participating States of the Conference on Security and Cooperation in Europe defines rights concerning mainly the conscientious objection of military service.

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The language of Article 18 of the ICCPR, the only strictly legally binding of the four, is used as a model for that found throughout the documents: “Everyone shall have the right to freedom of thought, conscience, and religion…and to manifest his religion in worship, observance, practice, and teaching.” Further, the Declaration on Religion’s Article 6 states that individuals have the right “to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.” Finally, religious communities constitute a people with the right to self-determination, specifically mentioned in the Minorities Declaration. This status ensures that “States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs,” except, as is also true above, where the manifestation of such identities can be limited by the state. Normative interpretations of the right to religion include obligations to protect favorable environments for the practice of religion and the freedom to communicate with coreligionists across national borders, both important rights for the transnational and minority Isma’ili community. However, the distinction made throughout the documents between the manifestation of religion and the right to religious belief is worth further consideration.

The legal differences between the rights of religious belief versus the manifestation of that belief highlight the deference to state sovereignty inherent within the human rights framework. As Witte and Green explain, “Freedom of religion…is an absolute right from which no derogation may be made.” In contrast, “Freedom to manifest or exercise one’s religion…may be subject only to such limitations as are prescribed by law and necessary to protect public

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6 Ibid, 7, as quoted by the authors.
7 Ibid, 9.
8 Ibid, 11.
safety, order, health, or morals or the fundamental rights and freedoms of others.”⁹ Though the list of limitations is clearly defined, interpretations of terms such as ‘public safety, order, and morals’ are usually left up to a state to determine and apply. Jeremy Gunn describes three principles for determining the legitimacy of state-proposed limitations to the right to manifest religion: that the limitation is prescribed by law, that it furthers a legitimate state interest, and that it is proportional to the seriousness of the potential or realized societal harm.¹⁰ The latter two principles create the most ambiguity concerning the legality of state limitations.

Gunn further explains that precedent in European human rights courts has rarely challenged states’ claims of legitimate interest. Interestingly, national security is not explicitly included in the list of legal limitations. However, this speaks to the relative ease with which states can interpret cases to fall into the categories of ‘public safety and order.’ The majority of cases challenging states’ limitations of the manifestation of religious identity have dealt with questions of proportionality.¹¹ Gunn argues that the application of this principle within the European Court of Human Rights has lacked consistency. Underlying factors have been given different weight in different cases, resulting in outcome-oriented case law without any clear precedent.¹² The framing of human rights law allows for wide ranging interpretations of the limits that states can apply to the manifestation of religious identity, though does offer protections against wholesale discrimination by the state against religious identity. These interpretations often favor the state interests when constructing claims to the protection of public order, morality, etc.

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⁹ Witte and Green, “Introduction,”⁸.
¹¹ Ibid 260-1.
This deference to state interest in defining appropriate limitations to the right to manifest religious identity frames the rights described above to national and international communication with coreligionists and the obligation of the state to provide favorable conditions for the development of religious culture. No government has the authority at any time to dictate the inner beliefs, religious or secular, of its citizens. However, the expression of that belief is more politically contested. While these limitations are theoretically within reason—a religious identity that actively threatens the lives and safety of another group is clearly a violation of public order and the rights of other citizens—it also presupposes a particular conception of religious identity that can be demarcated clearly between private belief and public expression. A practicing Christian need not challenge public morals about equality and dress while fully and legally expressing his or her faith publically. But a Muslim woman or Jewish man wearing a hijab or kippah in accordance with her or his religious beliefs may not be admitted into government buildings or allowed to participate in certain state-sponsored activities. Situations such as these have been widely publicized, but are still decided in national and regional courts on a case-by-case means, rather than dealt with categorically and systematically.

Scholars such as Talal Asad have theorized about ideas surrounding canonical conceptions of religion that trace their roots to particularly European and Christian experiences.

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13 The 2004 case of Şahin v. Turkey in the European Court of Human Rights is often cited as the standard for illustrating the normative interpretation of the limitation of manifestation of religious belief. A medical student at Istanbul University, Ms. Şahin was routinely denied entrance to classes and exams after a policy was announced barring the headscarf during university proceedings. Gunn writes on the Court’s ruling in favor of the Turkish state, “In the European Court case evaluating Turkey’s prohibition of women students wearing the headscarf, for example, the Court deferred to the Turkish state’s assertions that the wearing of the headscarf would harm the State’s principles without requiring any evidence this was so. Nor did the European Court take seriously the religious claims of the university student, Leyla Şahin, who was prohibited from wearing the headscarf. With exactly the same evidence presented before the Court, the decision could have been in favor of Ms. Şahin rather than the Turkish state if the Court had assumed the fundamental right to wear religious attire and had demanded proof (rather than the mere assertion) from Turkey that headscarves are disruptive…it is quite clear that the Court majority deferred to the Turkish state and accepted at face value the State’s unproven claims.” T. Gunn, “Limitations,” 262. See also Şahin v. Turkey, 44 EHRR 5 (2007) (EctHR, 2005– XI, 175, November 10, 2005) (Grand Judgment Chamber).
potentially contributing to the unintentional challenges faced by the current human rights legal framing. Building off his larger body of work, Asad traces the genealogy of normative conceptions of religious belief and ritual in his essay “Thinking About Religious Beliefs and Politics.” He argues that in the context of Enlightenment Europe, the performance of ritual came to be seen as a form of social control and domination, in contrast to the privacy and protected interiority of belief. Asad’s ideas are important to understanding the religious protection offered within human rights law.

The specific and limited conception of religion formalized and institutionalized in Article 18 of the UDHR and ICCPR marked a departure from other attempts to legalize religious protection. Linde Lindkvist writes in his essay on Article 18, “In the Berlin Treaty of 1878 and the minority treaties that emanated from the Paris Peace Conference in 1919, religious liberty had primarily been construed as a negative obligation of states to respect the ‘free exercise of religion.’” Lindkvist reports that this emphasis on exercise was also mirrored by the 1944 recommendations of the American Law Institute concerning “Essential Human Rights.” Even at the time of the drafting of the UDHR, a conception of religious identity prioritizing belief over manifestation was just one understanding of many. While Asad traces the more general idea of individualist religious expression to 17th century Europe, Lindkvist highlights the specific contributions of Lebanese Christian lawyer Charles Malik to the drafting of Article 18. Whether Malik’s beliefs were exceptional or part of a larger intellectual trend, two points that are not necessarily mutually exclusive, both authors support the argument that the legal understanding of

religion and religious identity embraced by human rights is far from universal or essential.

Keeping in mind these critiques, the consequences of codifying specific ways of understanding the universal phenomenon of religious belief and identity must be examined. Human rights law privileges one very particular conception of what it means to be a person of faith by defining religious identity in the specifically dichotomous private belief/public manifestation framework. As Elizabeth Shakman Hurd, a scholar of religious freedom and secularism writes, it “contribute[s] to the normalization of (religious) subjects for whom believing is taken as the universal defining characteristic of what it means to be religious, and the right to believe as the essence of what it means to be free.” She continues, “It privileges particular ways of doing and being as deserving special protection by the state or associations thereof, leaving others behind.”16 This normalization, then, creates what in comparison are abnormal religious identities unworthy of equal protection. For a universal moral regime, such categorization is clearly problematic. What is important is not only that the “particular way of doing and being” privileged by this law may have its roots in Eurocentric experiences. More so, the codification of such specific conceptual understandings leads to mechanisms for protection that are, in turn, just as limited. From the privileging of private belief over the public manifestation of religious identity follows a right to religion that offers protections only to those religious identities easily contained within state boundaries and compatible with state-based citizenship.

The limited human rights understanding of religious identity has a very real and practical impact on the lives of individuals and communities, especially for Isma'ilis in terms of their relationship with the state. The purely internal, private belief protected absolutely under human

rights law does not interfere with an individual’s public identity as citizen. However, an alternative conception that understands manifestation of belief as similarly essential to religious identity creates a potential challenge to public order and state interest, as well as to normative conceptions of secular and state citizenship. For Isma'illis in GBAO, religious identities are in many ways connected to the development work of transnational institutions that—rather than the state—provide the majority of their services. Codified assumptions of religious identity and citizenship that privilege private belief over public manifestation in deference to state interest do not account for such experiences.

**Economic, Social, and Cultural Rights and Transnational Civil Society:**

Though the basic legal structure of the human rights regime names the state as the primary duty-bearer, it does provide a legal space for non-state actors, and more specifically for transnational non-state actors such as international NGOs, corporations, and armed political assemblages. A small percentage of literature addresses concerns of economic, social, and cultural (ESC) rights specifically. Within this, a vast majority examines the role of corporations and transnational economic institutions like the World Bank and International Monetary Fund in upholding human rights. Because Isma'ili institutions in Tajikistan play such a large role in service provision for individuals in GBAO, this subset of civil society theory is most applicable. However, the specific role of transnational religious organizations in regards to ESC rights is hardly mentioned, and the relationship of religion in the construction of transnational NGOs is rarely considered.

The main concepts emerging from the literature are similar to those concerning religion and human rights, namely the role of the state and the nature of human rights law that hold states
as primary duty-bearers. Despite attention to non-state actor obligations in this area for decades, little has been done to create specific, legally binding standards. NGO accountability to protect and uphold human rights is filtered almost entirely through the state’s obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and relevant law to which the state is party. As an individual, one does not have the right to petition non-state actors in the event of violations, but must address complaints through the state. In order to fill in these gaps, actions have been taken within the UN system to strengthen non-state actor accountability, but such work does not challenge the general state-based framework. For example, the Committee on Economic, Social, and Cultural Rights in General Comment 15 has outlined that the state obligation to protect ESC rights includes the monitoring of non-state actors and steps to prevent and address rights violations by such actors, a position the Committee has reiterated in its Concluding Observations on state reports. The UN Guiding Principles on Business and Human Rights offers a human rights framework that transnational corporations can voluntarily commit to uphold, though it focuses primarily on businesses rather than other types of non-state actors like NGOs. While a step in the right direction, these efforts are a far cry from the formality of the binding obligations of states in legally enforceable treaties.

In the foundational paper in this area, Oxfam’s Chris Jochnick argues that a state-centric enforcement approach is particularly damaging for ESC rights, though it is applicable to non-

18 CESCR, General Comment 15, paragraph 24, (2002).
state actors of all types concerning all categories of rights. Writing two full decades later, Manisuli Ssenyonjo’s analysis is nearly identical, pointing to a lack of meaningful legal engagement. While Ssenyonjo expands upon Jochnick’s report to list specific legal precedents that could provide the basis for enforceable obligations—such as language in human rights treaties about the “duties of all people” to uphold human rights—these theoretical underpinnings are far from clear standards for conduct. Both authors agree that while the traditional obligations of states in terms of civil and political rights are easier to enforce, the statist orientation of ESC rights obligations fails to consider the reality of poor and developing states. In such situations, as is increasingly common, individuals rely more on non-state actors like NGOs for the fulfillment of rights rather than the state. Where transnational corporations are implicated, many companies have budgets bigger than the entire country in which they are active. This is also true of Isma’ili institutions that are much better funded than many of the states in which they work. Under such conditions, in which states already lack the ability to fulfill rights, their ability to police non-state actors is questionable.

Further, indirect weak state accountability for non-state actors leads to a reactive approach to rights generally, and ESC rights in particular. While gross violations of rights by corporations, NGOs, or other non-state actors receive redress and attention as the state is able, a rights-centric approach to the development work of NGOs is hardly enforceable. The hierarchical approach of the ‘respect, protect, and fulfill’ framework breaks down as non-state actors are added into the mix. States without resources for the positive obligation to fulfill rights are still expected to uphold the negative obligation of respecting and protecting rights. These

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expectations become logistically improbable when non-state actors are the primary provider of services that fulfill ESC rights. In such circumstances, the asymmetric resources between non-state actors and the state impede the full protection of rights. This lack of oversight undermines the protection of human dignity as the foundation of laws regarding ESC rights. As long as an organization does not draw attention to itself and any potential violations of rights that result from its activities, the likelihood that developing states are able to affectively monitor and approve all organizational programming is unrealistic at best. The indirect accountability of non-state actors through legally obligated states thus relies on individuals to report to states any potential violations—individuals who receive little support from their state governments and depend upon the services and goods provided by the same NGOs and corporations they are expected to report.

The increasing privatization of the fulfillment of ESC rights that frames both Ssenyonjo and Jochnick’s papers is noted even earlier by Danilo Türk, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in a report submitted to the then Commission on Human Rights in 1992. Türk’s findings and conclusions, and especially their continued relevance so many years later, provide insights into potential theoretical challenges to the current legal framework of ESC rights. Türk goes farther than either Ssenyonjo or Jochnick to argue not just that the assumption of state fulfillment of rights is “anachronistic” or overly idealistic, but points to a misconception about the “nature of the structure of the State itself.” He continues, “A great many States…far more resemble ‘soft’ or

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‘particularistic’ forms of governance than the ‘strong’ or ‘universalistic’ vision so often coupled with ideal views of the State protecting, respecting and fulfilling economic, social and cultural rights.” Beyond historicizing the conception of the state within human rights frameworks, Türk questions the universality of this understanding.

Jochnick, however, does assume the ‘strong state’ to have actually been the most prevalent model at some point in the past. While not explicitly stated, it can be reasonably assumed that this idea is rooted in theories of statehood prominent during and immediately after World War II, during the founding of the United Nations and the writing of the UDHR. Though universally representative of states at that time, large territories were still held by colonial powers, and a majority of the current members of the UN did not yet exist, including the vast majority of non-European states. The contemporary political landscape, including large numbers of post-colonial and post-Soviet states like Tajikistan, is radically different. The modern presence of non-state actors more powerful and able to fulfill ESC rights than that states that are legally expected to do so challenges the rigidity and universality of these rights, which are built upon certain theoretical assumptions about the relationship between state and citizen. This is similar to challenges that transnational religious identity presents to the normative, state-compatible conception of religious identity assumed in the protection of religious rights. The development work of Isma'ili institutions in Tajikistan provides a case study that questions these traditional theories of identity, state, and citizenship.

Transnational Isma'ili Identity:

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26 Ibid, 23.
Returning to the GBAO region of Tajikistan, the roads and bridges upon which individuals travel, the electricity that lights their homes, the schools to which they send their children, and the health-related services from which they seek support when sick or injured are all funded and managed by transnational Isma'ili institutions. This has not always been the case, however. Before Tajik independence, services were provided by the Soviet system. A bloody civil war followed the fall of the Soviet Union, placing the young state into a crisis that disproportionately affected the relationship between GBAO citizens, many of whom are Isma'ili, and their government. During the war, the region served as the central territory of a coalition of groups forming the United Tajik Opposition (UTO). UTO became the primary opposition to the communist government in the capital of Dushanbe. After the government cut off supply lines to the territory, innocent civilians in GBAO were just as devastated as armed UTO members. Under these conditions, Isma‘ili relief organizations under the authority of the Aga Khan provided much-needed aid to the region. This aid paved the way for a re-entry of the Imamat after decades without any official connection to the area’s Isma‘ili population under Soviet control.28,29 As Jonah Steinberg explains, “The Tajik civil war effected and cemented the exclusion of the Pamiri Isma’ilis, which motivated them to seek resources and membership in a new formation that accorded them high status….In the wake of the war…the primacy of the [Aga Khan Foundation] remained.”30

After almost twenty years of peace, the Tajik state still relies on the support of NGOs like the AKDN to fulfill the ESC rights of its citizens, especially in rural and mountainous GBAO.

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28 This entire portion of historical information from Steinberg, Isma‘ili Modern, 126-131.
29 Historically, the Imamat refers to the institution of the leadership of an imam over the Shia community. As different Shi‘i sects emerged recognizing different sources of legitimate authority, the Imamat took different forms depending upon the specific tradition. For Isma‘ili’s the term refers not just to the Aga Khan’s leadership of the community, but the centralized institutions through which this leadership is maintained.
30 Steinberg, Isma‘ili Modern, 130.
With by far the largest remittance economy in the world—47% of the country’s GDP in 2011—the majority of Tajik families rely on wages from outside of the country.\(^3\) 47% of the population lives below the national poverty line, including 50% of the rural population. Isma’ili institutions, however, have continued to flourish in these regions. Besides the capital city, poverty is lowest in GBAO, where the AKDN is most active.\(^3\) While development standards are slowly increasing, Tajikistan is far from being able to provide for its citizens.

Within this context, tensions between the religious and secular aspects of Isma’ili development work help to engender a transnational Isma’ili identity. Though a war fueled by ethnic and regional tensions provided the initial circumstances for Isma’ili institutions to enter Tajikistan—and an interest in “bringing Isma’ilis into the fold” brought these institutions to the country at all—the AKDN and its partners are strictly non-discriminatory in their development projects.\(^3\) In one example of such non-discrimination, Bruno de Cordier documents the work of the AKDN in the Rasht valley, a province closer to the capital and in which the majority of residents are Sunni rather than the Shi’i Isma’ilis.\(^3\) Though tied to the religious community and funded through the Aga Khan, the AKDN, Aga Khan Foundation (AKF), and other Isma’ili development institutions are explicitly secular. Just as they offer their services to all individuals, nothing about the services themselves is religious or carries any association with proselytism. However, as Steinberg notes:

> “Representatives of the Imamat’s institutions will generally argue that their symbols carry little specifically Isma’ili appeal. However, the consciously formulated denotations, the explicit meaning of the symbols, suggest otherwise. But even more important are their connotations, the


implicit associations. My interviews in both Pakistan and Tajikistan suggest that even where not intended, AKDN symbols conjure the image of the imam to local Isma’îlis. The imam’s institutions are, for Isma’îlis, inextricably tied to the leader himself, and despite the formally secular nature of the institutions, they associate them with him, his religious significance, and the resources he is thought to bring.”

This identification of services directly with the Aga Khan can be explained by the centralized nature of Isma’îlism, in which the Aga Khan plays a very personal role in the relatively small population of Isma’îlis worldwide. Further strengthening the shared, transnational Isma’îli community, services and institutions operate virtually identically across state borders in the mountainous regions of Afghanistan and Pakistan. These institutions are often staffed by diasporic Isma’îlis from developed countries, creating a shared, transnational Isma’îli community.

Certain theological characteristics of Isma’îlism exaggerate its more general religious potential as the source of transnational identity. In his *Introduction to Shi’ism*, Najam Haider describes the Isma’îli belief in the inerrant authority of the Imam, closely related to what he calls “the weight of Isma’îli expectations.” Both key features of Nizari Isma’îlism are critical to understanding the context within which Isma’îli development institutions function. As a direct descendent of Muhammad, the Aga Khan is the sole and unquestionable authority in charge of the Isma’îli community. In turn, the community expects him to protect and serve their best interests. In his chapter on contemporary Isma’îlism, Haider focuses on the attempts of the third and fourth Aga Khans to extend outreach to historically Isma’îli communities and codify religious practice and identity. In part, this is achieved through the material development work of the AKDN in remote and undeveloped Himalayan regions. This central religious structure

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35 Steinberg, *Isma’îli Modern*, 73.
provides a consistent and concrete source around which identity formation for the transnational Isma'ili community can form. This structure also necessitates that the imam remain active in the programming of his agencies. While Steinberg characterizes Isma'il institutions and their work as distinctively modern—a unique product of contemporary forces of globalization, neoliberal economics, and liberal politics—Haider argues that no claim of modernity can be made without taking into consideration the very classical and hierarchical religious structure of the Imamat. This structure recalls more traditional formations of religious communities in the pre-modern era.

Unlike other secular NGOs and corporations that might be providing services to fulfill ESC rights in lieu of the state, this role coupled with a sense of religious identity gives Isma'il institutions a more state-like nature. Structurally, the bureaucratic nature of the Imamat functions more like a state than the headquarters of an NGO. As Steinberg explains, “The Isma'il global assemblage has real-time, historical relationships with individual states, but as a sociopolitical structure it also demonstrates a morphological relationship (though certainly not identity with) the generalized form of the nation-state.”37 From the current seat of the Imamat in Aiglemont, France, the Aga Khan directs the territory-less Isma'il organizations and issues administrative and religious decrees, called farmans. The bureaucratic structure at Aiglemont includes a diplomatic wing, “responsible for the facilitation of extensive treaties, accords, agreements, and negotiations in which the signatories are usually the Aga Khan and a nation-state.”38 One such treaty between the Aga Khan and the states of Tajikistan, Kyrgyzstan, and Kazakhstan established the Isma'il-driven University of Central Asia in 2000.39 Additionally Steinberg

37 Steinberg, *Isma'il Modern*, 17.
38 Ibid., 56-7.
39 Ibid., 77.
reports, “The highest representatives of AKDN in poorer countries enjoy diplomatic status, their vehicles bear diplomatic plates, and the national ‘resident representative’ has legal ambassadorial status.” Isma’ili institutions like the AKDN not only fulfill the obligations of states, look and act like states, but also garner the allegiance of the people they serve in a manner similar to states. It is this allegiance that sets the AKDN apart from more traditional NGOs to which political identity is not tied.

Despite these similarities—and in great contrast to states—Isma'ili institutions are inherently transnational and have no territory over which they are sovereign. To understand this transnational nature, we must decouple the two terms of the ‘nation-state’ concept. Though they are the source of political and religious identity for many Isma'ilis, Isma'ili institutions formally operate only with the permission of state governments. This granting of permission does not normally include oversight, accountability, or even the capability for such on the part of the state. Lack of territory and sovereignty greatly informs the structure and programming of Isma'ili institutions, despite their possession of other financial and technological resources. Isma'ilism constitutes a type of national identity in the sense that individuals feel political allegiance to its development institutions and the Aga Khan. But there is no plan or desire to create an Isma'ili state, though accusations from nervous governments like Tajikistan’s might raise the question. Isma'ilism is essentially transnational in nature, built around its institutions and common identity rather than a particular territory or the desire for such a territory.

The Aga Khan’s role and duty as a religious leader is to protect and improve the lives of his followers, in ways both alike and dissimilar to the duties of a state to provide for and protect

40 Ibid, 11.
its citizens. In his own words, “Imams are responsible for the security of their community, for the quality of life of their community—they must engage, but they have to engage ethically.”

The institutional and transnational structure described above serves the interests of the community well considering the centralized nature of authority and interpretation within Isma'ilism, as well as the community’s status as a minority population within the countries in which they live and Shi’ism more generally. Unlike other religious leaders, the Aga Khan and high-level Isma'ili employees are able to enjoy the privileges of a state by directly engaging countries with Isma’ili populations and being treated as acceptable representatives of the Isma'ili community. They work directly with governments to ensure that they are able to carry out their projects and meet the needs of Isma'ilis. Additionally, farman's from the Aga Khan instruct Isma'ilis how to live and express their faith in particular national contexts. The transnational nature of Isma'ili identity and institutions is not a stepping-stone on the way to statehood, but the manifestation of a particular conception of political and religious community, one that is difficult to place within the human rights framework because of its non-state, non-national character.

Though its roots are also deeply religious, contemporary Isma'ili identity in the, transnational and institutional form it takes is cultivated and constructed like any other political relationship between citizen and service provider. And it is just one of many such identities that has historically existed in the area. With changing governments, borders, and other actors to organize and structure the lives of Isma'ilis in GBAO came changes in self-identification and political identity. Steinberg describes how before Soviet occupation, the population of the Pamir mountain region of GBAO was organized along ethnolinguistic lines, not national identities or

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state borders. Under the influence of the different governments that controlled the area, Isma'ili in what became Tajikistan began thinking of themselves not just as Pamiri—living in a single contiguous border region touching Afghanistan, Pakistan, and China—but as specifically Tajik. Steinberg writes, “Afghan and Tajik Badakhshan, for example, though adjacent, were no longer recognizable as a single sphere of circulation, both to outsiders and to the inhabitants of the respective sides.” Tajik Isma'ili regarded Afghan Isma'ili as backwards and uncivilized, stereotypes that are still common, though they are not treated as seriously. Even acknowledging the existence of the Afghan border was forbidden under Soviet occupation.

However, with the common institutions of the AKDN and other Isma'ili agencies providing shared support and structure across borders since the civil war, “divided populations are now being intensely drawn together…transforming and disintegrating some of the ideas of evolution and progress that define Tajik discourses of the Afghans on the other side.” In the decades since the fall of the Soviet Union and the entry of the AKDN into the region, Pamiri Isma'ilis have come to self-identify as Isma'ili, as have their coreligionists across borders. The term ‘Isma'ili’ itself is linked with the coming of the development institutions of the AKDN and the re-establishment of communication with the imam—before the civil war the term “Panchtani” was more common. During Soviet times, “No one thought about the Imam” as one villager noted, and ethnic identities, rather than religious identities like that of Isma'ilism, were the most prominent among individuals.

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44 Ibid, 125-6.
45 Ibid, 134. The term “Panchtani” literally means “five bodies,” referring to members of the Prophet’s family, who Shia Muslims especially revere. Instead of the more specific term “Isma'ili,” directly connected to the Aga Khan and Isma'ili institutions, Panchtani was used to differentiate generally between Shia and Sunni Muslims.
46 Ibid, 183.
47 For more information of this topic see full chapter in Steinberg, “Into the Fold,” *Isma'ili Modern*, 107-143.
Operating more like a nationalistic state than other, purely secular NGOs that provide services, Isma'il institutions cultivated a new transnational identity by “bringing into the fold” Tajik Isma'ilis in GBAO. Unlike a state, however, the legal channels of accountability and protection afforded by the human rights framework do not consider Isma'il institutions because of their transnational and non-territorial nature. And unlike other religious organizations or quasi-state religious formations like the Holy See or the Central Tibetan Administration, the development work of Isma'il institutions moves beyond charity or aid to provide the very infrastructure upon which services are provided. Though Isma'il institutions act much like a state in providing services for a population who identifies with them as part of a public and political—as well as personal and religious—identity, they fall outside the scope of state-centric human rights frameworks.

The transnational Isma'ili identity, displayed by Tajik Isma'ilis living in Gorno-Badakhshan, exacerbates already-identified places of tension within the existing human rights framework. This identity is closely connected to institutions that provide services normally under the purview of the state’s obligations to protect and fulfill ESC rights. Isma'ilism manifested cannot easily be contained within national borders as assumed by human rights. State interference with Isma'il institutions—organizations that are assuming the traditional roles of the state—would profoundly impact the way Isma'ilis live and experience their belief given the all-encompassing nature of their faith. As one researcher of Isma'il teachers in GBAO explains, “Karim [an Isma'il teacher] passionately felt that teachers needed to identify with the Living Imam [the Aga Khan] and the Prophet Muhammad to be effective reformers in their schools and
In practice this role meant promoting tolerance and peaceful conflict resolution and advocating against gun violence and drug use, values that are not necessary religious or particularly or exclusively Isma'ili. In Steinberg’s words, “From the perspective of most Isma’ilis the religious life is the whole thing, more crucial than any other aspect of life…other aspects, such as involvement with the AKDN, may be seen by Isma’ilis as simply contributing to one’s religious worth and virtue.” A system of human rights that could empower individuals to hold Isma'ili institutions directly accountable instead of relying indirectly on state governments could better support ESC rights than the current framework. This is especially true considering that the values of Isma'ilism often work to strengthen human rights rather than contest them. Similarly, the assumption within the law that ESC rights should ideally be provided by the state, and that any other entity working to fulfill these rights should be doing so under the direct authority of a watchful state, fails to account for the allegiance given to Isma'ili institutions by citizens.

Theories of Transnational Citizenship:

A specialist in studies of globalization, Saskia Sassen and her book *Territory, Authority, and Rights* challenge traditional conceptions of citizenship derived solely from the nation-state. Her ideas are helpful in understanding the transnational Isma'ili identity in part formed and sustained by the Isma'ili control of services normally provided by the state. They also provide a useful framework for comparing and contrasting the relationship between the conceptions of citizenship embodied in Isma'ili transnationalism and those defined by the human rights regime.

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49 Steinberg, *Isma'ili Modern*, 101, original emphasis.
Normatively, citizenship is considered a political relationship entailing a set of legal obligations between a person and the nation-state of which she is a member, though other understandings of citizenship existed in the past. While this relationship can be based on a number of possible sources from ethnicity to location, self-identity rarely figures among them. Thus, national identity and citizenship are related and often directly coupled terms, but formally distinct. Yet a person’s self-identity as a citizen must also be considered as a source of legitimacy for this relationship, rather than more top-down and state-centric understandings. Sassen explains how other conceptions of binding political relationships existed prior to modern states. Historically citizenship referred to identities tied to a particular city, civil society organization, or even individual. Slowly, citizenship coalesced on a national level consequent with the development of state institutions. While in the past citizenship could be constructed around a set of obligations corresponding to the relationship between an individual and the lord or guild to which they were loyal, this bond became increasingly nationalistic in character as migration increased and these traditional ties diluted. Especially during industrialization, state interests aligned with those of large portions of the population, including the working class and bourgeoisie, creating the basis for the 20th century idea of the welfare state. Individuals wishing to benefit from state institutions had an obligation to pay for such services in the form of taxes, and could expect in return the assumption and protection of a particular state culture.

However, modern forces of globalization are eroding the relationship between national identity and the state provision of services just as earlier and more personal forms of citizenship were replaced by allegiance to the state. As Sassen explains, “globalizing dynamics have weakened the exclusive authority…of national states over people, their imaginations, and their

50 Sassen, Territory, Authority, Rights, 282.
51 Sassen, Territory, Authority, Rights, 284-5.
sense of belonging. This facilitates the entry of non-state actors into international domains once exclusive to national states.” Globalization thus allows economic and political relationships formerly restricted within the state to expand beyond its borders. The transnational Isma’ili identity is just such a globalizing force, and Isma’ili institutions embody the type of non-state actors diluting the formerly exclusive domain of the fulfillment of citizens’ economic and social rights described by Sassen.

Sassen’s narrative of changing conceptions of citizenship illustrates how this political definition is connected to service provision, and thus implicated as global non-state actors increasingly take over these formally state-dominated processes. Rather than an understanding of citizenship based in the state by definition, citizenship conceived in terms of identity is more flexible to such changes. In Sassen’s words, “The development of notions of post-national citizenship requires questioning the assumption that people’s sense of citizenship in liberal democratic states is fundamentally characterized by nation-based frames.” She continues, “insofar as legal and formal developments have not gone very far, a focus on experiences of identity emerges as crucial to post-national citizenship.” While extending analysis beyond the state, Sassen also complicates the relationship between the state and emerging transnational political identities. Though transnational citizenship holds the potential to threaten the state and state-bound identities, the two are not necessarily mutually exclusive. However, it does force us to expand definitions of who citizens are and what makes them so. Most important to the case of Isma'ili institutions is her theory of post-national citizenship. Post-national citizenship is located outside of the national sphere and represents completely new conceptions of political identity produced by the forces of globalization.

52 Ibid, 299.
53 Sassen, *Territory, Authority, Rights*, 287.
Sassen’s approach to citizenship as a form of post-national identity helps situate the example of transnational Isma'ili institutions, but stands in contrast to the understandings of citizenship codified in human rights law. Human rights remain rooted in the state institutions from which they emerged in the post-war era, a grounding that anticipated the wave of independence movements in the following decades. In Samuel Moyn’s analysis, human rights were even transformed from a framework of imperial control to a tool for self-determination championed by formerly colonized peoples.\textsuperscript{54} The state-based foundation of human rights orients their protections towards individuals rooted in state-centric and nationalistic notions of citizenship. Transnational Isma'ili identity as a form of citizenship entailing a political relationship with obligations and rights between individuals and non-state actors simply falls outside of this frame of reference. Human rights are individual rights from and against the state, and states bear the primary burden of human rights legal obligations. However, the post-national character of Isma'ili transnational citizenship is the product of a religious identity that was never inherently connected with a particular state. Though human rights are international in scope and provide checks against absolute state authority in a framework that can challenge state sovereignty in favor of individual protections, they do not address emergent non-national forms of citizenship. Therefore as a legal framework, human rights fail to hold Isma'ili institutions as accountable to citizens as they would the state, though these institutions provide the same services as states and play a similar role in the lives of Tajik Isma'ilis in GBAO.

Conclusion:

\textsuperscript{54} See Samuel Moyn, “Death from Birth” and “Why Anticolonialism Wasn’t a Human Rights Movement,” in \textit{The Last Utopia}, (Cambridge, Massachusetts: Belknap of Harvard Press, 2010), 44-84 and 84-120, respectively.
Steinberg’s description of a visit to the Ryn village in GBAO exemplifies how Isma’ili institutions in Tajikistan provide an interesting case study to examine how human rights law and practice understand religious identity, ESC rights, and citizenship:

Ten years ago there were only ten families, and now there are thirty-five. Recently a new school was built, and now there is also an AKDN medical center. AKDN is working on water supply in the village…During Soviet times, villagers say, life was much better: “Moscow provided.” But now, they say, due to the “creativity” of AKF, “lots of good things are being planned.”…My main informant in this village was a member of the AKDN Village Organization and says that everyone else is also a member…the current VO leader is the school headmaster…A prominent religious leader in the community says that local people have a great deal of contact with other Isma'iliis from elsewhere through [AKDN]…he explained that he feels brotherhood with other Isma'iliis, and that Hazir Imam…has been mentioning this in his farmans.55

Within human rights, these three aspects of the regime are known and protected through their relationship with the state. However, for the villagers of Ryn, these ideas are connected to transnational Isma'ili institutions. Further, this example illustrates how theoretical conceptions and definitional constraints filter down to shape policy in the field.

While human rights offer a framework for religious protection, this framework privileges certain understandings of religion and faith that focus on internal, private belief as opposed to the more public and communal manifestation of religious identity. In turn, the manifestation of religion is deemed nonessential and is limited within a legal framework deferential to state interest. As Talal Asad, Elizabeth Shakman Hurd, and Linde Lindkvist argue, such understandings of religious identity reflect only very specific traditions and historical contexts, and are thus far from the universally applicable promise of human rights. Isma'iliis illustrate these conceptual limitations in the way their all-encompassing faith manifests through transnational,

55 Steinberg, Isma'ili Modern, 183.
and explicitly secular, development institutions sponsored by the Aga Khan and staffed by fellow Isma'ilis from all over the world. This public, political, and transnational manifestation is in contrast to the internalized religious belief that is easily reconciled with national identity and contained within state borders.

Similarly, the state-centric conception of ESC rights in human rights law provides little accountability for non-state actors, like Isma'ili institutions, and displays a particular understanding of the state as the primary provider of services to citizens. Like the limits of the human rights understanding of religion, Jochnick, and Türk argue that this ideal ‘strong state’ does not match the reality of poor, developing, and often war-torn or post-conflict countries. This failing becomes even more apparent considering the human rights framework maintains that even when a state is unable to fulfill the ESC rights of its citizens, it can respect and protect those rights by allowing third party and non-state actors to provide services. But legal accountability remains with the state as the formal duty-bearer, and the same governments that are unable to meet their citizens’ needs are unrealistically expected to police such non-state actors. The absence of direct legal channels for Tajik residents of GBAO to hold Isma'ili institutions accountable for their development work leaves Pamiris vulnerable to the—fortunately as of yet, often rights-respecting—whims of these institutions.

Finally, human rights understand citizenship as a legal relationship derived from nationality, ethnicity, or residence within a state. However, emergent forms of post-national citizenship described by Sassen and exemplified by the transnational and institutional nature of Isma'ilism highlight the need for a more flexible conception of citizenship as a form of political identity. The legal formality of human rights provides accountability through delineated responsibilities and protections for both the citizen as rights-bearer and the state as duty-bearer.
However, changing notions of citizenship call for changing definitions of duty-bearers, expanding this current role from beyond its state-centric meaning. Further, the lack of territory or sovereignty around which post-national Isma'ili citizenship organizes itself—instead positioning its institutions as the central mechanism of citizen-identity formation—challenges understandings of political power and authority grounded in these concepts.

From a policy perspective, the human rights regime could adapt to hold non-state actors more accountable. In order for such reform to be possible, however, the it must come to understand the concepts around which it is structured as products of particular contexts and histories, though its values may be universal. Only by recognizing such limitations can alternative and more inclusive theoretical understandings become possible. Most of the literature regards these contexts as fundamentally altered by particularly modern forces or movements. Indeed, the central point of Steinberg’s monograph on Himalayan Isma'ilis is just how “modern”—how much of a reflection of contemporary global power structures—their transnational assemblage is. Sassen offers her theory of post-nationalism as an emergent form of citizenship identity in a modern and globalized world. The ‘strong state’ ideal critiqued by Ssenyonjo, Jochnick and Türk is a reflection of the past—in which a few, very powerful states controlled the global political order—rather than the post-colonial, post-Soviet world of today.

Though the centrality of the state and its importance within human rights may appear inevitable and universal, the nation-state is only one form of political organization among many in which people have participated, and perhaps not the most modern form. The state plays a necessary role as the mechanism through which rights are enforced and supported. While this role is vital, any form of polity could fill it. Simply because the state has been the dominant model during the formulation and institutionalization of human rights does not mean that it must
continue to be, or that it is an essential aspect of human political existence. As Samuel Moyn writes, “When the history of human rights is told beyond myths of deep origins, it illustrates the persistence of the nation-state as the aspirational form for humanity until recently… the perceived crisis of the postcolonial world, however, made the globalization of the nation-state unattractive as the sole formula for the achievement of modern freedom.”\textsuperscript{56} The human rights regime regards the state not simply as the current enforcement mechanism of rights, but as the source of its understanding of some fundamentally human aspects of life. The Isma'ili example shows how dependent upon the state—upon a particular conception of the state as service provider, protector of religious identity, and source of territorially-bound citizenship—human rights are, and how their protections fall short when lived experience does not so easily fit within this statist formula.

However, while it is undeniable that the world is a much different place than it was at the formation of the UDHR in 1945, I suggest that many of these conceptual limitations have been present from the beginnings of the human rights regime. Especially concerning religion, though modern circumstances have exacerbated the complications of such specific understandings of state and citizenship codified within human rights law and practice, the potential problems associated with the state-centric priority of belief over manifestation do not reflect particularly modern challenges to that understanding. Transnational religious identities that cannot easily manifest within state borders are not an innovation, but reflect traditions that have roots among communities long before the existence of state and national boundaries. Despite this transnational nature of religious identity, religion is rarely mentioned in contemporary studies of transnationalism. Though not every person of a particular faith will feel solidarity with her

\textsuperscript{56} Moyn, \textit{Utopia}, 212, emphasis mine.
coreligionists, as thinking about transnationalism and transnational citizenship gains traction in policy circles, religion—and the religious nature of Isma'ili transnational identity—should not be forgotten.

Having explored and adopted values it found universal and essential to humanity, the human rights regime must now turn to the structural components of this vision. When translating values into actionable rights, we must constantly ask what the relationship is between these political concepts and what it means to be human. Does the framework through which human rights become programming reflect equally universal and essential concepts?

It is imperative that a program of rights founded not on an individual’s relationship to the state—but on her humanity—promotes legal concepts that are built upon the diverse identities of rights-bearers. Rather than defining identity through the state, as with religion and citizenship, human rights must seek to understand these concepts on their own terms. It is not enough for rights to be granted on the terms of humanity if the only means of protecting or fulfilling these rights depend upon the state. This paper has examined ways in which transnational Isma'ilism challenges the understandings of the state codified within human rights law and practice. Understood in terms of Sassen’s theory of post-national citizenship, Isma'ili allegiance to the institutions of the Aga Khan represents growing trends in which communities are moving away from the state as the sole source of citizenship. The centrality of the state within human rights limits their ability to adapt to changing political formations and human identities. Hannah Arendt writes, “The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective….Man, it turns out, can lose all so-called Rights of Man without losing his essential
quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.”

Without the structural ability to acknowledge forms of polity other than the state, and with conceptual understandings of identities only so much as they are tied to the state, human rights risk failing to protect the essential human dignity on which they are founded.

Reforming the structure of human rights in light of these critiques—altering certain concepts to reflect the diversity and flexibility of lived human experience—can be seen as part of a greater identity crisis facing the human rights regime. In the epilogue to his book on the history of human rights, Moyn writes:

Born in the assertion of the ‘power of the powerless,’ human rights inevitably became bound up with the power of the powerful. If human rights calls to mind a few core values that demand protection, they cannot be all things to all people….And so the program of human rights faces a fateful choice: whether to expand its horizons and take on the burden of politics more honestly, or to give way to new and other political visions that have yet to be fully outlined.

As our efforts to empower those most marginalized and without a voice succeed, we must be willing to listen to what those voices say about how they understand themselves as part of a universal regime. The concepts that underlie human rights law and practice must be as grassroots as some of the work that happens in the field. Human rights as policy will never be perfect, as no policy ever will. But if the only questions explored concern implementation rather than concepts—if as a regime human rights is blind to its relationship with power and the full extent to which power has and continues to influence how we understand the place of individuals and communities in a global order—human rights will continue to self-limit the most radical and utopian aspects of its vision.

58 Moyn, Utopia, 225-7.
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