LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

MOBILISING FOR GROUP-SPECIFIC NORMS:

RESHAPING THE INTERNATIONAL PROTECTION REGIME FOR MINORITIES

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A THESIS SUBMITTED TO THE DEPARTMENT OF INTERNATIONAL RELATIONS
OF THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

LONDON, JULY 2009

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This thesis is dedicated to the memory of:

Atsuko Tanaka-Fox

whose hard work and dedication made a lasting impact on the protection of

minority rights globally

and to

Murray Osborne and Lee Sinclair-Osborne

who are also dearly missed.

ABSTRACT

This thesis examines the agency of minority groups and their international allies in reshaping the international protection regime for national, ethnic, religious and linguistic minorities to include new group-specific norms. The practices of "norm entrepreneurship" by two groups, Dalits and Afro-descendants, are considered in detail and contrasted with the experiences of similar norm entrepreneurship by indigenous peoples and Roma. Dalit and Afro-descendant activists have pursued norm emergence to establish group-specific recognition, standards and mechanisms at the international level. This thesis examines three key factors that have been instrumental to this group-specific norm emergence: the establishment of strategic frames and stronger forms of transnational mobilisation by each group; the supportive engagement of international actors; and the emergence of new political opportunity structures at the international level, in particular the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR).

The findings of the thesis provide insight into macro-level changes to international minority protection. By concentrating on the agency of minority groups, the thesis adds to the largely state-centred literature on minority protection. By critically assessing the role of international actors in aiding this norm entrepreneurship, the thesis helps to uncover their limitations, interests and ideational commitments. The findings contribute to norm entrepreneurship studies by considering a unique kind of transnational non-state actor, one that possesses the latent capacity for statehood. The capacity of weak non-state actors to achieve norm emergence even without state support is demonstrated but the deep challenges they face in securing group-specific norms are exposed. On a normative level, the findings give a glimpse of how emerging norms for transnational minority groups could alter conventions of representation in international society, creating post-Westphalian forms of political community. On a policy level, the findings provide some useful inputs on how to strengthen these new forms of political community and how to enable adherence to emerging group-specific norms.

ACKNOWLEDGEMENTS

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ABBREVIATIONS AND ACRONYMS

ACJP - Ambedkar Centre for Justice and Peace
ADEPHCA - Asociación de Desarrollo y Promoción Humana de la Costa Atlántica
ADRM - Asian Dalit Rights Movement
AECI - Spanish Agency for International Cooperation
AFRODES - Asociación de Afrocolombianos Desplazados
AI - Amnesty International
Alianza - La Alianza Estrategica de Afro-Latinamericanos
BLL - Buraku Liberation League
CBC - US Congressional Black Caucus
CEDEHCA - El Centro de Derechos Humanos, Ciudadanos y Autonómicos
CEDET - Centro de Desarrollo Étnico
CEJUDHCAN - Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua
CEE – Central and Eastern Europe
CEMIRIDE - Centre for Minority Rights Development
CERD – UN Committee on the Elimination of Racial Discrimination
CESCR – UN Committee on Economic, Social and Cultural Rights
CCFD - Catholic Committee against Hunger and for Development
CIMARRON - Afro-Colombian National Movement CIMARRON
CIS - Commonwealth of Independent States
COCEN - Council Working Group on Enlargement
CoE – Council of Europe
Commission – UN Commission on Human Rights; European Commission
CONAPA - National Commission of Andean, Amazon and Afroperuvian Peoples
CRC - Convention on the Rights of the Child
CSCE – Conference on Security and Cooperation in Europe
DANIDA - Danish International Development Agency
DDPA - Durban Declaration and Programme of Action
DFID - UK Department for International Development
DG - Directorate General
DLET - Dalit Liberation Education Trust
DNF - Dalit NGO Federation Nepal
DoCip – Indigenous Peoples' Centre for Documentation, Research, and Information
DRC - Durban Review Conference
DRIPS - UN Declaration on the Rights of Indigenous Peoples
DSN-UK - Dalit Solidarity Network UK
ECHR - European Convention on Human Rights
ECLAC - Economic Commission for Latin America and the Caribbean
ECOSOC – UN Economic and Social Council
ECRI - European Commission against Racism and Intolerance
EIDHR - European Initiative for Democracy and Human Rights
ERIO - European Roma Information Office
ERRC - European Roma Rights Centre
ERTF - European Roma and Travellers Forum
EU – European Union
FEDO - Feminist Dalit Organisation
FCNM - Framework Convention for the Protection of National Minorities
FNB – Frente Negra Brasileira

G8 – Group of 8 states
GA – General Assembly
GALCI - Global Afro Latino and Caribbean Initiative
GONGO - governmental NGOs
GRULAC - Group of Latin American and Caribbean states
HCNM - High Commissioner on National Minorities
HRC – UN Human Rights Committee
HRW – Human Rights Watch
IAC - Inter-Agency Consultation on Race in the Americas
IAF - Inter-American Foundation
IASG - Inter-Agency Support Group on Indigenous Peoples Issues
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social, and Cultural Rights
ICERD - International Convention on the Elimination of All Forms of Racial
Discrimination
IDB - Inter-American Development Bank
IDSN – International Dalit Solidarity Network
IEM – UN Independent Expert on minority issues
IIDH - Inter-American Institute of Human Rights
IIDS – Indian Institute of Dalit Studies
IITC – International Indian Treaty Council
ILO – International Labour Organization
ILP - Independent Labour Party
IMADR – International Movement Against all forms of Discrimination and Racism
IMF – International Monetary Fund
INDEPA - National Institute for the Development of Andean, Amazonian and Afro-
Peruvian Peoples
INGO - international non-governmental organisation
IOs – International organisations
IPCN - Instituto de Pesquisas das Culturas Negras
IR – International Relations
IRU - International Romani Union
IWGIA – International Work Group for Indigenous Affairs
LWF - Lutheran World Federation
MDGs – Millennium Development Goals
MG-S-ROM - Committee of Experts on Roma and Travellers
MEP – Member of European Parliament
MNU - Moviemento Negro Unificado
MP – Member of Parliament
MRG – Minority Rights Group International
NAACP - National Association for the Advancement of Colored People
NACDOR - National Conference of Dalit Organisations
NCDHR - National Campaign on Dalit Human Rights
NGO – non-governmental organisation
NORAD - Norwegian Agency for Development Cooperation
OAS – Organization of American States
ODECO - Organización de Desarrollo Étnico Comunitario
ODIHR - Office for Democratic Institutions and Human Rights
OED - Oxford English Dictionary
OFRANEH - Organización Fraternal Negra Hondureña
OHCHR – Office of the UN High Commissioner for Human Rights

OIC – Organization of the Islamic Conference
ONECA - Central American Black Organisation
OSCE - Organization for Security and Cooperation in Europe
OSI - Open Society Institute
POA – Durban Programme of Action
PER - Project on Ethnic Relations
Prepcom - preparatory conference
PFII – UN Permanent Forum on Indigenous Issues
RNC - Roma National Congress
SAARC - South Asian Association for Regional Cooperation
SEE – Southeast Europe
SEPPIR - Special Secretariat for the Promotion of Racial Equality
SIDA – Swedish International Development Agency
SKOKRA - Council of the Organizations and Kumpania Roma of the Americas
Sub-Commission – UN Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities)
TAN - transnational advocacy network
TC - Thematic Commissions
TEN - Teatro Experimental do Negro
UDHR – Universal Declaration of Human Rights
UK – United Kingdom
UN – United Nations
UNDM - UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNDP – UN Development Programme
UNESCO – UN Education, Social and Cultural Organization
UNHCR – UN High Commission for Refugees
UNICEF – UN Children's Fund
UNPO - Unrepresented Nations and Peoples Organisation
US – United States of America
USAID - US Agency for International Development
VISION - Volunteers in Service to India's Oppressed and Neglected
WB – World Bank
WCAR – UN World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance
WGIP – UN Working Group on Indigenous Populations
WGPAD - UN Working Group of Experts on People of African Descent
WGM - UN Working Group on Minorities

CHAPTER 1: INTRODUCTION

Beginning in the 1970s and witnessing more intensity in the recent decade, the international protection regime for ethnic, religious and linguistic minorities has exhibited a shift away from generalised measures for all minority groups to the delineation of more group-specific standards and mechanisms. This thesis intends to investigate this shift. In particular, the thesis seeks to understand the agency of minority groups in stimulating this shift through a process of "norm entrepreneurship". In an in-depth study of two groups, Dalits and Afro-descendants, recent normative innovations in the international protection regime for minorities will be explored. Dalit and Afro-descendant activists both have pursued norm emergence to establish group-specific recognition, standards and mechanisms at the international level. These efforts have helped to build group esteem and increase group leverage vis-à-vis states. This thesis examines three key factors that have been instrumental to this group-specific norm emergence: the establishment of strategic frames and stronger forms of transnational mobilisation; the supportive engagement of international actors; and the emergence of new political opportunity structures at the international level, in particular the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR). Although there is evidence to suggest that these changes are impacting on domestic policy, this thesis will focus primarily on understanding the processes of norm emergence within the international sphere. By concentrating on the agency of minority groups, the thesis also aims to challenge the state-centred orientation of much of the literature on minority protection.

The existing international protection regime for minorities consists of a set of standards and mechanisms created to balance the legitimate interests of minorities and states. Most of these standards and mechanisms have been elaborated with little participation of minorities. The regime lumps together very disparate groups – be they distinct ethnically, religiously, linguistically or culturally, territorially concentrated or dispersed, resident for centuries or newly arrived – with only limited regard for the many factors that distinguish their needs and interests. The protection regime emerges from the historical experiences of minority treaties in Europe, which focused primarily on

national and religious minorities; groups outside this experience often have found it difficult to fit the scope and purpose of the standards to their own context. The international protection regime is, in short, a one-size-fits-all approach to managing diversity that takes little account of diversity itself. While having a universal minimum standard of protection for minorities is important, the compromise necessary to achieve this standard has produced a weak and highly generalised regime that is poorly monitored, frequently ignored and sometimes blatantly transgressed.

Not all minorities are satisfied with the normative landscape constructed by states. They are rejecting the one-size-fits-all approach of the regime and are seeking to maximise attention to their particular interests through the creation of group-specific norms. Group-specific norms are packages of norms (especially rights) that are delineated for – but not necessarily exclusive to – named groups. These new group-specific norms are a response to ill-fitting and/or failed implementation of existing (domestic) norms. They can increase attention to their communities, both from international actors and states, boost the (internal and external) esteem of groups, help to mobilise members, provide increased opportunities for participation and can give priority access to resources for realising their rights.

The process of non-state actors creating new norms has been termed "norm entrepreneurship" in International Relations (IR) scholarship (Florini 1996, 375 and ft 12; Finnemore and Sikkink 1998). The study of norm entrepreneurship can be divided broadly into two stages: norm emergence and norm adherence. This thesis will be concerned primarily with norm emergence, drawing especially from a framework elaborated in Finnemore and Sikkink's article, "International Norm Dynamics and Political Change" (1998). Successful norm emergence relies, *inter alia*, on strategies of 'framing', the development of organisational platforms and the effective use of political opportunity structures. Frames enable actors to present issues and objectives in a way that gives them particular meaning, often embedding them in an existing institutional or normative framework. Minority groups can frame their identities as distinct from general 'minority' categories and can construct transnational identity frames to unite disparate groups under a common agenda. This common identity and agenda is institutionalised through the creation of organisational platforms. These may be new organisations or coalitions of existing organisations and other actors at the domestic and

international levels that engage in transnational social mobilisation. The frames used by these organisational platforms can also give access to existing political opportunity structures or justify the creation of new ones. In the international sphere, these structures come in various forms, including international organisations, world conferences and treaty negotiations. These structures offer minorities formal recognition, strategic support, space for collective action and leverage to influence their governments.

Very few minority groups have sought group-specific norms linked to a transnational identity. Most groups focus on domestic political opportunities to advance their claims, lacking either the interest or capacity to use international fora. Those that are aware of international standards and mechanisms tend to use them only sporadically. They do not seek group-specific norms, regarding the existing norms and mechanisms as satisfactory, or because the motivation, ability and likely success of constructing transnational identities matched by group-specific international standards is low.

There is, nevertheless, a small but interesting trend towards group-specific norms. Indigenous peoples were the first and most successful group to make this move, managing to forge a distinct transnational identity on the basis of being 'indigenous', i.e. original (read pre-colonial) inhabitants, and being 'peoples' entitled to the right to self-determination. Roma have followed suit, uniting several distinct communities under a shared transnational Romani identity. Both groups have accessed a wide array of political opportunity structures, many created exclusively for their group. They have engaged in an important dialogue with states over the meaning of 'peoples' and 'national minorities', respectively, in international law, leading to the adoption of group-specific standards and/or policies. There is now a separate international protection regime for indigenous peoples, whose resources outweigh those allocated for the international protection regime for minorities within the UN, and a plethora of mechanisms at the regional level in Europe that privilege Roma apart from other minority groups.

There are strong parallels between the discourse, framing strategies, organisational platforms and institutions utilised by indigenous peoples and Roma. Two other groups have pursued similar group-specific norm entrepreneurship: the Dalits and Afro-

descendants. Both have mobilised around constructed transnational identities to target international institutions and the states in which they live. They have been successful in achieving recognition, new standards, and/or new mechanisms for group-specific protection at the international, regional and domestic levels.

Dalits have mobilised as a distinct community in India since the 1920s but in the 1990s began a more systematic process of internationalizing their advocacy. The Dalit identity was reconstructed to fit into a transnational group of communities discriminated against on the basis of caste. Key international institutions, such as the UN Sub-Commission on the Promotion and Protection of Human Rights and the UN Committee on the Elimination of Racial Discrimination (CERD), have been instrumental in keeping a focus on caste-based discrimination within the international sphere. Normatively, Dalit advocacy has concentrated on a reinterpretation of the grounds of discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), specifically that concerning the meaning of 'descent' in Article 1.1 defining discrimination. CERD endorsed this view with the adoption in 2002 of a General Recommendation on 'Descent'. An important catalyst for Dalit and caste-based mobilisation was the 2001 World Conference Against Racism. The conference stimulated the development of new partnerships between caste-affected communities across Asia and Africa and with international NGOs, institutionalised by the establishment of the International Dalit Solidarity Network in 2000. The conference also provided a space for Dalits and caste-affected groups to bring global attention to their case and put the spotlight on the Government of India's denial that caste should be discussed at the WCAR.

People of African descent (living outside of Africa) find their transnational mobilisation roots in the Pan-African movement begun at the start of the 20th century. This movement had a principal concern with emancipation of Africans from colonialism as well as a strong civil rights component for Africans living elsewhere. The American civil rights movement had long overshadowed the smaller and more elite focused mobilisation of people of African descent in Latin America, but from the late 1990s, the regional activism in Latin America become more prominent. The increased profile can be linked to the preparatory processes of the 2001 World Conference Against Racism. The political opportunities afforded by the Santiago regional preparatory conference

(prepcom) of the WCAR stimulated a surge in advocacy and united activists under the newly articulated identity of "Afro-descendants". Significant new concessions were recognized for this group, echoing concessions made previously to indigenous peoples in Latin America. The WCAR prompted the creation of new mechanisms at the global and regional levels, such as the UN Working Group of Experts on People of African Descent and increased cooperation with key international organisations, such as the Inter-American Development Bank (IDB).

This short summation shows the many commonalities between these groups. They each have deep historical roots in group-specific advocacy, both domestically and internationally and have gradually constructed a transnational identity out of shared experiences. This identity has been asserted not as an ethnic, religious or linguistic *minority* identity but as a *distinct group* identity. The groups have all managed to undertake sustained transnational social mobilisation and international organisations have served as important political opportunity structures. The WCAR was instrumental in shaping their mobilisation over the last decade. Their advocacy has been oriented to norm emergence - seeking international recognition, standards and mechanisms that are group-specific.

The impact of group-specific norm emergence on the international protection regime for minorities has not been considered fully (Kymlicka 2007, 5). The effect is a fragmentation of the protection regime, initiated first by the transnational mobilisation of indigenous peoples. On a positive note, such fragmentation has been empowering for the groups, propelling international actors and governments to give unprecedented support to the long-neglected needs of indigenous peoples, Dalits, Roma and Afro-descendants. The groups are reconfiguring their relationship with the state, seizing their citizenship and stimulating esteem for identities that have been degraded. Activists have constructed new sets of group-specific rights and mechanisms that are directly relevant to the stated interests and needs of their communities. This has helped make an arguably state-focused protection system more responsive to the views of minorities, especially those not from Europe.

This fragmentation also raises some concerns. Some would argue that group-specific norms 'essentialise difference', particularly by institutionalising difference in standards

and mechanisms. Rather than focusing on general human rights protection, this norm entrepreneurship further marginalises groups from social and political integration. It reinforces structures of inequality by perpetuating and reifying identities used for discrimination. The construction of *universal* group-specific norms restricts local communities from negotiating *particular* forms of inclusion. Another concern is that the core minority protection mechanisms could be weakened by the diversion of resources to group-specific mechanisms. Minorities might be compelled to reframe their identities in an attempt to access these resources; for example, evidence shows that some groups are already making dubious claims to being indigenous peoples to gain advantageous rights (Kymlicka 2007; Lennox 2006). The result is a *de facto* hierarchy of groups with some better able to command attention than others based less on need and more on mobilisation capacity. The transnational mobilisation of these groups also raises questions about representation and accountability, where an elite cadre of activists is influencing a normative and policy discourse of which their fellow minorities are largely unaware. These activists have not always agreed a common understanding of norm emergence, nor do their international allies necessarily share this understanding. This normative discourse has real implications for government action domestically but because mobilisation has been concentrated in the international sphere minorities and government actors at the local level have had little input. As a consequence, they often have less will and/or capacity to meet the expectations set for them within international fora, leaving the efforts at norm emergence without a strong basis for norm adherence.

These are some of the points that will be explored in subsequent chapters. This chapter will set out the analysis and provide some useful background information. The analytical framework of norm entrepreneurship will be introduced, with a particular focus on framing, organisational platforms and political opportunity structures. How these concepts apply to the case of minorities will be considered, beginning with a discussion of probable state motivations for accepting normative standards on minority rights. The concept of 'minority' as a frame and its meaning, in particular as perceived by so-called minorities themselves, will be discussed to help understand motivations for establishing alternative group-specific frames. The evidence of transnational social mobilisation by minority groups will be presented and placed in the context of the general literature on transnational social mobilisation by non-state actors. This will be

followed by a discussion of the relationship between minorities and political opportunity structures, especially those offered within international organisations. The key political opportunity structure in this analysis, the WCAR, will be introduced to provide the necessary background information on the conference and its significance for civil society and states. For comparative purposes, the chapter will then provide a summary analysis of the case of indigenous peoples and Roma, reviewing their norm entrepreneurship successes and challenges. This will inform the case study chapters that follow and offer points for identifying similarities across the cases and the common problems faced in norm entrepreneurship by minority groups. To begin, the methodological approach of the thesis will be outlined.

Learning from the experiences of Dalits and Afro-descendants: Methods and thesis structure

This thesis will draw upon norm entrepreneurship theory, the experiences of indigenous peoples and Roma, and the WCAR as a pivotal political opportunity structure to guide the examination of two group case studies. Dalits and Afro-descendants were selected for analysis because, after indigenous peoples and Roma, they have been the most active and successful norm entrepreneurs within the international protection regime for minorities. An in-depth analysis of the processes of norm emergence in each of the cases can uncover some conclusions about the challenges of establishing transnational mobilisation and group-specific norms for minority groups. The WCAR had a profound impact on the groups in different ways and it offers a unique opportunity to examine how they were able to exercise norm entrepreneurship within the same time and space. That the cases are strongly rooted in particular regions offers another important spatial comparison and the possibility to evaluate the role of regional systems in supporting norm emergence.

The case study chapters will offer a long view of each group in order to demonstrate the historical and contemporary manifestations of their transnational mobilisation and its changes over time. The time period of analysis runs to late-2008, although some key points that emerged during the WCAR Durban Review Conference (DRC) in April 2009 have been included as needed. Given that a principal claim of this thesis concerns the important role of international actors in aiding norm emergence, particular attention

will be given to reviewing the interaction between the groups and international institutions. The aim is to highlight which international actors have been most influential for norm emergence and in what ways they have been influential. Effort will be made to pinpoint agency in the processes considered here, including where possible to name the individual actors responsible for change. The end result is a thick description of norm emergence guided by the analytical framework of norm entrepreneurship.

The empirical analysis is compiled from primary and secondary sources. Internet-based materials of IOs, INGOs, NGOs, and documents issued during the WCAR processes form most of the corpus of primary texts. This was complimented by a series of 28 semi-structured interviews conducted in New York, Washington, D.C., Geneva, London, Kathmandu and Brussels or via telephone and by email communications, and by other personal communications with relevant actors. I also attended the Durban Review Conference, Geneva, 22-23 April 2009, for participant observation. Given the vast geographic and linguistic scope of the case studies, I have selected interviewees on the basis of their deep knowledge of the norm emergence processes in question and their role as an actor in these processes. I have not interviewed government representatives because the main focus of analysis is on the agency of minority groups and international actors in norm emergence. Secondary resources discussing the case study groups have also been used, with much compiled from country-specific analyses. In addition, I have drawn on my work as an Advocacy Officer for Minority Rights Group International for the period 2001-2006, which includes also my participation at the WCAR in Durban. I have verified (and challenged) my own perceptions of events with the record of primary resources and interview responses. My marginal role as an actor in the processes studied here has afforded me exceptional access to information, helped to build confidence with interviewees and offered a first-hand view of norm development during a critical period.

Some connections between the cases will be drawn as appropriate within the case study chapters; however, the bulk of cross-case analysis will be offered in the concluding chapter. There, the common successes and challenges experienced by the four groups will be reviewed. The main challenges to be discussed are: the obstacles in moving from norm emergence to norm adherence; the debates about minority representation and

accountability; the difficulties is constructing viable frames for mobilisation; the role of critical states and other actors; and the ongoing need for increased resources and capacity for norm entrepreneurship. Based on this analysis, I will discuss the policy implications for international actors and governments interested to support the normative claims of Dalits and Afro-descendants. Among the implications are the need to: increase political participation of these groups domestically; invest in long-term sustainable capacity building of all relevant actors; establish stronger accountability mechanisms for norm elaboration and implementation; and maintain and expand international space for groups to advance their normative claims.

Norm entrepreneurship by non-state actors: key concepts and strategies

The concept of "norm entrepreneurship" aims to capture both a process and an outcome: the process is the emergence of new norms for appropriate state behaviour and the outcome is norm adherence. How and why certain norms emerge and others recede is of great interest to those IR scholars that believe norms matter in international society (e.g. Katzenstein 1996; Klotz 1995; Finnemore and Sikkink 1998). Several scholars assert that it is not only state actors (especially hegemonic state actors) that contribute to changes in norms; non-state actors similarly can shape norms, in particular transnational non-state actors (Charnovitz 2006; Risse-Kappen 1995; Boli and Thomas 1999; Finnemore and Sikkink 1998; Barnett and Finnemore 2004). International organisations (IOs), international NGOs (INGOs), and transnational corporations are among those non-state actors that have attempted to influence understandings of appropriate state behaviour. They do this by persuading states to adhere to existing norms and by promoting acceptance of new normative tools like treaties, IOs, and monitoring systems that create new norms or reinterpret existing ones.

Much of the literature on norm entrepreneurship focuses on non-state actors that want to strengthen or create norms pertaining to social justice (Klotz 1995; Keck and Sikkink 1998; Ropp, Risse-Kappen, and Sikkink 1999; Friedman, Hochstetler, and Clark 2005). Researchers emphasise the principled, non-self-interested nature of these claims, in contrast with the self-interested norm creation practised typically by states, corporations or other civil society. For example, Keck and Sikkink's major study, *Activists Beyond Borders* (1998), finds that processes of transnational social mobilisation "often involve

individuals advocating policy changes that cannot be easily linked to a rationalist understanding of their 'interests'" (8).

Norm entrepreneurs rely on three key tools: framing, organisational platforms and political opportunity structures. Each of these concepts draws heavily on social movement theory, which recently has given greater attention to these processes at the transnational level (e.g. Smith, Chatfield, and Pagnucco 1997; Della Porta and Tarrow 2004; Tarrow 2005; Khagram, Riker, and Sikkink 2002; Smith and Johnston 2002). Using these tools, norm entrepreneurs pursue strategies for norm emergence.

Framing:

Frames are an essential tool for constructing collective action across diverse social, cultural and political spaces. They can help actors to "transform other actors' understandings of their identities and interests" (Keck and Sikkink 1998, 17). Frames can change perceptions of existing structures of power and inequality in order "to further undermine the legitimacy of the [political/social/cultural] system or its perceived mutability" (McAdam, McCarthy, and Zald 1996, 8). Framing stimulates greater or different attention to claims by placing issues and objectives within a particular discourse with which the frame is associated. For example, frames can give domestic issues a new international relevance or meaning. In order to move from the domestic to the international sphere, activists must either link domestic issues to broader global frames or diffuse domestic frames across borders. Tarrow (2005) terms the former "global framing" and the latter "diffusion". He cites the anti-globalisation movement as a highly successful "global frame" by being open enough that a diverse range of actors can translate their local concerns into 'globalisation' issues. The human rights frame has served a similar function (Keck and Sikkink 1998, 11-12).

Creating a universal frame is never easy and there are particular challenges of framing in the international sphere. Although global framing can "dignify and generalise claims that might otherwise remain narrow and parochial", it is difficult to achieve because "activists must work within the power structures and political cultures of their own countries" (Tarrow 2005, 75). Agreeing on a shared frame can be a long negotiation process for actors involved. Passy's (1999) analysis of indigenous peoples' mobilisation

identified this as a "communicative interaction" process, drawing from the work of Habermas (1987), whereby groups "try to frame their protest in global terms through a series of discursive acts with the aim of finding compromises or even consensus that allow them to speak with a common voice" (160-161).

Political opportunity structures:

Frames can give access to a wide range of actors, institutions and processes that are otherwise termed political opportunity structures. Political opportunity structures can enable social discontent to become collective social action. In the international sphere, these structures come in various forms, including IOs, world conferences and treaty negotiations. These structures increasingly have formalised mechanisms for participation of non-state actors. They give non-state actors opportunities to engage in dialogue on normative issues, both formally, e.g. through NGO participation in UN meetings, and informally, e.g. via the 'corridor advocacy' of international spaces. They give legitimacy or "certification" (Tarrow 2005, 194) to non-state actors by raising their profile within the international sphere and recognizing their right to participate. They provide opportunities to learn about policy issues and to share relevant domestic information. These structures increase the leverage and visibility of norm entrepreneurs by serving as "a fulcrum for the formation of alliances of different state and non-state actors" (Della Porta and Tarrow 2004, 236). Actors within IOs working towards the purpose for which they are mandated can be important allies for groups that seek to influence state practice. Sikkink and Smith (2002) show that non-state actors working on social issues have increased their engagement with IOs: for example, "the proportion of groups reporting having ties with more than three [IOs] more than doubled from 17 percent in 1953 to 37 percent in 1993 (Smith and Sikkink 2002, 41).

Political opportunities in the international sphere do not always translate into change in the domestic sphere: *domestic* political opportunities also must be favourable. Domestic political opportunities are fewer where state interests are threatened by the goals of norm entrepreneurs, where state-civil society relations are fraught, where the channels for political contention are blocked, or where there is an absence of domestic political allies. Even if domestic political opportunities are open, Sikkink's (2004) work shows that activists may still use simultaneously international political opportunities in an

"insider-outsider coalition" (165) for strategic purposes. Access to political opportunities in the international sphere adds to the leverage of norm entrepreneurs to achieve their goals domestically.

Not all themes or all regions have equal access to political opportunities (Tarrow 2005, 27). Regional institutions are deepest in Europe and some thematic issues are more institutionalized than others, such as human rights. This institutionalisation presents non-state actors with more opportunity structures in the form of invitations for policy input, international meetings, or individual employees of IOs with whom to engage. The space available for norm entrepreneurship at the international level also can expand or contract, usually according to the needs of the states that created the political opportunity structures in the first place.

Norm entrepreneurs, however, are not passive actors reacting to political opportunities – they also seek to transform or create opportunity structures (Sikkink 2004, 154). To paraphrase Wendt (1992), political opportunities are what actors make of them: "opportunities and threats are not objective structural factors but are perceived by activists" (Sikkink 2004, 158 citing McAdam, Tarrow and Tilly 2001). This is evidenced in the establishment of parallel NGO fora alongside world conferences, which create a formal space to make 'declarations', or the lobbying for creation of new mechanisms at the international level such as the establishment of new thematic or country UN Special Rapporteurs, whose reports can simultaneously elaborate and institutionalize norms.

Organisational platforms:

Political opportunity structures provide physical spaces for the emergence of new institutions, coalitions and networks that serve as "organisational platforms" for norm entrepreneurship (Finnemore and Sikkink 1998, 899). These organisational platforms enable transnational social mobilisation and may develop from within existing institutions (such as NGOs) or be spawned for the specific purpose of norm entrepreneurship. One of the most common structures for organisational platforms are so-called transnational advocacy networks (TANs) (Keck and Sikkink 1998). TANs are described as "sets of actors linked across country boundaries bound together by shared

values, dense exchanges of information and services, and common discourses" (Khagram, et al 2002, 7). These actors can include NGOs, INGOs, epistemic communities, church groups, trade unions, political parties or individuals with a personal commitment to the ideas and values espoused by the TAN. TANs are not social movements *per se*, the former constituting a wider and deeper form of social mobilisation, although social movements might use TAN structures. The mechanical function of TANs is primarily to exchange and use information for advocacy purposes but they may also enable the distribution of, *inter alia*, funds and training opportunities, particularly from Northern to Southern members.

TANs serve an important function when domestic political opportunities are blocked. Keck and Sikkink (1998) denote this advocacy cooperation as a "boomerang" model, which occurs where "domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside" (12). Domestic NGOs use TANs to relay information on practice and policy in the domestic sphere and INGOs use this information to influence state behaviour in the international sphere. The TAN structure is also central to "insider-outsider coalitions" where international political opportunities are used in conjunction with open domestic opportunities. Working with political opportunity structures requires a certain set of skills, knowledge and resources. In this regard INGOs play an intermediary role, gathering information on IO activity for redistribution through their networks and sometimes facilitating the physical access to these institutions of other actors through financial or other support (e.g. allowing domestic NGOs without UN ECOSOC consultative status to speak under the recognised INGO's name).

This cooperation is not always smooth. Cultural barriers, institutional variations and differential access to resources undermine efforts to establish global cooperation. INGOs are sometimes accused of profiting from domestic NGO information and partnership to bolster their own credibility and access to resources. North-South structural divisions can be problematic: highly institutionalised movements of the North, operating in similar domestic structures (i.e. Western liberal democracies) have privileged access to financial resources, media and communications facilities; Southern NGOs, usually more linked to grassroots movements, struggle to access these same resources and facilities. There may also be real tension between the *modus operandi* of

North and South actors, with some preferring direct-action, disruptive strategies and others focusing on policy development, lobbying and media campaigns. There may be ideological differences, from Marxist-based analyses of goals and targets to more liberal democratic views. North-South divisions can thus impede genuine coalition building across time and space, both for operational and ideological reasons.

Pre-existing mobilising structures and access to resources also can affect the emergence of organisational platforms. Mobilising structures are "those collective vehicles, informal as well as formal, through which people mobilise and engage in collective action" (McAdam, et al 1996, 3). These may include interpersonal networks, formal organisational structures or even a shared discourse as evidenced by epistemic communities. For example, in the civil rights movement in the United States, the church functioned as a key mobilizing structure (McAdam 1999). In transnational mobilisation, mobilisation structures can be harder to source, given that cross-border cooperation may be entirely novel and pre-existing connections weak. Transnational social mobilisation is aided greatly also by external funding. Funding organisations give support to enable domestic civil society to participate in the international sphere and to cooperate across borders. These kinds of funds are limited, however, and subject to shifting priorities of donors. Norm entrepreneurs therefore find it difficult to attract vital external funding to sustain long-term transnational mobilisation that is needed to achieve their norm-changing goals.

Processes of norm emergence:

The norm emergence process can be disaggregated into various components of action and outcome (Keck and Sikkink 1998, 25 and 201; Price 2003, 584; Reinalda and Verbeek 2001). In the earliest stages, scholars identify agenda-setting actions, when actors manage to get their issues recognised as a topic for international attention. This might be evidenced by international meetings held on an issue-area, interventions made on a topic in international fora or a new research programme. Another action is what this thesis terms, 'norm elaboration', when actors outline the content and scope of proposed norms. This can be an empowering process for norm entrepreneurs, enabling them to define the norms according to their own perceptions and interests. Once elaborated, norms can be "institutionalised" (Finnemore and Sikkink 1998, 900), for

example, in the form of legal standards, policy recommendations or IO-endorsed documents (such as review reports, interventions or mandates). This helps to set the parameters of the norm and gives guidance on how it should be observed. Another outcome of norm elaboration can be the creation of new procedures or bodies to review the implementation of the emerging norm. This can come in the form of international monitoring mechanisms, a new IO, or new domestic institutions charged with monitoring and/or implementing the norm. It is important to note that none of these early stages of norm emergence necessarily require active state consent. Issues can be put on the agenda of international fora wherein states do not determine the agenda; norms can be elaborated in civil society meetings or by independent legal bodies (e.g. international courts); IOs can institutionalise norms without state approval (for example, General Recommendations of UN treaty bodies); and new bodies can be established by IOs with only the tacit consent of states (e.g. UN Special Rapporteurs) or independently by civil society (e.g. new monitoring INGOs).

The desired outcome of norm emergence is norm compliance by target actors, usually states. This is pursued through actions of persuasion and socialisation. The goal of persuasion is to socialise states to comply with the new norms of behaviour, to encourage socialised states to persuade other states to adopt the norm and ultimately to achieve norm "internalisation" where norm adherence is no longer questioned (Finnemore and Sikkink 1998, 895). At the earliest stages this can be evidenced by changes in the "discursive positions" of states (or IOs) (Keck and Sikkink 1998, 25). Norm entrepreneurs aim for a "tipping point" when a critical mass of states follow a norm, stimulating a "norm cascade" when norm entrepreneurship from below is no longer required for states to adhere to the norm – they will do so without mobilised pressure from civil society, the burden of socialisation then shifting to other states or IOs (Finnemore and Sikkink 1998, 902). The process of norm emergence is not necessarily linear – norms may advance or recede – and not all norms will reach a "tipping point" nor be institutionalised before the cascade.

This raises the question of why some norms emerge and others do not. Keck and Sikkink (1998), for example, point both to issue characteristics and actor characteristics in determining norm emergence success. They find that for social justice concerns, actors are most effective where they can frame their issues as constituting a "legal

inequality of opportunity" or "bodily harm to vulnerable individuals" (27). They cite in evidence examples like the international campaign on violence against women and the anti-slavery movement. Finnemore and Sikkink (1998) further pinpoint what March and Olsen call the "logic of appropriateness" (cited at 912, March and Olsen 1998, 951) in determining how targets will respond to proposed norms. Where norm entrepreneurs can frame their issues "within the standards of appropriateness defined by prior norms" they will be more successful (*Ibid*, 897). To achieve this, a strategy of "adjacency" is used, whereby "activists work hard to frame their issues in ways that make persuasive connections between existing norms and emergent norms" (*Ibid*, 908).

Actor characteristics are also crucial to norm emergence success. Researchers find that norm entrepreneurs are more successful where they can increase their influence by asserting authority. Price (2003) summarises three key sources of authority: "expertise, moral influence and claim to political legitimacy" (587). Expertise is based on knowledge of the issue, typically exhibited by epistemic communities. Their normative and policy recommendations hold influence because they are perceived to be informed by (independent) expertise. Moral influence derives from perceptions that norm entrepreneurs are acting for principled values not tied to their own self-interest (Keck and Sikkink 1998). Norm entrepreneurs are thought to hold political legitimacy because they claim to represent constituencies affected by the proposed norms. The mechanics of this representation, e.g. through transparent processes of election and accountability, is sometimes critiqued and norm entrepreneurs are vulnerable to accusations that their 'representativeness' is dubious (Price 2003, 590).

The characteristics of states and their consequent motivation to accept norms also are considered in the literature. Ideational and rational motivations are debated, often concluding in many cases that both affect norm emergence. Beyond material considerations, Finnemore and Sikkink (1998) posit that states will be more readily socialised to norms on the basis of legitimacy, conformity and esteem (903). Legitimation pertains to state identities – where states are concerned about their reputation internationally or domestically they may be more willing to adhere to certain norms, particularly where the norm is seen to be adopted by successful and desirable models of statehood. Conforming to the norm buys the state into this club of successful and desirable states. Esteem speaks to the level of the individual, such that individual

state actors may want to act according to norms that make them feel good or be thought well of by others. This effect may be particularly strong where principled issue norms are concerned and the "logic of appropriateness" compels state actors to see these norms as desirable, positive and appropriate behaviour. These factors are difficult to test empirically; constructivists rely on methodologies such as process tracing (Checkel 2005), which can uncover perceptions and motivations by individual actors.

Rational factors need also be considered, even when ideational concerns appear to rise above them. The configuration of power among states can have a significant impact on what norms emerge and when. Finnemore and Sikkink (1998) acknowledge that certain "critical states" can have a positive or negative effect on norm emergence. Critical states are "those without which the achievement of the substantive norm goal is compromised" or those that "have a certain moral stature" that may impact strongly on norm adoption by other states (Finnemore and Sikkink 1998, 901). In a similar way, the influence and interests of global or regional hegemons, former colonial powers or powerful neighbouring states can impact on the extent to which norms will be accepted by critical states or others. The position of the state in international society also affects socialisation possibilities. For example, 'pariah' states may have little engagement within the international sphere, may restrict access to outside information, and may prevent international travel of civil society activists. At an operational level, many international institutions are composed of states' membership on a rotating basis: thus the possibilities for successful norm emergence alters according to which states have a seat at the table (or are chairing) and the interests and identities they represent. This is evidenced in policy issues made a priority by states holding EU Presidencies, or in which states are members of the UN Human Rights Council. Where the interests and priorities of leading or participating states coincide with those of norm entrepreneurs, the possibility for successful norm emergence expands.

Norm entrepreneurs have various tools at their disposal to persuade states and IOs despite their weak position in international society. Social movement theorists identify a set of processes or forms of action that all movements draw upon for exerting their contention. Charles Tilly (2004) calls these "the social movement *repertoire*" (3). In the domestic sphere, this most commonly includes such forms as marches, public meetings, petitions and demonstrations. Keck and Sikkink (1998) identify a repertoire

used successfully by TANs in the boomerang process consisting of: information politics; symbolic politics; leverage politics; and accountability politics. Information politics involves the transfer of information (including not only facts but also especially personal "testimonies") from the domestic sphere to the international sphere in order to bring pressure on governments (*Ibid*, 19). Symbolic politics uses powerful symbolic events, symbols or stories to stimulate action and/or to reframe issues (*Ibid,* 22). Leverage politics sees TANs using material and moral leverage to bring pressure to bear on targets. Material leverage is most common in the form of economic and security sanctions or restrictions on access to international loans. Activists work with key states or IOs to harm target states through restrictions on material goods they value. Moral leverage comes from shaming states publicly, assuming that a state's concern over its international reputation may prompt a change in behaviour (*Ibid,* 23-24). Accountability politics brings attention to states' failed voluntary commitments evidenced in hard and soft international law, domestic legislation or other policy documents and public statements made by state actors (*Ibid,* 24). Tarrow (2005) builds on Keck and Sikkink's emphasis on information to consider also "institutional access" (147). Institutional access refers to social movement actors' use of international institutions to assert their claims, such as bringing cases to international courts or participating in public meetings of international institutions (*Ibid,* 152-154).

There are many processes and variables that contribute to successful norm entrepreneurship, including the capacity of actors, external opportunities and state interests. The next section will consider these points as they apply in the case of minority groups.

Norm entrepreneurship by minorities: (re)-constructing the international protection regime *for* minorities

Norm entrepreneurship by minorities reflects many of the above characteristics but offers a different perspective on the study of norm emergence. Norms on minority rights stem from a complex mixture of rational and ideational concerns of state actors, including interests in security, the management of diversity and resource implications. The 'minority' frame is problematic for many groups but also necessary for accessing

certain rights and political opportunities. The organisational platforms of minorities are also distinct because of the difficult issue of representation. How and why groups come to diverge from the minority frame, create new organisational platforms and use political opportunity structures will be introduced here and detailed in the case study chapters.

Specific challenges to norm entrepreneurship by minorities:

Minorities face some particular challenges that distinguish them from other non-state actors following principled issue norm entrepreneurship. First, it cannot be said that they act without consideration to their own interests; indeed, the motivation to change the minority protection regime stems in part from a belief that the current regime does not reflect their interests enough. This raises questions about their 'expertise' and 'moral influence'. Minorities are deeply and personally aware of the norm violations that affect them but their self-interest in those norms may give the impression they are ill disposed to serve as objective authorities on norm development in the manner of epistemic communities. Discriminatory attitudes can also impact on their perceived capacity. Although their actions might include principled aims (such as universal recognition of minority rights), they will often be perceived to be advocating not for universal values but for benefits to their own group. Even when embedding their claims in the universal human rights framework, society might not see accommodation of minority claims as a problem of the common good nor see how they too would benefit from the remedies.

The relationship between norm entrepreneurs and the constituents that will benefit from norm entrepreneurship is also specific, creating problems for 'claims to political legitimacy'. Minorities are seeking norms for a distinct kind of community, a community that could form a new sovereignty entity. This leads to an assumption that minority norm entrepreneurs must somehow be 'representatives' *of* their communities, rather than merely advocates *from* these communities. The burden of democratic accountability is arguably higher than for other norm entrepreneurs. Advocates on landmines or the environment are not required to demonstrate their authority within any community they intend to support; even women's rights activists are not held to the same accountability expectations as minorities (women face critiques on class-based or

North-South representation). Within the international sphere, minorities are typically represented by NGOs but the concept of 'representation' in the case of minority-specific NGOs can be problematic: is the NGO specifically mandated by the community to represent them?; in what way are the NGOs accountable to the community?; are there other decision-making structures within the community which the NGO does not take into consideration (e.g. elder groups)? Moreover, minorities who are elected government officials would be more inclined to focus their attention on domestic political opportunities than on international (advocacy) fora. Many groups that are territorially concentrated may possess the nascent structures of statehood that far surpass NGO organisational limitations yet for the most part they are not able to represent themselves supranationally through forms of so-called "paradiplomacy" (Aldecoa and Keating 1999). The 'leaders' that participate in international meetings are usually self-appointed advocates and therefore may or may not be viewed as legitimate representatives by their own communities. There can be tension when those who are effective international advocates are not those who hold authority at the grassroots level. These issues have come to the fore in the UN Permanent Forum on Indigenous Issues (PFII) and also the European Roma and Travellers Forum, both institutions established for a more structured interface between IOs and the respective groups but each challenged by issues of legitimacy, transparency and accountability.

Even if the minority actors do have legitimacy they may be operating without the necessary resources and infrastructure to properly consult or disseminate information on actions being taken in the international sphere in the name of the community. Because of the general conditions of marginalisation experienced by many minority groups in society, minority NGOs typically have limited advocacy capacity and minimal institutionalisation. Getting funding for minority advocacy can be difficult – many donors do not want to allocate funds to specific ethnic, religious or linguistic identity groups for fear it will be viewed as political interference in the state. Norm entrepreneurs for more generic groups like women or persons with disabilities or even 'vulnerable groups' are more palatable partners for cooperation. Private donors like the Ford Foundation and the Open Society Institute (OSI), or international NGOs like Minority Rights Group International (MRG), Human Rights Watch or Global Rights, have provided much of the seed funding to norm entrepreneurship for the groups studied here before bilateral and multilateral donors came on board.

Regarding issue characteristics, states can be less open to persuasion by minority groups than other civil society actors because the issues they raise touch on fundamental 'logics of appropriateness' concerning state identity, legitimacy and territorial integrity. Minority demands may be regarded as politically destabilising, challenging the myths of national homogeneity and the right of self-determination of the state. Kin states that could be natural allies might be reticent for fear of facing accusations of irredentism. Conversely, kin state support can be seen only as self-interested rather than as principled support to global norms. Norm entrepreneurship by minority groups that are territorially concentrated might be perceived as the first steps towards secession.

Asserting minority rights is often viewed as an affront to national unity and a (harmful) process of 'othering' the group from society at large and 'essentialising difference'. Minorities who might benefit from new group-specific norms can consider them divisive and favour strategies of inclusion based on equality not difference. The group-specific goals of norm emergence may be thought to go well beyond rectification of 'legal inequality' and even appear superfluous given that legal equality provisions that prohibit racial discrimination are nearly universally entrenched.

Finally, minority identities often have negative connotations, pushing members of the group to not wish to so identify. Norm entrepreneurs face the prospect that the norms they help to create will be unclaimed because the intended beneficiaries reject the identity to which the norms are attached.

Accepting norms for the protection of minorities: rational and ideational motivations

Under the auspices of the UN and various regional organisations, several standards and mechanisms concerned with ethnic, religious and linguistic minorities have been adopted by states. These standards are elaborated as rights of persons belonging to minorities within the broader international human rights framework. They are structured around four key norms: the right to exist; the right to non-discrimination; the right to protection of identity; and the right to participation. The rights are contained in a number of international standards adopted in the post-World War II era, some legally binding and others constituting political declarations. The first pillar, *the right to exist*,

is embodied in the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (Thornberry 1991). Although the Convention is not limited to protection of minorities, the dynamics of genocide are such that it is ethnic, religious or linguistic minorities that are targeted most frequently in this way. The same applies to discrimination against minorities: *the right to non-discrimination* is recognised by the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (ICERD), adopted as a universal protection mechanism but from which minorities can benefit significantly. The *right to protection of identity* is at the heart of Article 27 of the International Covenant on Civil and Political Rights (1966) (ICCPR), which reads:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The meaning and purpose of Article 27 (expressed similarly in Article 30 of the Convention on the Rights of the Child (1989) (CRC)) was elaborated further in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM), adopted by the General Assembly in 1992. The Declaration provides an extended list of rights around each of the four pillars in addition to details on appropriate measures by states to give effect to these rights. Herein the fourth pillar on *the right to participate* is given attention, calling upon states to recognise the right of persons belonging to minorities "to participate effectively in cultural, religious, social, economic and public life" (Article 2.2) and "to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live" (Article 2.3). To these universal standards on minority rights we can add several regional standards. The Council of Europe has a Framework Convention for the Protection of National Minorities (FCNM) (1995), and a European Charter for Regional or Minority Languages (1992); the Organization for Security and Cooperation in Europe (OSCE) has minority-specific standards in its political declarations, principally evidenced in the 1990 Copenhagen Document. Various monitoring mechanisms review and advise on the implementation of these standards, including treaties bodies, the UN Forum on Minorities (and former Working Group on Minorities (WGM)) and the UN Independent Expert on minority issues (IEM).

The motivations of states in accepting these norms have both rational and ideational elements, rooted also in the complex history of international debates on the nation-state and racism. Security interests have been a major factor, evidenced not least in the fact that key standards have emerged in the context of heightened security concerns pertaining to conflict with minorities: for example, the UNDM and FCNM were adopted in the uncertain post-1989 climate predicting ethnic fragmentation of states (Jackson Preece 1998). Security motivations are less obvious in the two case studies. Afro-descendants and Dalits have in their history some incidents of violent agitation against the state, and even some claims to territorial sovereignty, but these have been more symbolic than decisive and, with the possible exception of Maoist movements in South Asia, these factors are not evident in the contemporary period. State motivations in accepting (or rejecting) their demands are not explained well either by economic interests. These groups are among the poorest in the world. It could even be argued that states benefit by pushing minorities to fill low-waged positions and by limiting their title to lands ripe for exploitation. Poverty alleviation, affirmative action and increased access to education, housing and health feature strongly in emerging norms for these groups, all of which require a significant redistribution of resources that may not be in elite interests.

Legitimacy has been a motivation: for example, the proposals for an article on minorities in the Universal Declaration of Human Rights (UDHR) (subsequently rejected) and later in the ICCPR, were championed especially by the Soviet Union and Yugoslavia, both with particular interests to portray to domestic constituencies their concerns for the protection of (minority) nations and nationalities. Legitimacy appears also to be an important factor in the case studies examined here. For example, the adoption of international commitments to address the concerns of Afro-descendants has coincided with domestic processes of democratisation beginning in the 1990s. In the case of the Dalits, domestic attention to their rights in India and Nepal has emerged in the context of decolonisation and internal conflict.

The impact of conformity on acceptance of minority rights norms is less clear. For example, in the context of the EU accession process the adoption of standards like the FCNM was considered an essential step in fulfilling the Copenhagen criteria requiring,

inter alia, "respect for and protection of minorities". To be a successful EU member state was to protect minority rights (even if several prominent EU members like France and Belgium have not ratified the FCNM) (Hughes and Sasse 2003). The Copenhagen criteria are widely regarded as measures to prevent ethnic conflict, however, and cannot be seen independently of this security motivation. States joining the Council of Europe often ratify the FCNM, suggesting that adopting minority rights standards represents a commitment to European values. In the case studies for Dalits and Afro-descendants, the identities of critical states are important. Brazil used the WCAR and reforms vis-à-vis Afro-Brazilians as a way of bolstering domestic legitimacy but also to signal its moral leadership in the region. The Government of India exerted great pressure to keep caste-based discrimination out of the WCAR and off the international agenda fearful in part that the debates might damage its preferred reputation as a liberal democratic state. In *Multicultural Odysseys* (2007), Will Kymlicka explores the issue of conformity by examining the global spread of liberal multiculturalism (of which the protection of minorities is a key component). He is not conclusive as to whether conformity with these norms is a necessary condition for being accepted as a liberal democratic state, given divergent practices on accommodating diversity even within Western states. He does argue convincingly that at a minimum this is the view being espoused by IOs, whose own (mis)perceptions of liberal multiculturalism guide their censure or praise of state behaviour and institutions.

The role of esteem and moral convictions cannot be ignored either. This was at play in the proclamation of the UN to remain committed to "the fate of minorities", as evidenced by the General Assembly resolution of the same name adopted on 10 December 1948.[1] It is true that the attention given to individual human rights over protection of minority rights (as under the League of Nations minority treaties system) was in part motivated by a security interest in preventing irredentism like that pursued under the Nazi regime. At the same time, the pogroms and Holocaust "shocked the conscience of mankind", prompting the founding member states of the UN to make attention to minorities a priority issue for the Commission on Human Rights with the creation of its Sub-Commission on the Prevention of Discrimination and Protection of Minorities. This ideational commitment was also evidenced in the swift adoption (if not universal ratification) of the Genocide Convention. The preamble states, "to liberate

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[1] UN Doc. General Assembly Resolution 217c (III) (10 December 1948).

mankind from such an odious scourge, international co-operation is required", and genocide was thereby legally recognized as an international crime punishable under universal jurisdiction, challenging norms of sovereign authority and immunity.

The crime of genocide is one of a short list of so-called obligations *erga omnes*, those acts so egregious their prohibition is considered part of customary international law. The crimes of, *inter alia*, apartheid, slavery, and racial discrimination are also on this list.[2] This is important to note in the context of this analysis because they represent an interesting conversion of norms pertaining to the treatment of minorities. Genocide, slavery, apartheid and racial discrimination are not committed exclusively against minorities but more often then not it is minorities that are the victims. From the perspective of assessing esteem in norm acceptance by state actors, these are also among the most heinous crimes for which an individual can be accused, all of which resurface in the Rome Statute of the International Criminal Court (see Article 7.1). Minorities can benefit from this in their efforts at norm emergence. These norms have influenced the "logic of appropriateness" in the adoption of subsequent standards for the protection of minorities – indeed, both genocide and racial discrimination are explicitly mentioned in the preamble of the UNDM. The minority groups detailed in the case studies have been victims of most or all of these crimes. Their appeals to the esteem of state actors tap into feelings of moral responsibility to provide restitution for crimes of the past and to prevent these crimes in the present. Afro-descendants have made strong calls for reparations for the slave trade, Dalits have described their experiences as contemporary forms of apartheid, and both have attributed their situation to the consequences of racial discrimination.

The norms against these practices are so strong that no state actor would openly admit to committing them. Nevertheless, these practices persist. This is particularly true of racial discrimination. Rather than admitting that racial discrimination is a problem domestically, many state actors have simply denied they are racist at all, often explaining blatant inequalities experienced by minority groups as a consequence of social or economic underdevelopment. At a rhetorical level, states can thereby maintain

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[2] On obligations *erga omnes* see, *Barcelona Traction, Light and Power Co. Case (Belgium v. Spain)*, International Court of Justice Reports 1970, 3.

the illusion of norm adherence while at a practical level attribute the effects of discrimination to other causes. In the end, the esteem of state actors remains intact.

This denial of racial discrimination has proven to be a barrier to norm entrepreneurship by minorities. It has made otherwise open domestic political opportunities more closed to groups who seek to raise these issues. Where states are not willing to accept there is a problem it is difficult to persuade them to create new norms to address it. Racial discrimination has long been a subject of international discourse but that discourse has focused primarily on inter-state relations rather than domestic obligations to individuals and groups (Banton 2002a; Lauren 1988; Jackson Preece 2005). The discourse on anti-racism in the UN quickly became a fault line between Northern and Southern states and a proxy for anti-colonial rhetoric. As newly independent former colonial states joined the UN as members, their agenda for reform concentrated in part on the elaboration of measures for combating racial discrimination. This is evidenced in the adoption of ICERD in 1965. The treaty was designed to protect the individual from discrimination but the language of the preamble hints at other motivations: the preamble makes specific mention of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and reaffirms that discrimination "is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples" (cited by Banton 1996, 54). In the debate over the content of the convention, the summary record reports "certain members…felt that the convention should recognize the intimate relationship between manifestations of colonialism, which continue to affect millions of people, and racial discrimination" (*Ibid*, 56).[3] Among the members supporting this position was the Soviet Union, which aligned itself strategically with the newly independent post-colonial states in opposition to the Western group, largely comprised of former colonial powers. Thus, debates on the international legal prohibition of racism were never far removed from the inter-state politics of the age. Racial discrimination in many states was more prominent as a foreign policy issue than a domestic policy issue. The only cases of consistent naming and shaming of states were South Africa for apartheid and Israel's occupation of Palestine. For many state actors, to admit to practicing racism was to equate their actions with those of these 'pariah' states.

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[3] See UN Doc. E/CN.4/873, para. 29.

This attitude continues to impact on state perceptions of legitimacy, conformity and esteem. The Government of India refused to accept they were racist by denying that caste-based discrimination had anything to do with race *per se*. In Latin America, states have relied heavily on the myth of 'racial democracy' to ignore the stark inequalities that persist along racial lines. To persuade state actors, especially those at the local level, that they are racist or complicit in racism continues to undermine the success of norm emergence and adherence. It is for this reason that the 2001 WCAR was so crucial – it pushed states into an open dialogue on race with civil society in an unprecedented way.

The gap between acceptance of emerging norms at the international level and adherence to norms for minority protection domestically revealed in the case studies, however, points to a two-level process of norm cascade. The rational and ideational motivations for norm adherence seem to differ in the international and domestic spheres, and even at different levels domestically. The cost of norm adherence in the international level can be low when compared to the costs domestically. For example, whereas actors in ministries of foreign affairs may be compelled by legitimacy and esteem internationally to admit to failures at home and thus promote emerging norms in international fora, the material implications of implementing those norms domestically may be high and burden ministries not privy to international commitments that affect them. Governments have endorsed norms at the regional and global levels, even creating domestic institutions to implement these norms but have not taken next steps towards norm adherence. These next steps require resources and might have implications for the ideational motivations of state actors. For example, it may be less costly to the individual esteem of a foreign office minister to acknowledge racial discrimination than to the esteem of a local government actor directly responsible for combating racism, who may be implicated personally as 'racist'. For this local actor, esteem is preserved best by ignoring the realities of racial discrimination and by attributing failures to the minority groups themselves and/or a non-group-specific cause such as underdevelopment.

This point requires further development but will not be a key focus of the thesis. It is noted here because it accounts for the evidence that norm emergence is not translating well into norm adherence in the case studies. To be understood more thoroughly, it

requires extensive analysis of domestic dynamics of norm adherence as well as in-depth interviews with state actors working in the international sphere; both of these issues are beyond the scope of this thesis, which aims to concentrate on minority agency in norm emergence at the international level.

The standards and mechanisms that already exist constitute an important normative framework to guide the relationship between minorities and states. This normative framework matters to minority groups. Minorities are often lacking the power to influence decision-making in the state. Even in democratic polities, the legitimate processes of majority voting can overrule the interests of minorities. Norms can provide leverage in a domestic system that is structurally unfavourable to minorities. Through processes of "accountability politics" (Keck and Sikkink 1998) minorities can use international law as a universal standard baseline for state practice in order to highlight gaps in adherence and push for change.

The international protection regime for minorities is not without controversy, however. The regime is structured on the basis of individual rights, not collective rights, thus limiting the ability of minority groups to make claims *qua* groups, including to the right to self-determination (of peoples).[4] The only legally binding provision specifically for minorities at the international level is contained in Article 27 of the ICCPR (and Article 30 of the CRC). Where minority rights are elaborated more fully in the UNDM the language used suggests recommendation rather than obligation on the part of states: states 'shall' and 'should' take measures to protect minorities, rather than minorities have 'rights to' those measures being taken. The WGM was replaced in 2008 by a smaller and arguably weaker UN Forum on Minorities. The newly appointed Independent Expert on minority issues is an expert to the UN High Commissioner for Human Rights, rather than reporting directly to the General Assembly or Secretary-General (as is the case for other similar mechanisms) thus conferring lower status to the position. The regime also lumps together very disparate groups – the needs of linguistic minorities are distinct from those of religious minorities, while national minorities may have stronger claims to, *inter alia*, territorial autonomy, a factor not considered directly in any of the minority rights provisions. The possibility of groups to claim the rights is determined in large part by whether states accept them to be minorities; this safeguard is

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[4] See common Article 1.1. of the ICCPR and ICESCR on the right to self-determination of peoples.

built into Article 27, which is said to apply "[i]n those States in which ethnic, religious or linguistic minorities *exist*" (emphasis added). International mechanisms have been challenged by state willingness to acknowledge even this basic starting point. [5]

Who is a 'minority'? Strategic framing of minority identities

The former OSCE Higher Commissioner on National Minorities (HCNM), Max van der Stoel, once famously said "I know a minority when I see one" in response to a question regarding how one might legitimately identify a minority group. His response touches on one of the most challenging aspects of the international protection regime for minorities, namely, determining who are minorities. The answer is important because it dictates which groups have rights as minorities, rights that pertain to material interests. Minority status is socially constructed, as is the meaning of the term itself.   The identity label has an intersubjective quality, requiring both group and state acceptance before the rights claims can be made successfully. This dynamic creates real tension between minority groups and states, while IOs often take up the role of mediating the contending views through expert observations and providing space for the debate to happen.

There is no universally accepted definition of "minority" either in law or in practice. [6] What has evolved is a balance between objective and subjective criteria that define groups as minorities. Objectively, groups must share a common ethnic, religious or linguistic identity; they must be 'non-dominant' in the political, economic and/or social spheres; and they may or may not be citizens of the state in which they live. Subjectively, they must have a desire to continue their collective identity and a wish to self-identify as members of a 'minority' group. This last criterion encapsulates the 'principle of self-identification', an important caveat. The principal serves as a safeguard against states that would deny the existence of persons belonging to minorities within their territory. It also recognises the freedom of groups to reject the minority identity label on an individual or communal basis.

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[5] The interpretation of the article by the UN Human Rights Committee has tried to establish that the existence of a minority group must be determined by fact and not merely by a decision of the state. See Human Rights Committee, *General Comment No. 23 on the Rights of Minorities (Article 27)*, (UN doc. CCPR/C/21/Rev.1/Add.5, 1994): para 5.2.

[6] See the proposed but rejected definitions of Francesco Capotorti (UN Doc. E/CN.4/Sub.2/384/Rev.1 (1979)) and Jules Deschênes (UN Doc. E/CN.4/Sub.2/1985/31 (14 May 1985)). See also the summary document on proposed definitions, UN Doc. E/CN.4/1987/WG.5/WP.1 (14 November 1986).

The category of minority has fragmented significantly over time, now encompassing a host of sub-groups. The WGM has said that the UNDM can apply to national minorities; ethnic, religious or linguistic minorities; indigenous peoples; migrant workers; refugees; immigrants; and non-citizens.[7] With the exception of 'indigenous peoples', these identity categories have been elaborated from above; that is, the groups themselves did not collectively organise to assert a new identity label. Rather, the labels have emerged from inter-state discourse (usually resulting in standards pertaining to groups) or from expert discourse, such as in the UN Sub-Commission on Human Rights. Consequently, many groups so-labelled have had little input into how their identity is framed or the limitations of that frame.

The minority frame can be both empowering and disempowering for groups. When groups claim they are a minority they can access an existing set of rights, institutions and meanings associated with the term. Outwardly, as a frame for social mobilisation it can therefore be highly instrumental. Inwardly, it is not a value-neutral term, however, and this can affect the desire of a group to so-identify. In English, for example, the meaning of the term 'minority' can have negative connotations (such as weakness, smallness, marginal) depending on etymology and/or social and political usage.[8] When groups say they are minorities, as opposed to, for example, nations or peoples, they tacitly acknowledge that they are in a position of less power. The frame imposes limitations on their rights established by the confines of the international protection regime for minorities, limitations created in the interests of states.

Some groups are rejecting the term minority and opting instead for the construction of new identity frames and/or the adoption of other identity frames, such as 'indigenous

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[7] *Commentary of the Working Group on Minorities to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.* UN Doc E/CN.4/Sub.2/AC.5/2005/2, (4 April 2005).

[8] The origins of the term 'minority' in English are illustrative. The Oxford English Dictionary (Oxford University Press 2000) indicates that minority in its present usage can refer to "any identifiable subgroup within a society, *esp.* one perceived as suffering from discrimination or from relative lack of status or power". The word minority in English was first used in the 14th century to denote "[t]he period of a person's life prior to attaining full age; the state or fact of being a minor". It was subsequently used to denote "[t]he condition or fact of being smaller, inferior, or subordinate in relation to something else". The word was then often used from the early 18th century to describe a political group not holding power, "whose views or actions distinguish it from the main body of people". From the mid-19th century the word 'minority' took on the meaning of "[a] small group of people differing from the rest of the community in ethnic origin, religion, language, etc.".

peoples'. Some seek empowerment in a new identity frame that is unique to their experiences, regardless of whether this impedes their access to the rights and opportunities of the minority frame. The new frame can reflect better their cultural and historical identity as they see it. This can build group esteem, by distancing members from the negative connotations of 'minority' and constructing positive connotations in the new identity frame. From a rational perspective, a group may also find that an alternative identity frame affords greater rights and opportunities. Identity frames such as 'peoples' or 'national minorities' are attached to legally binding rights in international law and to various kinds of state practice. A group may wish to re-frame its identity from 'minority', with a limited set of rights, to 'peoples' with a different set of rights as part of an interest maximising process. For example, Kurds in Turkey could legitimately claim status as national minorities but the discourse of Kurdish political activism often uses instead the identity frame of peoples, implying their 'stateless-nation' status. External actors cannot easily dissect ideational interests from rational interests in identity framing and often both motivations exist. The case is illustrated well in the words of one Afro-descendant leader from Colombia:

> 'Pueblo/s afrodescendiente/s' is definitely more effective [than 'minority'] in political terms. Why? Because not only the leaders but also the communities see the word 'minorities' ("minorías") as a word that minimizes their socio-economic problems. For instance, it is common to hear in Latin America sentences like "Afro-descendants have many problems, but they are just a minority, and we need to solve the problems of all people in the country or region". It is important to add that the word 'minorities' is also (mainly) seen as a measure of comparison (only in demographic terms), and many leaders don't like it because of that.[9]

It is clear that the minority identity frame is not sufficient in many cases to accurately reflect either the character, the needs or the objectives of the group.

A shared ethnic, religious or linguistic identity serves as a powerful mobilising frame but these identities contain much internal variation that can undermine attempts to establish a unified outward identity, particularly on a transnational level. The frame can be challenged by insiders and outsiders; indeed, the principle of self-identification embedded in the minority rights discourse recognises the right of communities to name themselves and assert their distinctiveness against the forces of homogenisation. The

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[9] Personal communication with Leonardo Reales. March 2006.

Roma in Europe, for example, self-identify into several groups such as the Sinti, Manush, Kale, Rudari and have associated groups such as the Ashkalija, Egyupti and Travellers (Klimova-Alexander 2005, 30-31); some groups are even reclaiming the 'gypsy' identity label, in part to distinguish themselves from ethnic Roma. The indigenous peoples' identity frame has fit less well in the regions of Africa and Asia where indigeneity is not so distinct and where post-colonial states are less willing to countenance group claims to be colonised 'peoples'.

The main purpose of forging these new transnational identity frames is empowerment, particularly to increase the leverage of the group vis-à-vis the state. By distinguishing themselves from minorities in the main, the groups begin to have a justification for separate standards, mechanisms and policies. These can give privileged access to resources, representation and participation. By making the identity frame as transnational as possible, they also justify attention by IOs to their concerns. When small and marginalised minority groups associate with a particular transnational identity frame, they are accessing an international network that can build esteem and alter relations with the state(s). No longer are they a unique and isolated group; they are part of that transnational community of indigenous peoples, Roma, Afro-descendants or caste-affected groups. They are less confined by domestic power structures and empowered by a diaspora, one of individually weak actors but with a strong collective voice. In sum, framing their identities as a minority can bring certain advantages; framing as part of a distinct *transnational* minority can bring even greater advantages.

Transnational social mobilisation by minorities:

Transnational social mobilisation of minorities occurs where minorities with a shared identity normally residing in separate states jointly take action in the international sphere. This mobilisation is *social* mobilisation to distinguish it from other kinds of mobilisation that may have distinctly cultural, economic or combative purposes and to distinguish those minorities who are non-state actors. A vast literature on ethnic conflict, power-sharing, irredentism and secession exists already to examine the nature and scope of mobilisation by minority groups to engage in conflict or governance. This is an important body of work but it has ignored other forms of mobilisation by minority

groups that are not only more peaceful but arguably more constructive than combative or narrowly political strategies.

Transnational mobilisation for social justice is not a new phenomenon. Social movements, INGOs and transnational coalitions of actors have long been active beyond the domestic sphere in their efforts to achieve change on global and/or local issues (Seary 1996; Keck and Sikkink 1998; Chatfield 1997). Among the earliest social foci of international NGOs have been anti-slavery, women's suffrage, labour rights and humanitarian assistance. The transnational mobilisation of non-state actors has been aided greatly over time by innovations in transportation and communication technology that have made time and space less of a barrier to collective social action across borders.

No transnational social mobilisation has occurred on the basis of the overarching identity frame of 'minority'. Despite the shared experiences of marginalisation and identity, the divergent social, cultural, historical and political experiences of minority groups have never been united in a global alliance. Groups in different regions are embedded in different historical constructions of diversity and state formation, from the idea of national minorities in ethnic-nation states (e.g. the Hungarians in Romania), to immigrant groups in civic states (e.g. north Africans in France), to highly fragmented ethno-linguistic communities in post-colonial states (e.g. India, Nigeria). This produces a wide spectrum in terms of how governments are disposed to minority rights advocacy. In Africa, for example, even the concept of 'minority' is contested, not least because the term is associated with colonial governance. There are also very practical divisions between categories of minority groups: for example, territorially concentrated ethnic minorities will be more likely to focus on land rights and autonomy issues than geographically dispersed religious minorities facing restrictions to the expression of their religious identity. The common ground, i.e. discrimination on the basis of identity, may be hard to find amid the particularities of each case. There are very legitimate reasons also why different minority groups should have greater entitlements than others, given the size of the group, the degree and nature of marginalisation faced and/or the historical place in society. In addition, many minorities are marginalised, poor and/or politically impotent. To mobilise resources, access information, create organisational structures and make international alliances is already a struggle for civil society actors who do not have to overcome these additional barriers.

Similarly, there has not been a common issue, such as access to mother tongue education, which has stimulated minorities from diverse experiences to form transnational alliances. North-South differences, regional differences and cultural barriers play a part in this. Groups in the North, for example, particularly in Europe, may have an easier claim to mother tongue education where resources are less stretched and several precedents for this kind of education exist, including as recognised in the regional standards on minority rights. In Asia or Africa, minority groups may prioritise equal access to education, considering mother-tongue provision of this education as a much longer-term goal (or unnecessary). Regardless of these caveats, minority groups may understand that they can better maximise their interests without creating a global alliance. The women's movement, for example, has faced many of the same barriers to mobilisation as minorities but has nevertheless forged transnational movements, including along issue areas (Friedman 1995; Keck and Sikkink 1998). The evidence suggests that minority groups have pursued more group-specific paths instead of global alliances because they see these as more beneficial and more feasible.

Generalisations on transnational mobilisation by minorities are difficult to make because minority groups will have different motivations for acting (or not acting) beyond the boundaries of the state. So-called 'homeland minorities' (national minorities historically resident) may find no gains can be made from international advocacy. In Europe, for example, many homeland minorities have found domestic political opportunities to be open as a result of strong domestic mobilisation, kin-state support and/or concessions following conflict. Individuals may connect with a diaspora as a means of preserving their culture or establishing social capital when far away from their homeland. Religious minorities may use their international brethren for political support in the face of persecution from the state or more commonly as part of proselytising or worship. While cultural associations, diasporas and religious universalism all have a clear transnational element, they often lack the "contentious politics" (McAdam, Tarrow, and Tilly 2001) that the present analysis intends to explore. These may nevertheless serve as useful mobilising structures: for example, some Dalits have used religious institutions to mobilise and Afro-descendants have found links through cultural channels like music.

Some insights can be gained by examining the landscape of minority-focused international NGOs active in international fora. Jackie Smith (e.g. Smith 2004b, 1997, 2004a) categorises nearly 80 percent of social-interest INGOs under seven headings: human rights; peace; women's rights; environment; world order/international law; development/empowerment; and self-determination/ethnic unity.

Table 1.1 Transnational non-governmental organisations by issue area

Issue area	1953 N=110	1963 N=141	1973 N=183	1983 N=348	1993 N=685	2000 N=959
Human Rights	33 30.0%	38 27.0%	41 22.4%	79 22.7%	190 27.7%	247 26%
Environment	2 1.8%	5 3.5%	10 5.5%	26 7.5%	123 18%	167 17%
Women's Rights	10 9.1%	14 9.9%	16 8.7%	25 7.2%	62 9.1%	94 9%
Peace	11 10%	20 14.2%	14 7.7%	22 6.3%	81 11.8%	98 19%
World order/ international law	22 20%	23 16.3%	37 20.2%	57 16.4%	80 11.7%	109* 11%
Development**	3 2.7%	3 2.2%	7 3.8%	13 3.7%	47 7%	95 10%
Self-determination/ ethnic unity	10 9.1%	12 8.5%	18 9.8%	37 10.6%	29 4.2%	20 2%

Source: Figures drawn from the *Yearbook of International Organizations* (1953, 1963, 1973, 1983, 1993, 2000). Table adapted from Keck and Sikkink (1998, 11), Sikkink and Smith (2005, 30), and Smith (2004a, 268).
*This figure is taken from Smith (2004a) under the heading "Global Justice/Peace/Envir.", which most closely corresponds to the "World order/international law" heading used in the other sources.
** This heading is sometimes presented as "Development/empowerment" in the sources used.

INGOs focusing on "self-determination/ethnic unity" is the smallest of Smith's categories and also reportedly the only one that has declined over time (Smith 1997, 48). She hypothesises that the decrease may be accounted for either by a shift of such INGOs to more violent forms of organisation (which would exclude them from her primary data source, the *Yearbook of International Organizations*), particularly over the 1990s as ethnic militarism increased; or to a reframing of their issues under another theme, most probably as human rights issues (1997, 48-49; 2004a, 270). She finds that:

About half of the groups working to promote indigenous peoples' rights were formed during the 1980s. Another organizing frame that may be displacing the ethnic unity/liberation one is the anti-racism/minority rights frame. Half of the groups listing this as a key goal were formed after 1980, and one quarter were formed during the 1990s. (Smith 2004a, 270).

It is not clear how Smith's figures on 'self-determination/ethnic unity' relate to the current categories of the *Yearbook of International Organizations*.[10] The *Yearbook* reports that for 2004, 302 international organisations (i.e. INGOs and IOs) were categorised under the heading "Racial, Ethnic Groups" and 265 under "Minority, Indigenous Groups".[11] These two categories have generally showed steady growth over time, with the "Minority, Indigenous Groups" increasing at a higher rate, in particular in the period between 1986 and 1995. From 2001 to 2002, the number of INGOs in each category nearly doubled.[12] The two growth periods may coincide with the growth of indigenous peoples' organisations around the WGIP (created in 1982) and the international campaign around the 500th Anniversary of Columbus's 'discovery' of the Americas (1992) and with the 2001 WCAR. One of the *Yearbook*'s earliest records, from 1924, shows 7 organisations registered under the category of "Nationalities and races", suggesting that the institutionalisation of transnational social mobilisation by ethnic non-state actors has a long history.[13] This is in evidence in the case studies: Afro-descendants pursued forms of transnational mobilisation from the beginning of the 20th century, while domestically Dalits were beginning to mobilise in the period.

The institutions categorised by the *Yearbook* include a wide range of bodies, such as funds, research institutes, foundations, and moribund organisations, in addition to international legal standards and IOs. The "Minority, Indigenous Groups" category, for example, begins with the Aboriginal and Torres Strait Islander Commission, a now defunct body of the Government of Australia, and ends with Young Women from Minorities, a small European INGO; in between are many organisations predominately

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[10] Smith indicates that her code on self-determination/ethnic unity was used for groups that were organised around an ethnic identity to promote solidarity within an ethnic group. Ethnic unity groups were not necessarily coded as 'Minority Rights' groups. This only occurred when the organisational description mentioned rights explicitly, as in minority rights or rights for marginalised peoples. Personal communication with the author, 23 February 2007.

[11] Union of International Associations, "Figure 4.1.2 Subjects. Number of International Organisations by Subject Groups: 2004", *Yearbook of International Organizations*, 2005. The *Yearbook* also includes related categories such as "Peoples", "Migrants", "Refugees", and "Class, Caste, Elites".

[12] *Ibid*, "Figure 4.2.2(b) Trends in Selected Subjects, 1985-2004", 2005.

[13] *Ibid*, "Figure 4.3.1 Classification of International Organisations: 1924", 2005.

working on indigenous peoples rights (e.g. International Indian Treaty Council – an advocacy INGO), some working on religious minorities (e.g. Institute of Muslim Minority Affairs – a UK-based research institute) and some for whom only a strand of their work indirectly impacts on minorities (e.g. International Alert – a conflict INGO).[14]

A better picture of minority INGOs is provided in Table 1.2, which gives an overview of the most active advocacy-focused INGOs, including those working primarily at the regional level. The INGOs listed here are those whose exclusive focus is on the situation of ethnic, religious or linguistic minorities and/or indigenous peoples. This list does not include INGOs that may give attention to minorities/indigenous peoples as one of several issues in their repertoire. The minority INGOs combine roles in information sharing, advocacy vis-à-vis international institutions, research, training/capacity building, and funding or running small to medium-sized projects, usually at the local level.

Significantly, most of the INGOs have a primary or exclusive focus on indigenous peoples; the extensive duration of their transnational mobilisation has led to strong organisational platforms that have been institutionalised as INGO structures. Only one of the 18 global INGOs focuses on a *particular* minority/indigenous group, namely the International Romani Union directed towards the interests of the Roma.[15] This suggests two points: first, that most minority groups are localised identities that are not easily framed with a global reach; and second, that transnational mobilisation by specific minorities is not extensive enough to warrant the creation of INGOs. At the regional level, the only non-indigenous group to have a dedicated INGO is the Roma; the indigenous Saami and the Amazigh also have specially dedicated INGOs. Many of the INGOs have been established by external actors and only about one third of the global organisations are directed by individuals belonging to minority groups. Although most of the INGOs are based in the North, many do straddle the North-South divide, working in close cooperation with organisations in the South and/or North. For example,

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[14] It is not clear how the *Yearbook* decides where to categorise the organisations; several bodies also appear under both the "Minority, Indigenous Groups" heading and the "Racial, Ethnic Groups" heading.
[15] The International Dalit Solidarity Network does work principally with Dalit issues but seeks to represent the interests of a wide range of caste-affected groups.

Minority Rights Group International reports that it has over 130 partner NGOs/INGOs in nearly 60 countries worldwide.

While Smith (2004a) finds that INGOs are increasingly working with regional organisations, the spread of minority INGOs in Table 1.2 suggests that many continue to use the UN as a key focus of their activity. All of the INGOs in Table 1.2 have engaged at some point with the UN fora and about half of these have formal consultative status with the UN, including seven of the mostly regionally focused INGOs. INGOs are often work very closely with and within international institutions, The expertise of IO actors can validate minority claims on norm development; IOs possess moral influence based on their perceived neutrality; and the political legitimacy of IOs is rooted in their state-sanctioned mandates. As discussed below, these are just a few of the ways that IOs have supported minority norm entrepreneurs.

Table 1.2 INGOs focusing on minorities and/or indigenous peoples.

The country in which the headquarters or secretariat of these organisations is located appears in parentheses.

Global	Cultural Survival (US)
	Centre de Documentation, de Recherche et d'Information des Peulpes Autochtones (DoCip) (Switzerland)
	Forest Peoples Programme (UK)
	First Peoples Worldwide (US)
	International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (Thailand)
	International Dalit Solidarity Network (Denmark)
	International Indian Treaty Council (US)
	International Movement against All Forms of Discrimination and Racism (Japan)
	International Romani Union (Poland)
	International Work Group for Indigenous Affairs (Denmark)
	Minority Rights Group International (UK)
	Netherlands Centre for Indigenous Peoples (Netherlands)
	Rainforest Foundation (UK/US/Norway)
	Society for Threatened Peoples (Germany)
	Survival International (UK)
	Tebtebba Foundation - Indigenous Peoples' International Centre for Policy Research and Education (the Philippines)
	Unrepresented Nations and Peoples Organisation (Netherlands)
	World Alliance of Mobile Indigenous Peoples (Iran)
Europe/North America	Arctic Council Indigenous Peoples' Secretariat (Denmark)
	Association for Democratic Initiatives (Macedonia)
	European Roma and Travellers Forum (France)
	European Roma Rights Centre (Hungary)
	Federal Union of European Nationalities (Germany)
	Indian Law Resource Centre (US)

	Inuit Circumpolar Conference (Canada/US/Russia/Greenland)
	Roma National Congress (Germany/Czech Republic)
	Saami Council (Finland)
Africa	African Indigenous Women's Organisation (Burkino Faso)
	Commission Amazigh Internationale pur le Developpement et les Droits de L'Homme (Algeria)
	Indigenous Peoples of Africa Coordination Committee (South Africa)
	Working Group of Indigenous Minorities in Southern Africa (Namibia)
Asia/Pacific	Asia Indigenous Peoples Pact Foundation (Thailand)
	Asian Indigenous and Tribal Peoples Network (India)
Middle East	N/A
Latin America	Abya Yala Fund for Indigenous Self-Development in South and Meso America (US)
	Amazon Alliance (US)
	Coordinator of the Indigenous Organizations of the Amazon Basin (COICA) (Ecuador)
	Indian Council of South America (Peru)
	Indigenous Information Network (Mexico)
	South and Meso American Indian Rights Center (US)

Using political opportunity structures: the supporting role of international organisations

International organisations provide a space in which norm emergence can occur. They provide a focal point for collective action and actors within these institutions frequently assist in achieving the goals of minority norm entrepreneurs. Minorities need to take on particular *modus operandi*, however, to be successful in these international fora.

The interaction of minorities with international organisations has a long history. From the League of Nations' minority treaties to the minority NGOs such as the National Association for the Advancement of Colored People (NAACP) and the American Jewish League participating at the San Francisco conference to found the UN (Seary 1996, 25-26), and the specialised minority-focused bodies under the OSCE, minorities have played a role in shaping the mandates and structure of many IOs.

Minorities in turn have frequently looked to IOs as allies in their struggles. At one extreme, IOs (mandated by states) have intervened to physically protect minorities, as in cases of genocide: UN peacekeeping missions in Iraq protecting the Kurds, in Bosnia and Herzegovina to protect the Bosniacs, and eventually in Rwanda to protect the Tutsi are examples in point. Several IOs have also established specialised mechanisms aimed at supporting minorities to engage peacefully with states on issues of legitimate interest.

Treaties with minority provisions are overseen by treaty bodies that review periodic state reports and provide recommendations for improved implementation. The soft law standards also have review bodies. The UNDM had the Working Group on Minorities (WGM), established under the auspices of the UN Sub-Commission for the Promotion and Protection of Human Rights.[16] Operating from 1995-2007, the WGM provided space for minorities to raise concerns, engage in dialogue with states, and for all participants to examine important general issues pertaining to minorities. This was replaced from 2008 with a UN Forum on Minorities meeting 2 days per year to focus on a specific theme. Finally, some ad hoc mechanisms have been established, charged with reviewing thematic and country-specific concerns, the latter principally upon invitation of states. At the UN, the position of the Independent Expert on minority issues was created in 2005 to focus on promoting the implementation of the UNDM and documenting best practices vis-à-vis minorities.[17] Related mechanisms, such as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, also have a focus that includes attention to minority protection issues. Other IOs may take up the issue of minorities as it pertains to the objective of the organisation: for example, the HCNM was created in 1992 by the OSCE to seek preventative solutions to inter-ethnic tension; and the Organization of the Islamic Conference (OIC) has been active in organising a series of conferences on Muslim minorities.[18] All of these mechanisms are supported by a cadre of international staff that regularly organise meetings and consultations with a view to stimulating dialogue and information sharing relevant to the mandates. For example, within the UN Office of the High Commissioner for Human Rights (OHCHR) there is an Indigenous Peoples and Minorities Unit and an Anti-Discrimination Unit.

These mechanisms provide important spaces for minorities outside of the domestic sphere. The international political opportunity structures enable minorities to make public statements about country-specific or thematic concerns, statements that might be blocked or weak in the domestic sphere for security reasons or lack of general public

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[16] ECOSOC Resolution 1995/31 (25 July 1995).

[17] Commission on Human Rights Resolution 2005/79 (21 April 2005).

[18] The first conference of Muslim Minorities in Africa was held in Accra, Republic of Ghana from 20-22 January 2003. See Resolution No. 1/10-MM (IS) *On Safeguarding the Rights of Muslim Communities and Minorities in non-OIC Member States.* Tenth Session of the Islamic Summit Conference, held in Putrajaya, Malaysia, from 20-21 Shaaban 1424H (16-17 October 2003). A second African conference was planned for Tanzania in 2006 and for Asia in 2007. See http://www.oic-oci.org/index.asp, 'Calendar of Events'.

interest. Within these international spaces minorities may be better able to engage in dialogue with representatives of their state, finding that their government officials are more accessible (and less discriminatory) in the corridors of UN buildings than in the offices of ministries at home. Recognition by the IO of the NGO's right to participate in the proceedings of the IO's institutions can be an important "certification" (Tarrow 2005, 194) of not only the organisation but also of the people they seek to represent. Where the state itself does not represent the interests of a minority, participation in inter-state dialogue is afforded by the space in IOs. Minority groups can suddenly find their kin have a seat at the international table and a voice to challenge the actions of their state from outside. Through statements to international fora, minorities can begin to formulate a shared agenda around country or thematic issues, a first step in norm elaboration. The more often groups come together at international meetings the greater the possibility that they can form supra-national alliances, including with INGOs and IOs. Several training and fellowship programmes have been established by INGOs and IOs to support these ends. The OHCHR hosts two fellowship programmes, one for indigenous peoples and one for minorities.[19] MRG and Global Rights similarly conduct trainings at the UN level and regionally on how to use minority rights standards in advocacy work. Slowly this is building a pool of minority actors that know how to take advantage of the political opportunities afforded by IOs.

Where IOs have a specific mandate to work on minority issues, for example through the legal standards elaborated under its auspices, actors within that IO will have a keen interest in engaging with minority representatives. This cooperation can assist IO actors to push for greater state compliance with standards. International mechanisms enable groups to input into the evolving normative framework of minority rights by sharing their own perspectives on these norms in theory and practice. For example, the submission of shadow reports or individual complaints to treaty bodies can help advance norm emergence and adherence by states via treaty body recommendations. Minority actors can also influence agenda-setting by persuading IOs to include new minority issues in their work. This can precipitate institutionalisation of emerging norms in IOs and the creation of mechanisms for observing them: for example, the UN Sub-Commission on Human Rights has played a key role in institutionalising emerging

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[19] Individuals are nominated by minority or indigenous NGOs to participate in the 1-4 month programmes in Geneva, where participants are introduced to the UN machinery available for protection of their rights.

norms on indigenous peoples' rights and has appointed Special Rapporteurs to investigate these issues.

In interviews conducted for this thesis, minority NGO representatives repeatedly cited the UN or similar IOs (such as the EU) as important allies to their cause. As noted in Table 1.2, however, there are a limited number of minority NGOs that have regular contact with IOs, often lacking the resources to sustain any serious international cooperation. NGOs with little experience on the international stage will find it difficult to understand where best to invest their efforts for maximum effect. There are also some minority groups for whom the domestic political opportunities are open and effective; this is particularly the case where groups have secured political representation in governance and/or autonomy. For them, international political opportunities offer little added-value.

Participation in any IO comes with certain parameters. IO actors can be cautious where minority groups are not officially recognised by the state, members of the minority group are engaged in some sort of conflict with the state, or sensitive political questions, such as forms of autonomy, are at issue. States can veto NGO participation (e.g. under ECOSOC procedures). Minority NGOs that seek to engage in these fora therefore must adopt a particular *modus operandi* to be admitted and succeed. NGOs that advocate or use violence in their efforts to achieve their goals will find it difficult to gain entry into IO proceedings. For those who believe that minority power lies in grassroots mass mobilisation or armed opposition, the IO offers little attraction. Even to engage with IOs, minorities must make certain concessions: "once NGOs have become recognised by international organisations, their room to manoeuvre will be limited with regard to the scope of their activities and their official positions" (Reinalda and Verbeek 2001, 155). The principal concession is to state sovereignty: groups would be unlikely to solicit state support for claims that challenge directly the sovereignty and territorial integrity of the state in which they reside. This is evident in the discourse of indigenous peoples' rights where advocacy on self-determination in the main focuses on *internal* self-determination. As much as the IO affords to minorities in terms of political opportunities and leverage against the state, the IO is first and foremost an institution formed for the interests of states and minorities must operate within these limitations. This may be more challenging for minorities than for other civil society groups since

many of the issues for which minorities seek remedy touch upon the authority and structure of the state. Access to IOs, however, can facilitate "voices of moderation"[20] within aggrieved minority communities, particularly where domestic political opportunities are blocked and violence appears the quickest path to soliciting state attention. The rules of engagement for civil society participation *within* IOs are law-abiding, orderly, adhering to certain repertoires and procedures that enable discursive pathways to normative change. Offering space for minority NGOs/INGOs within international fora can stimulate moderate and peaceful forms of mobilisation by minority groups, provided (and this is a key caveat) that minorities see that change is possible in using these fora.

Durban or bust: the 2001 World Conference Against Racism

In light of the many challenges discussed above for minority norm entrepreneurship, there are several reasons why the WCAR was such an important political opportunity structure for minority groups. It reduced some of the constraints on their norm entrepreneurship and promised the possibility of new normative commitments. The WCAR opened up doors for dialogue and gave minorities more esteem for their identities. They had opportunities to make arguments for change without being accused of upsetting the status quo because *external* actors created the opportunities. The topic of discrimination was not taboo; governments were obliged by way of the WCAR preparatory processes to discuss it. National and regional consultative meetings conferred greater authority to minority advocates and the increased media and legislative attention gave a better sense of accountability for the commitments made. Several donors created funding streams for civil society participation. This section will provide an overview of these dynamics, which will be treated in greater detail in the case study chapters.

The UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa, 31 August - 8 September 2001. For the victims of racial discrimination and related intolerance that travelled from far and wide to be present it was a deeply moving experience; for South Africans and the

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[20] This point on NGOs attending the UN being "voices of moderation" was made by Mr. Karim Abdian of the Ahwaz Human Rights Organisation at the 2005 session of the WGM.

rest of the world it was a highly symbolic event, another signpost in the triumph over apartheid.

This was the third world conference on this topic, predated by the first held in Geneva in 1978 and the second, also in Geneva, in 1983. The decision to hold a third world conference on racism was not inevitable: by many accounts the first two world conferences had been largely ineffective. These conferences were used as a political forum to criticise South Africa's apartheid regime and Israel's occupation of Palestine but failed to give adequate attention to the persistence of discrimination across states. The third conference, coming at the start of a new century, following a decade of increased confidence in multilateral processes, and with a large pool of interest from civil society, was supposed to herald a new wave of commitment to equality, justice and non-discrimination. Three days after the conference ended, following a surge of diplomacy to secure a text amidst the controversial departure of the US and Israeli delegations, the September 11 attacks in the US occurred. The convergence of these events has impacted significantly on the post-WCAR follow-up, shifting world focus to anti-terrorism measures and related security concerns.

The proposal to hold a third world conference on racism originated in the UN Sub-Commission on Human Rights with Resolution 1994/2. It came at an important juncture, following the Presidential election of Nelson Mandela in 1994 and the UN abolition of the epithet that "Zionism is racism" in all of its subsequent documents as of 1991.[21] These two issues were important because both apartheid and Israel's occupation of Palestine had all but consumed the UN dialogue on 'racism and racial discrimination' to that date. As Sub-Commission member Gay McDougall recalls, in this period "there was some searching going on for what to do with the racism agenda".[22] The Sub-Commission was keen to draw states' attention to a myriad of contemporary problems linked to racism and racial discrimination (Lindgren Alves 2003). They were also encouraged by the success of the World Conference on Human Rights held in Vienna in 1993. The General Assembly took up the call for a third world conference in Resolution 52/111 in 1997, proposing that such a conference be held not later than 2001.

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[21] See UN General Assembly Resolution 46/86 (16 December 1991).
[22] Interview with Gay McDougall, April 2008.

The core objectives of the WCAR offered to minorities an important political opportunity structure in which to push the normative boundaries governing their rights and recognition in a way that was not in evidence at the 1978 and 1983 meetings. So-called "victim groups" were to be a primary focus of attention. A series of preparatory meetings at the regional and global level offered space to meet and develop organisational platforms and a common agenda. The WCAR outcome document, the *Durban Declaration and Programme of Action* (DDPA), presented an opportunity to embed their claims into an international soft law instrument. States that might otherwise give little attention to minority concerns were pushed into dialogue by the demands of WCAR engagement.

A wide array of UN official preparatory processes led up to the final conference in September 2001. During 1999 and 2000 five regional Expert Seminars were held in Geneva, Warsaw, Bangkok, Addis Ababa and Santiago de Chile. These proved useful opportunities for norm-related issues to gain a profile early on in the process. Of particular significance was the so-called Bellagio Consultation, hosted in January 2000 by Global Rights under its then Executive Director Gay McDougall. The Bellagio Consultation was a high-level civil society meeting that produced recommendations for the first draft text of the DDPA prepared by OHCHR. Among the short list of invited participants were key leaders in the cases considered here: Paul Divakar, Convener of the National Campaign on Dalit Human Rights (NCDHR); Claire Nelson, the lead within the IDB on Afro-descendant issues; and Dimitrina Petrova, Executive Director of the European Roma Rights Centre (ERRC). The consultation suggested themes for the WCAR, including 'Victims Groups', under which sub-themes were recommended for:

> Indigenous peoples; Ethnic, national, religious and linguistic minorities; "Excluded majorities" (such as *Afro-Brazilians* or Black South Africans under apartheid); Migrants, refugees, asylum-seekers and displaced persons; Groups subject to discrimination on the basis of *descent* (such as the *Dalits and the Burakumin*); *People of colour in the Americas*.[23]

The list signals an interest, conceptually and politically, to consider Afro-descendants and Dalits as a distinct category from minorities at the WCAR.

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[23] UN Doc. A/CONF.189/PC.1/10 (8 March 2000): para 50 (emphasis added).

Regional intergovernmental preparatory meetings were also held: European countries met in Strasbourg, 11-13 October 2000; in the Americas a meeting was held in Santiago de Chile, 5-7 December 2000; the African regional preparatory meeting took place in Dakar, 22-24 January 2001; and the meeting of the Asian group was held in Tehran, 19-21 February 2001. Each of these prepcoms produced a draft Declaration and Programme (or Plan) of Action to feed into the global common draft DDPA. The global common draft was shaped by several intergovernmental prepcoms held in Geneva.[24]

Parallel to these UN sanctioned processes were NGO-led initiatives. NGOs were able to participate in virtually all of the preparatory processes as observers, offering them important political opportunities to encourage states to include civil society recommendations in the draft texts. NGOs typically organised parallel sessions to the regional inter-governmental prepcoms and tried to influence the outcome of these processes at the same time as networking amongst themselves. These parallel NGO prepcoms would issue their own declarations in which they could express views on normative and substantive issues related to the WCAR.[25] At the WCAR itself an NGO Forum was held 28 August – 1 September 2001 just a short walk from the official site of the UN conference. The NGO Forum issued its own *Declaration and Programme of Action*,[26] which became embroiled in controversy regarding certain paragraphs relating to the situation of Israel and Palestine, prompting several NGOs to publicly distance themselves from the document. In many countries national consultation processes also fed into both government and civil society positions at the WCAR. In the US, for example, an Interagency Task Force was created by the Department of State to conduct consultations with NGOs and other stakeholders in the lead up to Durban.[27] This gave national platforms/networks an opportunity to coalesce and enabled input from local NGOs and individuals that lacked the means to participate in the international preparatory meetings or Durban.

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[24] The key Geneva-based preparatory meetings were as follows: a special session of the UN Commission on Human Rights during the period 19 March - 27 April 2001; two Inter-sessional Open-Ended Working Group Meetings of the Preparatory Committee, 5 - 9 March 2001 and 7 - 11 May 2001; two preparatory intergovernmental meetings held 1-5 May 2000, and 21 May - 1 June 2001; and further meetings of the Preparatory Committee, 30 July to 10 August 2001.
[25] For access to NGO Fora outcome documents, see http://www.icare.to/docs-wcar.html (accessed 5 May 2009).
[26] http://www.icare.to/wcar/finalngodeclarationandpoa.html (accessed 5 May 2009).
[27] http://www.state.gov/p/io/uncnf/wcar/c1577.htm (accessed 24 April 2007).

An estimated 18800 people were in Durban to follow all of the events held in connection with the WCAR (OHCHR 2001, 2). The NGO Forum saw the attendance of some 7000 representatives (in contrast, the 1978 and 1983 conference had 33 and 50 NGOs respectively) (OHCHR 2001, 6).[28] At the intergovernmental conference, 163 governments were present, including 16 heads of state and 58 foreign ministers (Banton 2002b, 359). The scene was set for a remarkable event, significant not only in its historic location but in the optimism that a third world conference would mark a genuine step forward.

After the firm international attention to the Vienna World Conference on Human Rights in 1993 and the Beijing World Conference on Women in 1995, there was a sense among civil society actors that such conferences were (at worst) good spaces for networking and (at best) could offer an opportunity for normative change and renewing political will to implement existing standards. The WCAR was no exception in this regard. For victim groups, this was not just another conference, however; it was a deeply personal journey, an assertion of their right to equality and a challenge to the discrimination, marginalization, violence and injustice that was part of daily life for many who participated in the Durban processes.

The WCAR was a good political opportunity structure for several reasons. The focus on not only racial discrimination but also 'xenophobia and related intolerance' gave a broad frame under which many groups could legitimately classify their interests. It was a densely concentrated process, spanning some 18-24 months of organised preparatory events, a useful time frame in which to launch a campaign and mobilise interest. World conferences are also very media friendly events, providing groups a chance to gain media attention in the domestic arena and internationally. The UN and other international donors (such as the Ford Foundation, Inter-American Foundation, and bilateral or multilateral development agencies) were willing to provide resources for NGOs to attend international meetings, organise local, national and international consultation processes and undertake related educational and campaigning projects. These kinds of funds would have been a lifeline to small and large NGOs alike representing groups who do not always figure prominently in funding agendas; the

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[28] See also UN Docs A/CONF.92/INF.2 (5 October 1978): p. 34 and A/CONF.119/INF.4 (1 December 1983): p. 36.

WCAR gave a legitimate motivation for targeting funds to NGOs with a mandate to promote the interests of specific ethnic groups.

New forms of transnational mobilisation were a key feature of the WCAR processes. Civil society formed some 35+ caucuses for the preparatory processes, which became the basis of 25 Thematic Commissions (TCs)[29] created at Durban for the purposes of negotiating the NGO *Declaration and Programme of Action*. Those outside the TCs were less likely to have their recommendations included. Many NGOs were only able to attend Durban itself, by which time lobbying to introduce new ideas or text was all but useless, leaving them to focus principally on networking. The TCs on African Descendants, Indigenous Peoples, Roma/Sinti/Travellers, and Dalits and caste-based discrimination were among the largest and most active.

The original General Assembly resolution 52/111 authorizing the WCAR named only two groups specifically: migrants and indigenous peoples. It is significant, therefore, that the final DDPA makes mention of not less than 21 different groups as victims of racism, racial discrimination, xenophobia or related intolerance, namely:

- Africans and people of African descent
- Arab communities
- Asians and people of Asian descent
- ethnic, cultural, linguistic and religious minorities
- indigenous peoples
- people infected or affected by HIV/AIDS
- Jewish communities
- migrants
- Mestizo populations of mixed ethnic and racial origins
- Muslim communities
- Palestinian people
- refugees and asylum-seekers, internally displaced persons
- certain religious communities
- Roma/Gypsies/Sinti/Travellers
- victims of trafficking
- women and girls

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[29] The Thematic Commissions were as follows: Administration of Justice and Criminal Justice; African Descendants; Anti-Semitism; Asians and Asian Descendants; Colonialism/Foreign occupation; Dalits and caste discrimination; Disabled; Displaced Persons/Migrants/Refugees/Asylum Seeks; Education, Information, Communication ad Media; Ethnic Minorities; Gender; Globalisation, Poverty Social exclusion and environmental racism; Hate crimes/Ethnic cleansing/Conflict/Genocide; Health and HIV/AIDS; Indigenous Peoples; Labour; Legal measures, policies and practices; Palestinians/New forms of Apartheid; Religious intolerance; Reparation and Compensation; Roma/Sinti/Travellers; Sexual orientation; Slavery and Slave trade; Trafficking; Youth and children.

Not all groups were successful in their bids to secure recognition of their concerns; indeed many more groups are distinctly mentioned in the NGO Forum outcome documents. Several factors contributed to the ability of groups to be recognized by the inter-governmental forum, including the size of the group lobbying (both in terms of the population size of the group as a whole and the number of delegates directly engaged in the WCAR processes); the presence of the group's representatives in WCAR fora and their skill as advocates in the international sphere; the willingness of states to take up the issues of concern to the groups; and the preexistence of agreed normative standards and other multilateral commitments vis-à-vis the group.

Arguably, state willingness trumped all other issues since it was states that made decisions on whether to adopt language for the final outcome documents. NGOs could make recommendations and lobby for certain paragraphs but without strong state support (or least, in the absence of strong state objections) these recommendations would remain on the cutting room floor. Groups that represented large constituents living in many different states were in a better position to use domestic media and other advocacy tools (e.g. parliamentary allies) to leverage support for their recommendations. They could also target multiple states to encourage adoption of their relevant paragraphs. A large team of advocates would enable this logistically and would also give their group a visible presence in the field of 'victim groups' at the meetings. Quantity does not always mean quality, however, and regardless of the number of delegates, victim groups' representatives needed to be savvy persuaders with an understanding of multilateral negotiating processes. Presence and hard lobbying in the regional intergovernmental prepcoms and the Geneva global prepcoms were key to success at Durban. Where past lobbying had established precedents and socialised states to certain language and provisions, victim group advocates had a better chance of securing state endorsement for their recommendations in Durban.

This is evidenced in part by the final outcome documents where certain victim groups are privileged over others in the text. The DDPA dedicates distinct 'chapters' to four groups: Africans and People of African Descent; Indigenous Peoples; Migrants; and Refugees. The latter two issues have obvious cross-border implications and would be the source of important economic concerns for states as well. Indigenous peoples have

over the past three decades been a visible presence in multilateral fora, repeatedly securing attention to their concerns in outcome documents; this socialisation was carried through at Durban. Africans and People of African descent were aided by state interests from both Latin America and Africa in seeing these paragraphs figure prominently in the final documents. Several other groups are addressed under the chapter 'other victims' (women; Roma/Gypsies/Sinti/Travellers; trafficked persons; people of Asian descent; national or ethnic, religious and linguistic minorities; and children). It is not clear why these groups are lumped under the 'other groups' general heading, rather than separate paragraphs.[30] Given the preoccupation of states with the controversial inter-state debates that dominated the WCAR processes, the success of victim groups in bringing any attention to their issues should be lauded.

Ideational and rational interests of states were both in evidence at the WCAR. The inter-state discourse on racism within the UN historically has been a proxy for criticisms of colonialism, specifically, and the dominance of the West, more generally. The discourse has been dominated by an underlying political agenda that claims racism, manifest through colonialism, perpetuates the structural inequalities faced by many (post-colonial) states in the international system. While there is a valid ideational critique in these assertions – the idea of racial hierarchy was used to justify colonialism – this point is often overplayed while the persistence of racism in *all* countries is ignored (Banton 2002a).[31] From a rationalist perspective, many Southern states sought to use the WCAR as an arena for gaining financial concessions for the negative legacies of colonialism and slavery.[32] From an ideational perspective, Northern states were ill-placed to oppose a world conference without appearing *ipso facto* to oppose combating racial discrimination, xenophobia and related intolerance. At the WCAR concerns with racism *between* states were still overshadowing attention to racism *within* states.

Norm entrepreneurship was constrained for many groups in the WCAR because states were most concerned with the big debates on slavery reparations, colonialism and

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[30] Women, in particular, are often privileged in such texts and states are socialised to women's concerns in these kind of fora. The interest of mainstream women's NGOs in the WCAR was weaker, however, and with a weaker presence can come weaker outcomes.

[31] See also Banton's (1996) work analysing state submissions to CERD.

[32] GRULAC (Group of Latin American and Caribbean) states were caught somewhere in between: aligned with Southern states over concerns of global financial inequalities but likely cognisant, particularly in the context of the WCAR, of the lingering structures of European colonialism in many states of the region.

Israel's occupation of Palestine. Some minority groups were able to profit from this: for example, Afro-descendants gained the support of the Africa group by highlighting common interests pertaining to the transatlantic slave trade. Dalits, in contrast, struggled to secure state support on caste-based discrimination because India was a broker for the Western Group of states in their efforts to avoid reparations for colonialism and slavery.

Several new bodies were created as formal WCAR follow-up mechanisms. The first such mechanism was a Group of Independent Eminent Experts, comprised of one individual nominated by the UN Secretary-General from each of the five regions. The Commission on Human Rights created a second follow-up mechanism, the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action. The Commission also created a Working Group of Experts on People of African Descent (WGPAD),[33] as requested by the DDPA. There has been very little rehashing of tense Durban debates within these mechanisms and so far the Intergovernmental Working Group and the WGPAD have been choosing important but innocuous thematic foci for each session (e.g. for the 2007 session the foci were national actions plans to combat racism and a discussion of racial profiling, respectively). A new Anti-Discrimination Unit was established at the OHCHR with a mandate to support the Durban follow-up mechanisms.

These instruments have been poorly attended by civil society. NGOs deeply engaged in the Durban processes took an early interest but were soon disappointed with the results. The 2006 session of the Intergovernmental Working Group was attended by 18 NGOs; in the 2005 session, the WGPAD was attended by 15 NGOs.[34] The low presence is the result of lack of funding by NGOs to participate in the (Geneva-based) meetings; a lack of awareness of the meetings; and a belief that attendance at the meetings is not useful for their advocacy objectives. Some NGO activists have lamented that (bar a few exceptions) there is a dearth of firmly committed individuals sitting in these mechanisms.

The set of institutions nevertheless continues to expand. In December 2006, the General

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[33] See Commission on Human Rights resolution 2002/68 (25 April 2002).
[34] See UN Docs. E/CN.4/2006/18 (20 March 2006) and E/CN.4/2006/19 (6 December 2005), respectively.

Assembly adopted a resolution to convene in 2009 a Durban Review Conference (DRC).[35] The proposal was tabled by South Africa, with strong support from the Africa Group and the OIC member states.[36] The United States and Israel voted against the resolution[37] and Canada signaled early on its intention not to participate in the process. The EU member states predicated their participation on no reopening of the DDPA. In the opinion of one key INGO representative in Geneva, the meeting "is simply a waste of money, energy and everything!" given the permanent mechanisms that already exist.[38] Civil society has not expressly lobbied for the DRC and NGO participation in the prepcoms was low.[39] In the DRC outcome document,[40] very little had shifted in terms of state positions on Dalits and Afro-descendants: the latter are mentioned specifically once again but 'work and descent-based discrimination' is omitted. With little funding tabled for civil society participation and no official NGO Forum held, the DRC did not match the important civil society mobilisation witnessed at Durban.

The impact of the WCAR on the international protection regime for minorities is mixed. The status of the outcome documents as soft law does matter, evident not least in the firm fighting between states over their content. The change exhibited therein has been used as the basis for subsequent construction of norms and institutions. The WCAR also was an important moral and political rallying point for groups who usually feel that their issues are not a priority. New forms of transnational mobilisation emerged for Durban and many WCAR actors remain active on the international stage. Many "victim groups" made symbolic gains, securing recognition in the media and/or the WCAR outcome documents. The Durban conference pushed the spotlight on state practice internally to combat racism, a spotlight that in 1978 and 1983 only shone brightly on South Africa and Israel.

Racial discrimination may still be more of a foreign policy issue than a domestic policy issue for some states but non-state actors are now much more active agents in this discourse. In the WCAR, Dalits and Afro-descendants had ambitious goals for expanding the normative framework of their rights and benefited greatly from the

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[35] UN Doc. A/RES/61/149 (7 February 2007): para. 33.
[36] UN Doc. A/C.3/61/L.53/Rev.1 (17 November 2006).
[37] An additional four states abstained on the resolution: Australia, Canada, Marshall Islands and Palau.
[38] Atsuko Tanaka, personal communication, February 2007.
[39] The meeting report of the first substantive session of the DRC Preparatory Committee shows only 26 NGOs registered to attend. UN Doc. A/63/112 (9 July 2008): p. 21.
[40] UN Doc. A/CONF.211/L.1, 24 April 2009.

funding and political opportunities afforded by that process. They have had greater success since Durban in getting their issues on the international agenda and have witnessed important strides in norm emergence. Their goals have not always aligned with state interests, however, and the path to normative change has not been easy. The case studies will review these developments in greater detail. The next section will provide an overview of norm entrepreneurship by indigenous peoples and Roma, whose experiences at the WCAR and beyond are instructive for understanding norm emergence on group-specific rights.

Norm entrepreneurship by indigenous peoples and Roma: a model for other minorities?

This thesis aims to identify trends across groups that have diverted from the mainstream minority protection regime to forge group-specific norms. Indigenous peoples and Roma have both had successes in this regard. They have used framing and political opportunity structures to build strong transnational organisational platforms that have helped to secure the emergence of new normative standards and mechanisms specifically for them. International institutions have played a significant role in supporting these emerging norms. They have also both struggled with issues of leadership, accountability, and self-identification. These points have been documented in a handful of important studies by IR scholars on the indigenous peoples' global movement (e.g. Brysk 2000; Wilmer 1993; Keal 2003; Niezen 2003) and on transnational mobilisation of Roma in European and UN institutions (e.g. Vermeersch 2006 and Klimova-Alexander 2005). In order to establish a frame of reference for the case studies on Dalits and Afro-descendants, some key points from the experiences of indigenous peoples and Roma will be summarized here. This will inform the analysis of broader trends on group-specific norm entrepreneurship that is offered in the concluding chapter of the thesis.

Indigenous peoples: leading the way for group-specific norms

Although the opposition that indigenous peoples have faced in norm entrepreneurship often is rooted in material interests of states, their success in norm emergence cannot be explained easily by rationalist theories. The efforts of indigenous peoples to secure recognition of their special status and rights within the state and transnationally have opened up space for other minorities whose demands can seem less radical in comparison.

Transnational networks of indigenous peoples' organisations emerged in the 1970s, guided by their own initiative and the support of international actors. The early gatherings brought together individuals from the Americas, Nordic states, Australia and New Zealand. In Latin America, for example, Brysk (2000) finds that the international and local mobilisation of indigenous actors happened more or less simultaneously, with less success in forging a strong presence at the national level in between. This is partly attributed to the lack of allies among national political parties, including on the left, who tended to regard indigenous peoples with the same discriminatory attitudes as society at large and/or who favoured class-based agitations (Brysk 2000; Warren and Jackson 2003). Discrimination also impacted on the willingness of individuals to self-identify as indigenous peoples and thus to associate themselves with national movements (Brysk 2000, 86). Moreover, while traditional structures of organisation and authority remained intact within many indigenous communities, indigenous mobilisation was constrained by the political climate of authoritarianism, as in Latin America, and/or government prohibition of political organisation by indigenous communities that was common across states.[41]

The international dimension was important to their mobilisation from the beginning. States had invested some authority in international organisations to help regulate the status of indigenous communities. The ILO was charged from the 1920s with investigating the situation of indigenous labourers, culminating in the adoption in 1957 of ILO Convention 107 Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries (Thornberry 2002). The Inter-American Indian Institute was created in 1940 under the Convención Internacional de Pátzcuaro, eventually becoming a specialized agency of the OAS to

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[41] For example, in Canada the 1927 Indian Act outlawed the organisation of political groups by indigenous peoples (http://www.afn.ca/article.asp?id=59 (accessed 1 June 2009)).

coordinate national policy and research on indigenous populations (Brysk 2000, 125). Many of the grievances made by the communities pertained to encroachment on their lands by resource extraction policies supported by governments often in cooperation with international donors and corporations. Many communities were also penetrated by international actors aiming to help them, in particular the church, development practitioners and anthropologists, whose sympathy to the plight of indigenous groups prompted them to encourage mobilisation within the communities.

These latter international actors were instrumental in forging early organisational platforms. Three northern-based INGOs with mandates to support indigenous peoples were founded in the late 1960s and early 1970s: the International Work Group for Indigenous Affairs (1968); Survival International (1969) and Cultural Survival (1972); Anti-Slavery International was also focusing on indigenous communities in this period. The World Council of Churches co-sponsored the first international meeting on indigenous issues (attended primarily by anthropologists) in 1971 in Barbados (Brysk 2000, 64). INGOs were funding indigenous mobilisation activities: Oxfam and the Inter-American Foundation were among the early contributors (Brysk 2000, 97 and 201).

There were also important efforts by indigenous leaders directly to organise themselves across borders. The Saami Council was created in 1956 as a regional network across several Nordic states. The National Indian Brotherhood, established in Canada in 1968, extended existing contacts within the Americas to forge links with indigenous leaders in New Zealand and the Nordic states on visits in the early 1970s. From 1974-1975 they held a series of international meetings at which the term and shared definition of 'indigenous peoples' was elaborated (Sanders 1980). The delegates also founded the World Council of Indigenous Peoples, the first transnational organisational platform of indigenous peoples, which earned UN ECOSOC consultative status in 1975.

The UN quickly became a key political opportunity structure for facilitating transnational contact of indigenous peoples and for establishing attention to indigenous peoples as a discreet normative discourse (from minorities). The decision in 1970 by the UN Sub-Commission to appoint a Special Rapporteur to prepare a study of the problem of discrimination against indigenous populations was among the earliest initiatives

(three years previous a similar study was recommended on minorities).[42] In 1977, an International NGO Meeting on Indigenous Peoples of the Americas was organised in connection with the UN Decade to Combat Racial Discrimination; a second global meeting on indigenous peoples and land was held in 1981. Commentators cite these meetings as a major turning point for indigenous participation in international society (Tennant 1994, 52). The following year a UN Working Group on Indigenous Populations (WGIP) was established under the UN Sub-Commission, meeting annually in Geneva with a specific mandate to, *inter alia*, "give special attention to the evolution of standards concerning the rights of indigenous populations".[43] The interface with the UN for indigenous peoples has continued to grow with the addition of the Permanent Forum on Indigenous Issues (PFII), which held its first session in 2002. The PFII creates a unique space within the UN system (reporting directly to ECOSOC), where eight indigenous-nominated and eight state-nominated experts are approved by ECOSOC to sit on its governing body. The UN world conferences on the environment (1992 and 2002), human rights (1993) and racism (1978, 1983 and 2001) have all witnessed successful mobilisation by indigenous peoples, evidenced in special provisions for them in the outcome documents. The UN declared 1993 the International Year of the World's Indigenous People and two subsequent UN Decades of the World's Indigenous People, 1995-2004 and 2005-2014 have been proclaimed. From 1995 - 2007, a UN open-ended inter-sessional Working Group on the draft declaration on the rights of indigenous peoples brought together states and indigenous representatives to negotiate the terms of the declaration. In 2001, the UN created the Special Rapporteur on the human rights of indigenous people, who has conducted some 12 country visits (as of end 2008) and hosted numerous seminars on thematic issues. At the regional level, the OAS Inter-American Commission on Human Rights adopted its first resolution on action to combat racial discrimination against indigenous populations in 1972 and has had a Special Rapporteur mechanism on the rights of indigenous peoples since 1990. The African Commission on Human and Peoples Rights created a Working Group on Indigenous Populations/Communities in 2001. The Artic Council recognises a special participatory and consultation status for representative indigenous

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[42] See UN Sub-Commission Resolution 4B (XXIII) (26 August 1970). Jose Martinez Cobo was appointed as Special Rapporteur in 1971; his final report is found at UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4. The Sub-Commission passed a resolution calling for a study on the application of Article 27 of the ICCPR in 1967 (Resolution 9 (XX)) and appointed the Special Rapporteur, Mr. Francesco Capotorti in 1971. His final report is found at UN Doc. E/CN.4/Sub.2/384 (20 June 1977) and Add. 1-7.
[43] ECOSOC Resolution 1982/34 (7 May 1982): para 2.

organisations. The list of international seminars, country reports and policy documents on indigenous peoples is too long to be detailed here but spans nearly four decades of international attention to their specific concerns as a distinct identity group.

These successes have been possible largely because of sustained and extensive mobilisation of indigenous peoples at the international level. In 1985, the UN created a Voluntary Fund for Indigenous Populations that has financed travel to international meetings; specific budget lines to support the advocacy of indigenous organisations have also been created by international donors and through private funding. Attendance at the WGIP has grown from 14 NGOs in 1982 to the accreditation of some of 583 participants in 2006.[44] At the 2008 session of the PFII, around 3000 participants attended.[45] Several indigenous international NGOs have formed, such as the International Alliance of Indigenous and Tribal Peoples, Tebtebba, the Saami Council and the International Indian Treaty Council.

Indigenous actors have pursued a strategy for embedding their normative claims in international standards. One of the earliest successes came at the first World Conference Against Racism in 1978. The final outcome document reads:

> The conference endorses the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language, and also recognizes the special relationship of indigenous peoples to their land, and stresses that their land, land rights and natural resources should not be taken from them (1978 *Declaration*, para 21).[46]

From 1985, indigenous actors worked with the WGIP to elaborate a draft UN Declaration on the Rights of Indigenous Peoples. They lobbied for ILO Convention 107 to be replaced by ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries in 1989 (Barsh 1990). The UN Declaration on the Rights of Indigenous Peoples (DRIPS) was adopted in 2007. At the regional level, a draft OAS American Declaration on the Rights of Indigenous Peoples is still under review by states. A number of international agencies, including the World Bank, UNDP and

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[44] Thornberry (2002, 23) and *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006),* UN Doc. A/HRC/Sub.1/58/22, (14 August 2006).
[45] UN Press Release, *UN's Indigenous Forum issues recommendations on climate change and other challenges as two-week meeting concludes* (2 May 2008).
[46] UN Doc. A/33/262 (9 October 1978): p. 17.

European Union, have adopted formal policies on cooperation with indigenous peoples.[47]

This long list of achievements belies the struggle and controversy that has characterised much of the norm entrepreneurship by indigenous peoples (Barsh 1994). Although from an early stage many states have been willing to countenance distinct recognition and protection for these groups, not all states have been readily socialised to their proposed norms nor accepted that those norms apply to their territories. At issue are self-determination and land rights, the cornerstones of the normative claims made by indigenous peoples. They have predicated access to these rights on their status as 'peoples', using this frame to strategically align their claims with those of other colonised peoples. This was a way of tapping into the "logic of appropriateness" in norm recognition, highlighting the "adjacency" of their claims to the decolonisation process. International law holds that "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".[48] States have long resisted the recognition of indigenous groups as peoples fearing that it would lead to territorial and natural resources claims and by extension, to challenges against the sovereignty of the state. They have managed the claim by circumscribing the rights of indigenous peoples *qua* peoples with legal provisos: for example, the principal legally binding international treaty on indigenous rights, the ILO Convention 169, states in Article 1.3 "The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law." States have also blocked efforts to see the term indigenous *peoples* used in international standards, opting instead for people, populations, or communities.

This was a major point of contention at the 2001 WCAR where indigenous activists staged a walkout of the conference when states insisted on a proviso on 'peoples' in the DDPA similar to that in ILO Convention 169.[49] The experiences at the WCAR

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[47] The World Bank first adopted an institutional policy on indigenous peoples in 1982, subsequently strengthened in 1991 and revised in 2005: the Revised Operational Policy and Bank Procedure on Indigenous Peoples (OP/BP 4.10) (July 2005). See also the *UNDP and Indigenous Peoples: A Policy of Engagement* (August 2001); and European Council Resolution, *Indigenous peoples within the framework of the development cooperation of the community and the member states* (30 November 1998).
[48] See common Article 1 of the ICCPR and ICESCR.
[49] See para 24, Durban *Declaration*: "We declare that the use of the term "indigenous peoples" in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination,

illustrate well the precarious position of indigenous gains at the start of the 21st century. While it is clear that the majority of the GRULAC states were willing to support indigenous peoples' claims after decades of socialisation to the issues[50] (Postero and Zamosc 2004; Brysk 2000), indigenous peoples did not have universal support among states. Most post-colonial states of Africa and Asia did not buy into the indigenous peoples' frame as colonised peoples whilst many Western states were trying to avoid any commitments that might impact on the protracted negotiation of the draft DRIPS. Indigenous groups as ever were highly organised in the preparatory processes and at Durban but they were competing with other voices for space and recognition. They struggled to maintain gains won previously, especially in the area of land rights.[51]

Progress in shaping the normative discourse on indigenous rights is still constrained by lack of consensus on these norms – in particular the 'indigenous *peoples'* identity frame - among states and also across the global indigenous community. As the indigenous peoples movement has grown, the cracks in the logic of choosing the 'colonised peoples' frame have begun to show. Framing indigenous groups in the Americas and Australia/New Zealand as 'peoples' like other colonised peoples worked well in the initial stages of the transnational advocacy. The emphasis on the similar relationship with the state made the cultural and spatial differences less important (Niezen 2003, 87). However, as groups wishing to claim indigenous identity began to mobilise in Africa, Asia and elsewhere, the decolonisation argument began to lose coherence. Groups were claiming to be indigenous peoples in countries long since liberated from colonisation and led by peoples also indigenous to the territory. The frame of colonised peoples has therefore been less successful for many groups in Asia and Africa who wish to self-identify as indigenous peoples (Kingsbury 1998).[52] This was a factor in the adoption of

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Xenophobia and Related Intolerance is in the context of, and without prejudice to the outcome of, ongoing international negotiations on texts that specifically deal with this issue, and cannot be construed as having any implications as to rights under international law".

[50] This is evidenced by the high number of ratifications of ILO Convention 169 in the region: 13 of the 20 ratifications to date are from states in Latin America.

[51] On land, the WCAR Declaration reads: "We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of their lands and natural resources to which they are entitled under domestic law" (*Declaration*, para 43). The text omits the term 'rights' and adopts the soft language of 'wherever possible' in invoking state responsibility.

[52] See also the objections to the use of the concept 'indigenous' by African and Asian indigenous peoples by UN Sub-Commissioner Miguel Alfonso Martinez, *Study on treaties, agreements and other constructive arrangements between States and indigenous populations, Final Report*. UN Doc. E/CN.4/Sub.2/1999/20, (22 June 1999): para 88.

the DRIPS. After being passed to the General Assembly, the Group of African states blocked the process, having participated only marginally in the negotiation to that point. Their fears over the legal meaning of the text were allayed by the insertion of additional provisions to safeguard territorial integrity. Key Western states voted against the DRIPS; the US, Canada, Australia and New Zealand declined to adopt the declaration ostensibly on grounds that the provisions were unclear and also might compromise domestic standards for indigenous rights. Their comments at the adoption suggest they were especially concerned about: the principle of 'free, prior and informed consent', which they considered as a veto over the state; the issue of land and resources; and the meaning of self-determination, which several states recalled only applied to internal forms of self-government and not to sovereign independence.[53]

The organisational platform is also possibly weakening. The great success of the indigenous movement has been its ability to unite disparate peoples and interests under a common set of demands. This was facilitated in large part by the creation of an indigenous caucus, a gathering of indigenous representatives prior to international meetings that concerned them. Often the same people dominate these caucus meetings because only a handful of individuals are able to attend international events on a regular basis. The actors driving the agenda tend to be from the Anglophone countries; Francophone groups often feel excluded, whilst the support of the Latin Americans is usually necessary to get issues agreed. It is a discussion by and for indigenous peoples, with non-indigenous actors accepted usually only by invitation. This caucus had its first great success in the 1992 World Conference on the Environment and Development in Rio de Janeiro, where a unified set of demands from indigenous peoples was critical to securing specific measures for "indigenous people and their communities", contained principally in Chapter 26 of the outcome document *Agenda 21*.[54] The most recent gains made in the form of the DRIPS, however, marked a fissure in the movement. While a core cadre of indigenous actors refused to accept any changes to the text, others understood that only through some compromise on their part would states agree to an amended draft. The caucus could not agree a unified platform. Further agitation was in evidence at the May 2008 session of the PFII. The theme of carbon trading was under

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[53] UN Doc. GA 10612, *General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' Towards Human Rights for All, says President*, 61st General Assembly, Plenary, 107th & 108th Meetings (13 September 2007)
[54] Interview with Julian Burger, May 2008.

discussion and while draft recommendations by the PFII supported World Bank initiatives like the Forest Carbon Partnership Facility as "good practices", a large constituent of indigenous actors (principally from Latin America) did not, demanding that the relevant paragraphs be removed;[55] they made their objections known by banging their fists on the table and yelling in unison at the (indigenous) Chair Vicky Tauli-Corpuz of the Philippines, who eventually capitulated and allowed them to present their concerns but not before UN security officers had to be called in.[56]

As interests are diverging, the strength of the movement is threatened. New arrivals at the indigenous caucus are reportedly skeptical of the legitimacy of those actors dominating therein. There have long been accusations of favouritism in how the resources of the Voluntary Fund on Indigenous Populations have been used, with certain indigenous communities receiving a disproportionate share.[57] The isolationism of the indigenous movement is also a concern. Since the mid-1980s, indigenous actors made a point of silencing NGOs that would speak for them, preferring to speak for their own communities in international fora. While this was important for empowerment it also prevented strong alliances from developing with other civil society actors. The environmentalist movement, an early ally of indigenous peoples, has more recently acted sometimes against indigenous interests, with many favouring environmental conservation over the rights of indigenous communities (Brysk 2000, 228-229). Efforts to reach out to other social movements, such as those focused on globalization and human rights, have been made by some of the key leaders in the movement.

The power of the indigenous movement has not entirely waned, however. Because of their strong platform they were able to demand that the WGIP not be lost in the reorganisation under the Human Rights Council; there is a new Expert Mechanism on Indigenous Peoples to replace the WGIP with a strong mandate.[58] The new Special

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[55] The protesters requested that paragraphs 5 and 37 be removed from *Recommendations on the special theme, "Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges"*. UN Doc. E/C.19/2008/L.2 (24 April 2008).

[56] For a short documentary film on the events, see *PROTEST-Indigenous Peoples "2nd May Revolt" at the UNPFII*, SommerFilms, 2008. http://uk.youtube.com/watch?v=UtORVi7GybY&feature=related (accessed 30 May 2008).

[57] Primarily indigenous activists are elected to the 5-person Board of Trustees that oversees the Voluntary Fund. See http://www2.ohchr.org/english/about/funds/indigenous/ (accessed 31 May 2008). Interview with Samia Slimane (commenting specifically on the UN Voluntary Fund for the UN Decade on Indigenous People), May 2005.

[58] UN Doc. A/HRC/6/L.42 (12 December 2007).

Rapporteur on Indigenous People, James Anaya, is an indigenous person. The DRIPS might have been lost if not for the advocacy prowess of indigenous peoples' organisations.

What is to be learned from the indigenous peoples experience for other would-be norm entrepreneurs? The indigenous experience validates many of the assertions of scholars on norm entrepreneurship. Framing is important for distinguishing concerns from those of other identity groups. Framing can afford important gains but frames also impose limitations and may have to be changed over time. In the indigenous case, the use of 'peoples' and its association with decolonization provided opportunities in the beginning but some constraints as the claims and regions expanded. Nevertheless, the identity frame of peoples did alter the power relationship with the state, at least symbolically, and opened up the opportunity to discuss collective land and natural resource rights in a way that a minority frame would not. Framing themselves as guardians of the environment was also key for success at Rio and providing access to other political opportunity structures but has sometimes conveyed an impression of 'primitiveness' that does not fit well with the reality and self-perception of new generations of indigenous peoples, including those whose goals clash with those of the environmental movement.

Transnational mobilisation of indigenous peoples has not happened spontaneously but is partly the result of interventions by international actors, both positive and negative, that stimulated awareness of and engagement with the international sphere. Epistemic communities, faith and environmental groups and INGOs have provided important top-down support for mobilisation. Opportunities for indigenous activists to meet at the international level have grown over time and helped to solidify an organisational platform. The development of the caucus was key to norm entrepreneurship, enabling the platform to issue clear, unified messages to states and other actors. This development of the platform also required a large investment of resources from donors willing to sustain funding over time; without the Voluntary Fund or INGO resources, for example, it is doubtful that indigenous peoples would have maintained such a presence in international fora.

Embedding norms institutionally can be successful but may take decades to win. Support from key states and regional blocs within IOs is vital for norm emergence. Indigenous peoples were fortunate to have the backing of many Latin American and Nordic states; the normative force of the ILO Convention 169, for example, would be extremely low if states from these regions had not ratified it. These states were also important to the negotiation of the DRIPS. The UN open-ended inter-sessional Working Group on the draft declaration on the rights of indigenous peoples was a vital space for shaping a new dynamic between indigenous peoples and states since its creation in 1995. In the beginning, the meetings were confrontational, with little space for indigenous input, prompting them often to stage walk-outs. Thanks to more amenable Chairpersons the sessions were opened with traditional prayers and indigenous leaders were eventually given a *de facto* equal right to speak with states (Feldman 2002, 40). This afforded them a status distinct from and arguably higher than that reserved for other NGOs. Indigenous actors learned that by pushing a hard line they could win concessions on points that were symbolically important. The space also enabled indigenous activists to socialise delegations to their proposals over time, through intellectual argument, personal testimonies and a refined understanding of their normative claims.[59]

Political opportunity structures are essential spaces for advancing norm entrepreneurship. The WGIP, PFII and Special Rapporteur have played an important role in discussing and developing normative understandings of indigenous rights on a range of issues. Indigenous peoples can rely on these opportunities every year and are not dependent on *ad hoc* conferences or treaty body reviews to present their recommendations for change. The UN International Decade on Indigenous People has given cause for continued resource allocation to indigenous issues by the UN and stimulated engagement by UN agencies. Individual actors within international institutions have also been important to their efforts: for example, Erica Irene-Daes and Asbjørn Eide, both Chairs of the WGIP and members of the UN Sub-Commission, were very sympathetic to the norm entrepreneurship of indigenous peoples and played a key role in shaping their normative claims. Shelton Davis, anthropologist turned World Bank social development advisor, founded an early indigenous information centre in the 1970s and worked with the OAS Inter-American Commission on Human Rights before

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[59] Interview with Julian Burger (former Secretary of the Working Group on the draft declaration), May 2008.

moving to the Bank where he was central to the elaboration of the first World Bank policy on indigenous peoples at the end of the 1980s.[60] Julian Burger, OHCHR lead on indigenous peoples, has pushed for UN engagement on these issues and forged strong links with indigenous leaders, extending a commitment he developed since representing Anti-Slavery International at the first WGIP in 1982.

Maintaining a unified voice is consistently challenging and legitimacy of representation will be questioned. Many of the indigenous organisations were, as Brysk puts it, "born transnational" and consequently have weak connections with the grassroots level (Brysk 2000, 277). While traditional leaders of indigenous communities have often been able to participate in international fora, many of the leading figures are activists, not elders. Both governments and IOs tend to prefer engagement with these (international) activists rather than local communities, the latter regarded as "culturally alien, sometimes intransigent" (Brysk 2000, 286). In contrast, actors operating in international fora adopt modes of operation that are alien to grassroots activists, resulting in "a cadre of professionalized Indigenous delegates who demonstrate more allegiance to the UN system then to their own communities" (Corntassel 2007, 161). The poor communication between international indigenous actors and local communities has been criticised often. The fissure of the indigenous caucus and the protests at the 2008 PFII demonstrate that consensus is not always possible even at the international level and a transnational identity group will have much internal contention that can impede successful norm entrepreneurship. While the PFII does have procedures for electing the indigenous representatives (under ECOSOC's approval), the selection is made by indigenous organisations with connections to the PFII and not directly by vote of indigenous communities.

The motivation of states in accepting new norms for indigenous peoples cannot be explained by rational interests alone. The indigenous population is usually small and marginalized both politically and economically, thus posing no tangible threat to elite interests or government stability. Security has typically not been a factor, with few indigenous communities using any violent tactics to push for state action (among the exceptions are Mexico's Zapatistas; Brysk 2000, 72). Indigenous actors have also played up the 'guardians of the environment' frame and used symbols of their

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[60] Interview with Shelton Davis, April 2008.

traditional culture – such as dress or ceremonies – to disarm state actors by portraying an exoticised and vulnerable identity that should be preserved and protected (Niezen 2003, 179-180). The presence of domestic constituencies of organised indigenous actors has influenced the level of engagement of states in international discourse on norm emergence. For example, the states of North and South America, the Nordic region, Australia and New Zealand have strong domestic indigenous NGOs/communities and these governments have maintained a serious commitment to negotiating the DRIPS (albeit not always sharing the goals of indigenous peoples). Denmark was pushing for the creation of the PFII and agreed to finance it. Participating in and promoting these institutions is one way of conveying to domestic indigenous actors that the state is committed to their issues, even if concessions on hardline issues at home or away remain difficult to secure. Thus, an important distinction can be made between state support to norm emergence and state support to norm adherence. At the international level, states have low material motivations to adopt emerging norms on indigenous rights and low material costs for adopting those norms, particularly where emerging norms are not legally binding. Conversely, they have high ideational motivations thanks to strong mobilisation and the effective framing by indigenous activists of their communities as colonized peoples denied their right to self-determination. Domestically, in contrast, when norm adherence comes into play, the material costs of adherence are high, and although ideational motivations remain, they often are trumped by material concerns, leading to low norm adherence.

In achieving norm emergence, indigenous leaders have had to allay states' rational concerns. The main point of contention has been land and resources, attached to acceptance of norms on self-determination for indigenous peoples. Indigenous activists have had to work hard to clarify the application of the right to self-determination, in particular to make states believe their intentions extend only so far as internal self-determination that would not impact on territorial integrity of the state. Rights to land and natural resources nevertheless can have significant economic implications and most states have not been willing to accept any legally binding provisions that might constrain their rights to use these for the public good rather than for the exclusive use of indigenous peoples.

Indigenous peoples are forging a new "logic of appropriateness", asserting a might in international society that extends far beyond their status as largely poor and marginalized communities. They are no longer just equal citizens of the state – their special status in international law has afforded them a special status also in domestic society. But the gains made in the international sphere belie the failures that persist in the domestic sphere. As much as the indigenous peoples' organisational platform holds considerable force in international spaces, most have not been able to match this at the national level. The challenges of overcoming long-standing discrimination and poverty are resource intensive and indigenous peoples typically lack the leverage to extract those resources from government budgets. At the international level they are part of a strong mobilisation of advocates whose measured norm entrepreneurship has been effective in persuasion and socialisation. Locally, they are smaller and more isolated, lacking the numerical, material or political influence that is often needed to influence change in the domestic sphere. This is an essential paradox of transnational social mobilisation by minorities: using peaceful measures, their potential to influence states under the prevailing conditions in the international sphere is often far greater than their potential to influence within the dynamics of domestic politics. This may be useful for norm emergence but it makes norm adherence more difficult.

Roma: A European minority?

Specific norms and mechanisms for Roma were emerging from as early as the 1970s but have grown significantly since the 1990s. Hundreds of Romani NGOs have been created to help articulate and implement these norms and policies. The discursive position of states has changed significantly over this time, with many acknowledging now that the situation of Roma is caused by discrimination and not 'social backwardness' as previously articulated. Specific references to Roma appear in standards and policies agreed by the OSCE, the Council of Europe (CoE), the EU institutions and the UN. Among the most prominent examples are the OSCE *Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area* adopted by the Permanent Council (2003); the CoE Parliamentary Assembly Recommendation 1203 "On Gypsies in Europe" (1993); the European Commission Against Racism and Intolerance (ECRI)'s *General Policy Recommendation No. 3: Combating racism and*

intolerance against Roma/Gypsies (1998); the COCEN "Guiding Principles for improving the situation of the Roma", adopted by the EU Tampere summit (1999); and the CERD General Recommendation 27 on Discrimination against Roma (2000). The Durban and Santiago outcome documents reinforced and expanded the existing soft law recognition at the European level. Many states have become socialised to the inclusion of Roma as a national minority within the terms of the FCNM.[61] Several monitoring mechanisms on Roma have been created including the CoE's Committee of Experts on Roma and Travellers (MG-S-ROM), the European Roma and Travellers Forum (ERTF), the OSCE Contact Point on Roma and Sinti, and the institutions of the Decade for Roma Inclusion.[62] This process is still advancing, with Romani activists focused now on building new EU institutions such as a new Commissioner portfolio on Roma, a European Roma Strategy and even a binding EU Directive on Roma.[63]

The emergence of norms and mechanisms on Roma has been both a top-down and bottom-up process. Romani groups have come onto the international agenda initially in the late 1960s and 1970s in response to the issues of nomadism and of discrimination against them (Guy 2001, 133 fts 3-4). It was not until the 1990s that IOs engaged in sustained efforts to respond to a growing crisis in the treatment of Roma. The egregious violence experienced by Roma for centuries was in evidence once again in the 1990s and 2000s in ethnic cleansing policies in the Western Balkans and racially motivated attacks on Roma across Europe. As economic conditions worsened, especially in post-Communist states, Roma communities became marginalized further. These factors prompted an increase in Roma asylum seekers over the same period: from 1990 to 1999, some 7000 Roma were granted refugee status in EU states; thousands more were required to return home.[64] The perception of mass Romani economic and asylum migration to richer states brought pressure on home states to decrease the push factors.

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[61] The Czech Republic, Finland, Germany, Hungary, Macedonia, Moldova, Norway, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, the Ukraine and the United Kingdom have all accepted (*de jure* or *de facto*) that the FCNM applies also to Roma. See the Second Cycle Comments by States for further information and Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN), *Results of the exchange of information on the question to which groups the Framework Convention will be applied*, Strasbourg, DH-MIN (98) 4 (15 January 1999): Addendum I

[62] The Decade for Roma Inclusion (2005-2015) is a transnational initiative to secure for Roma improvements in education, employment, health and housing; 12 states participate in the Decade activities and it is funded in part by IOs like the World Bank and UNDP. See http://www.romadecade.org/ (accessed 10 June 2009).

[63] See, for example, the European Parliament's *Resolution on a European Strategy on the Roma* (P6_TA-PROV(2008)0035) (31 January 2008); and EU Roma Policy Coalition (2008).

[64] http://www.irr.org.uk/2003/april/ak000004.html (accessed 17 March 2008). On returns see Cahn and Guild (2008).

States put the issue of Roma on the agenda of IOs to help expedite and coordinate these actions. By safeguarding Romani rights, EU member states prior to accession could more easily reject Romani claims for asylum and, post-accession, can decrease the migratory flow. Accession states have championed Romani rights in order to meet the Copenhagen criteria and hasten their membership in the EU.

These state interests have been matched by the interests of Romani leaders to use international fora as a space for addressing Romani concerns in the face of state failures to do so. They have used norm entrepreneurship to privilege Roma as distinct from other minorities at the same time as seeking similar forms of protection. This process has not been without challenges and controversy, however, and the Romani experience is helpful in identifying many of the difficulties in norm entrepreneurship for minority groups. Chief among these for Roma have been the creation of unifying identity frames, the strengthening of organisational platforms and finding consensus on norm elaboration. Political opportunity structures created by international actors have tried to mitigate some of these difficulties but the results have been mixed.

Building a viable transnational identity frame was an early challenge for Romani norm entrepreneurs. The population of Roma in greater Europe is estimated at 10-12 million.[65] The name 'Roma' obscures the great diversity of identities captured by this term. In fact, Roma *per se* constitute only one particular type of Romani group that is concentrated primarily in CEE. Other identities include the Sinti, Kale, Manush and associated groups like the Travellers, Egyupti and Ashkalija; Romani communities are found also in the Americas, the Middle East, North Africa, India and Australia (Klimova-Alexander 2005, 30-31). This diversity has impacted on unity in the Romani transnational mobilisation, including in contemporary discourses of Romani nationhood, which in some guises attempts to reunite the Roma as one community based on a myth of common origin from India (Fraser 1993; Hancock 1987, 2008; Vermeersch 2006, 14-17).

As for many subaltern groups, appropriation of their own identity frames is an exercise in empowerment and esteem building. For Romani leaders, it is a project that has helped

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[65] This figure is given by the Council of Europe for the population of Roma in its member states. See: http://www.coe.int/t/dg3/romatravellers/documentation/strategies/statistiques_en.asp (accessed 11 May 2009).

to re-frame an identity from socially undesirable to politically significant and useful for ethno-nationalist goals. The social stigma of belonging to a Romani community is still very strong, conferring real social and economic disadvantage to those who might self-identify as such. Many Roma have also assimilated much of their identity (often involuntarily) to the dominant culture in which they live; in Hungary, for example, 70 percent of Roma do not speak Romanes and have little in the way of distinct cultural practices (Pogány 2006, 15).

This reality does not sit well with the ambitions of some Romani actors. They have an avowedly nationalistic agenda, to forge for Roma a strong, transnational nationhood. As Hancock (1991) explains, "A sentiment common among many Romani nationalists is that 'we were one people when we came into Europe, and that we must be one people again'" (256). This is a classic nationalist fiction, not least because there is no firm agreement if Roma ever constituted 'one people' or arrived in Europe during the same period. Nevertheless, leaders have created many of the trappings of nationalism, including a flag, a written language, an anthem and a mythical homeland of *Romanestan* (Hancock 1991, 258; Liégeois 1994, 258).

One difficulty that leaders have faced is that dominant groups within the Romani "archipelago" (Acton and Gheorghe 2001, 55) compete to assert their independence within and from a Roma nation. As Acton and Gheorghe (2001) point out:

> Not all those politically defined as Roma call themselves by this name; and some of those who do not, such as the German *Sinte*, outraged by what they perceive as claims of superior authenticity by *Vlach Roma*, even repudiate the appellation Roma (58).

Some groups also seek to reclaim the previously pejorative 'gypsy' term, arguing that it better reflects their identity than ethno terms like 'Roma'. Thus, even within the "imagined community" (Anderson 1991) of Roma there is disagreement over in and out groups, hierarchies and the very terminology to be applied.

There are some points on which these diverse groups can agree in terms of their identity construction. The first is the distinction between Roma/Gypsy society and non-Roma/Gypsy society. The Roma/gypsy populations 'othered' the majority groups by labeling them 'Gadje' (singular, 'Gadjo'). This has established a dichotomy that

Romani leaders can use to give their communities a feeling of unity. The other common experience is that of discrimination. Even where individuals may not feel deeply a Romani identity, society at large may perceive them as Romani and use this as the basis for discrimination. Severe economic marginalization and persecution has also caused Roma to migrate, bringing together Roma from diverse backgrounds in new states. It is this feeling of grievance that is perhaps the best glue Romani leaders have to bind together a patchwork 'nation'.

The process of making claims to be a nation is one linked both to empowerment and also to rights claims (Petrova 2003). There is an obvious 'adjacency' strategy at play. Romani "ethnogenesis" is portrayed as an extension of earlier processes of nation-building in Europe, a nation whose late-awakening is a consequence of earlier oppression (Gheorghe 1997, 158-159). At a conference of the International Romani Union (IRU) in 2000, the IRU Declaration of Nation (sic) was proclaimed: "we are a Nation, we share the same tradition, the culture, the same origin, the same language; we are a Nation. We have never looked for creating a Roma State" (reproduced in Acton and Klimova 2001, 216). The declaration rejects the appropriateness of a state for Roma because it is not suited to their history and culture and because the form of a territorial state is perceived as old thinking in the new age of global governance (Klimova-Alexander 2005, 22-23). On the other hand, Romani leaders (like indigenous peoples) recognize that the likelihood of achieving a state of *Romanestan* is slim and asserting such claims will make governments less sympathetic to their cause.

Achieving consensus on norm elaboration has been problematic because there is tension between those who see Romani concerns through the prism of ethno-cultural rights and those that see it as socio-economic rights, or human rights writ large. The difficulty lies in how different actors wish to represent Roma. Some regard Roma as citizens to be treated equally with others on the basis of non-discrimination, afforded no particular privileges other than full implementation of their human rights. They fear that the assertion of a national minority identity or transnational nationhood will further marginalize Roma from the wider society within which they seek integration. Others see Roma as national minorities, with particular rights stemming from their ethno-cultural identity and non-dominant status within the state. They want Roma to have the same minority rights as similar groups within the state and have less interest in cross-

border issues.[66]   Still others see Roma as a transnational people or nation, with entitlement to a *sui generis* set of rights on the basis of their unique status as a non-territorial transnational nation.

The claims for Roma to be recognized as a transnational nation or people are the most controversial, and the only proposal that really includes new Romani-specific rights. Some Romani leaders do not believe that Roma are minorities because they lack a kin state and "do not conform to the traditional profile of a territorially concentrated national minority" (Gheorghe and Mirga 1997). These actors see the "Romani minority as an 'exception', which renders the situation unique in comparison with other cultural and ethnic minorities" (*Ibid.*). Some espousing this view have asserted the need for a European Charter on Romani Rights, the implication being that their unique status requires recognition of new group-specific forms of international protection. The idea for a European Charter on Romani Rights has been around since the early 1990s and was resurrected most recently at the ERTF annual assembly in late November 2008. The Charter is to include provisions for: combating Anti-Gypsyism; representation with voting rights in the UN, CoE and European Parliament; participation in decision-making at the national/local level with a right to veto over decisions affecting Roma; political recognition of the Roma as a national minority; freedom of movement across borders; freedom of cultural and political organisation; and rights pertaining to education for Roma.[67]   These provisions go beyond existing international standards for the protection of minorities by including collective rights structures for supranational representation, veto rights, and by the focus on Anti-Gypsyism as a unique form of discrimination.

There are some important practical arguments for and against a European Charter on Romani Rights. Romani identity spreads throughout Europe and is a common minority to nearly every European state. Although the same claim might be made by a handful of other minorities (e.g. certain religious minorities), none can claim to suffer the same extent of marginalization as Roma. A treaty for them alone therefore seems justified. Others have made the point that many Roma that have migrated out of their country of origin for various reasons often have less access to rights than Roma who are

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[66] Gheorghe and Mirga (1997) give the example of the Zentralrat of German Sinti and Roma which opposed German laws that did not recognise their status as a national minority.
[67] See http://www.romnews.com/a/RKreport.htm#_Toc496896328 (accessed 20 June 2009).

considered as 'national minorities' in the countries where they hold citizenship (Gheorghe and Mirga 1997). This presents a two-tiered system of rights protection even between Romani groups living in the same country. A European Charter would give some uniformity of status to Roma regardless of their citizenship or country of residence. There is also no collective rights dimension to any European-level provisions for minorities, which frames the rights as those of 'persons belonging to minorities'. Those against the idea of a European Charter on Romani Rights believe that such an instrument is ill suited to the existing realities of the Romani population and international law. The emphasis on Europe in this case is seen as problematic given that the Romani population extends far beyond the borders of Europe. This is why at the WCAR the NGO Forum *Programme of Action* amends the title to call for an *International* Charter on Roma Rights (Article 435, emphasis added). There also is concern that recognition of legal rights for a transnational Romani community may undermine the state-citizen relationship and possibly the utility of the state itself. In its most radical form, the proposal for a collective rights-holding transnational Romani identity makes Roma subjects of international law separate from and in many ways on par with states in the space of international institutions (Kawczynski 1997). Acton and Gheorghe (2001) go so far as the claim "the unfolding agenda of Gypsy activism may be nothing less than the abolition of the nation-state" (69). Most Romani leaders, however, prefer a combination of the citizenship approach with recognition of minority status and rights that is rooted firmly within the nation-state system (PER 2001; 2006). They do not look beyond the horizon for a post-national, post-territorial international order.

Like indigenous peoples, the ambitions of Romani norm entrepreneurship have not always been accepted universally by states. For example, while several have recognized the application of the FCNM to Roma, others have not and only a handful of states confer constitutional recognition to Roma as minorities.[68] There was no acceptance of the proposal to recognize Roma as a 'non-territorial nation' in the government documents of the WCAR indicating that Roma have not successfully socialised states to this rights frame. At the same time, some have argued that states have been keen to

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[68] Specifically, see the Finnish Constitution, section 14, subsection 2-3; Slovenian Constitution Article 65; Macedonia Constitution Articles 48 and 78, Hungarian Act on the Rights of National and Ethnic Minorities (1993) and the Austrian Ethnic Act (1993, amendment to the Act of 1976) (Gheorghe and Mirga 1997). Denmark and Ireland (for Travellers) are among the states that do not accept application of the FCNM to Roma. See also *supra* note 61.

effect the "Europeanisation of the Romani problem" as a means of evading their responsibilities towards these communities (Klimova-Alexander 2005, 139). From a rational perspective, recognizing Roma as a transnational non-territorial nation may confer some material benefits for states. Funding and policy support from IOs has to some extent alleviated state responsibilities. From an ideational perspective, making discrimination against Roma a collective European problem diffuses accusations against individual state failures and safeguards esteem of state actors.

With this divergence of views on Romani rights framing, what is emerging in practice is a compromise approach in international fora that constitutes a group-specific rights approach. This approach goes beyond mere non-discrimination by focusing also on the cultural aspects of Romani identity, privileging Roma as a specific kind of national minority, but does not go so far as to endorse the more controversial collective rights possibilities. This approach ensures a distinct place on the international agenda for Roma without creating any *sui generis* rights for them. This group-specific approach is evident, for example, in proposals for a European Strategy on Roma but rejections of a (legally-binding) EU Directive on Roma, which might confer distinct rights.

A third challenge for Romani leaders has been in creating a sound organisational platform to pursue these norm entrepreneurship objectives. There are strong divisions across Romani NGOs, between the old guard and younger generations and between those who favour domestic political representation over civil society and IO routes (Gheorghe 2001; PER 2001, 18-19; Trehan 2001, 139). Leaders have not stimulated a mass mobilisation of Roma and the civil society organisations of or for Roma have been labeled pejoratively as the 'gypsy industry'.

Like indigenous peoples, Roma have a long history of transnational social mobilisation, beginning possibly as early as the late 19th century, and some forms of traditional leadership (Puxon 1973; Mayall 2004, 215, ft. 60; Liégeois 1994, 17-18). These structures were concretised in the mid-1960s when the World Gypsy Community was formed. This was followed by the first World Romani Congress held in 1971 in London and the second World Romani Congress convened in Geneva in 1978, from where emerged the International Romani Union (IRU). This meeting marked a sharp increase in size and breadth of participation, with 120 delegates from 26 countries

(Liégeois 1994, 258). Participation has continued to grow at subsequent World Romani Congresses held in Göttingen, Germany (1981), Warsaw (1990), Prague (2001), Lanciano, Italy (2004), and Zagreb (2008). The Congresses lack firm institutional structures, however, and tend to be organised in an *ad hoc* manner.

The IRU remains one of the most prominent Romani INGOs. It has over time attempted to create formal structures of representation and decision-making with a view to serving in its most ambitious form as a world Romani government (Acton and Klimova 2001, 208). By 2004, it had 33 member states and 19 candidate states in its membership, including states such as Australia, India and Israel (Klimova-Alexander 2005, 18; Acton and Klimova 2001, 199-200). The IRU has struggled to meet its own expectations, lacking funding, accountability of its leadership and even a website (Klimova-Alexander 2005, 18; Barany 2002, 258-259). Because of what are seen as the failures of the IRU there have been a small number of organisations aiming to compete for space on the transnational level. The most visible is the Roma National Congress (RNC) founded in 1990 under the leadership of Rudko Kawczynski (Gheorghe 2006; Klimova-Alexander 2005, 100-101). In 2003, the International Roma Women's Network was created, in part a reaction to male dominated leadership on Romani affairs; it is directed by Soraya Post. The European Roma Information Office (ERIO) was established in 2003 to serve as an interface between Romani networks and European institutions; its director in Ivan Ivanov.

All of these organisations must now share space with the European Roma and Travellers Forum (ERTF). The ERTF was born in 2004 following a process of negotiation with the Governments of Finland and France (co-sponsors of the proposal) and the CoE. It has the status of an NGO but is affiliated with and largely funded by the CoE, serving as an interface with the organisation. The ERTF consists of 75 elected Romani representatives meeting once a year in plenary and, *inter alia*, an Executive Committee. The Statutes of the ERTF attempt to ensure a breadth of representation by specifying, "The composition of the [country] delegation should reflect the principles of representativeness, transparency, geographical specificity, gender equality and generation balance" (ERTF Statutes Article 6.3). The delegates are selected by Romani

INGOs or by national platform Romani NGOs in 38 countries in Europe.[69]

The structural changes made by the IRU and the emergence of the ERTF have precipitated greater discussion in recent years on the issue of Romani leadership and representation. By most accounts, Romani mobilisation is an elite affair that is dominated by a handful of individuals who move between key positions in NGOs and IOs working on Romani issues. For example, Nicolae Gheorghe, a scholar and activist from Romania, founded the NGO Romani Criss, was Vice President of the IRU and was the first to hold the position of Senior Advisor to the Office of the OSCE Contact Point on Roma and Sinti. The space for new actors is opening up, following investment in Romani leadership programmes, and an expanding cadre of Romani professionals with experience of working in and with, INGOs, IOs and governments.

This elite activism, however, has not been able to break easily into mainstream politics nor to build up mass Romani mobilisation from below. Discrimination still abounds in mainstream parties that can be loath to field a Romani candidate. Romani political parties tend to be dominated by older Romani men, which has left less space for women or younger actors.[70] Most Roma are more concerned with local day-to-day realities than national or international mobilisation (Gheorghe 2006). Many communities express a mistrust of government institutions and actors (Mihalache 2009). There is also little in the way of transnational or even intra-Romani group solidarity among local populations (Pogány 2006, 18).

While in the early days the short-cut to representation taken by a self-selected Romani intelligentsia and activist elite seemed necessary (given capacity gaps) and important (given the situation of Roma) they must now consider whether those short-cuts have harmed their longer-term goals. The norms have emerged but Roma have low capacity to ensure norm adherence. According to Gheorghe (2006):

> Roma are still taking a rather comfortable approach to politics […]. International organisations […] invite Roma to their meetings […] where we frequently behave in a 'take-it-easy' way and do not use these occasions for political

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[69] The INGOs represented are the International Romani Union; the Roma National Congress; East Meets West – Roma Youth Network; Forum of European Roma Young People; and the International Roma Women Network. The national delegates can be found at http://www.ertf.org/en/memberngos.html (accessed 10 February 2008).
[70] Personal communication with Isabela Mihalache, OSI, May 2009.

debates and confrontation. We still tend to believe that rights are granted somehow mechanically by laws and policy documents. After 15-20 years of such "resolution-driven" Romani activism, we could learn that the adoption of such documents, while useful, is far from being enough; neither is the "small project driven" approach successful enough.

This is one reason why expectations of the ERTF have been so high. The ERTF has the potential to provide international representation for Roma as a subject of international law and some Romani leaders envisage that states would consult the ERTF before implementing any actions aimed at Roma (PER 2006). This would make Roma a *sui generis* non-state actor, with no territoriality but with some political authority over community members. The ERTF has the potential to move beyond the PFII, which is narrowly focused on the role of UN agencies and which has no consultative powers with states. This is far from certain, however, and the ERTF is already fielding major criticism, with many regarding it as little more than a mismanaged INGO. Institutionally, it has achieved modest gains over the IRU but has failed so far to establish a firm plan of action. There is little consistency in or external scrutiny of the decision-making processes therein (Deets 2008, 22-23). Its role as a *representative* body is dubious and the selection of delegates has been criticised for its lack of transparency and the dominance of an old guard of Romani actors to the exclusion of younger activists.[71] National platform NGOs seated in the ERTF are perceived by some to prioritise their own institutional goals (e.g. funding) over the needs of local Romani organisations. A contract awarded to the ERTF by the CoE to host a Roma information network was terminated after a year of inaction and a spent budget. The interim ERTF President, Rudko Kawczynski, has commented that Roma are "in the process of establishing a truly efficient and representative Romani interest representation […] This will be a painful process especially for those who have had a comfortable life as self-acclaimed experts or Romani leaders".[72] Gheorghe's need for "political debates and confrontation" may emerge within the ERTF but if the ERTF becomes too contentious or radical in its recommendations to IOs and states it could lose IO support. There is evidence to suggest this is already happening; according to one leading Romani actor, the ERTF delegates:

> don't have the capacity to be political representatives, they are acting like grassroots activists. Some of them are Rom and some aren't Roma. The

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[71] Personal communication with Isabela Mihalache, OSI, May 2009.
[72] http://ertf.org/en/index.html (accessed 23 March 2008).

[European Commission] and Finnish were deeply disappointed. When you talk to [Romani leaders] they always speak of how hungry their children are, how dirty their streets, the Holocaust – they really don't have the language of European institutions.[73]

If neither states nor IOs find credible norm entrepreneurs to inform their decisions, the risk is that participation of Roma will become even more tokenistic, with states and IOs rendering policy prescriptions independently.

As international institutions and states have become more and more willing to countenance the normative demands of Roma, Romani leaders have been under increasing pressure to consolidate their views and provide a firm direction for future norm elaboration and policy vis-à-vis their communities. The difficulty they have faced in doing this signals the range of problems that norm emergence for transnational minorities can entail. Romani leaders have struggled to forge consensus between far-reaching norm entrepreneurship and modest norm adherence, and as a consequence have lacked a clear, consolidated message on Romani rights and policy priorities.

Given these many challenges faced by Romani norm entrepreneurs, the role of IOs and INGOs in bolstering norm emergence has been critical to the successes achieved. It is not possible here to provide a detailed analysis of all the institutions created by IOs for Roma or of all the cooperation between Roma and INGOs. Vermeersch (2006) offers an excellent review of European institutions and Klimova-Alexander (2005) of UN institutions vis-à-vis Roma; both also consider INGO engagement, with the European Roma Rights Centre (ERRC) and Open Society Institute (OSI) figuring most prominently. For the purposes of this thesis, the impact of the WCAR will be noted briefly before turning to some broad conclusions about the impact of international actors on Romani norm emergence.

The WCAR gave Roma an important forum in which to raise their profile on the international stage, translating into several symbolic gains. Durban marked a greater internationalization of the Romani identity and the normative framework of Romani rights. They had one of the largest delegations and were widely mentioned in the keynote speeches (Klimova 2003, 314, ft. 164). In the NGO Forum *Declaration and*

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[73] Interview with Ivan Ivanov, May 2008.

Programme of Action Romani activists were successful in asserting their identity as a 'stateless nation' and proposing several policy recommendations such as the establishment of a Permanent Roma Forum.[74] While the DDPA offered Roma no normative innovations, it did reaffirm them as a distinct 'victim group' in the provisions.

States were not willing to countenance the 'stateless nation' claims of the Roma by incorporating this into the outcome documents. Such an acceptance has potential legal implications for many states with Romani populations, particularly those in Europe that are signatory to the FCNM. States outside this region or without Roma populations had weak incentives to fight for this issue. Furthermore, the norm has not been firmly institutionalized in IOs and thus lacks certification from international actors.

The active participation of Roma from the Americas underscored the need to consider Romani issues at this global level. The WCAR offered more to Latin American Roma than to European Roma. States in the region were newly socialised to the existence of Roma within their territory. Romani groups based in the Americas formed a new transnational organisational platform during the regional prepcom process, namely SKOKRA[75] (Council of the Organizations and Kumpania Roma of the Americas), which issued its own normatively innovative *Declaration* that drew heavily from the regional indigenous rights discourse.[76] Despite being a very small presence,[77] they also managed to secure inclusion of Roma in the Santiago NGO Forum *Declaration and Plan of Action* as well as the inter-governmental outcome documents. In the latter, the Romani delegates were aided in particular by the delegation of Colombia who submitted the proposed text (International Human Rights Law Group n.d., 13). In the Santiago *Declaration and Plan of Action* states "Recognize with concern that the Roma and Senti [sic] are victims in some countries of the region of stigmatization and discrimination, as in other parts of the world" (Santiago *Declaration*, para 48); and were

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[74] *NGO Forum Programme of Action*, para 136. The body was requested under the auspices of the UN, CoE and OAS.

[75] The Declaration was signed by the following members of SKOKRA: Asociacion Identitad Cultural Romani de Argentina; Asociacion Nacional del Pueblo Rome de Ecuador; Proceso Organizativo del Pueblo Rom de Colombia; Grupo Roma – Kumpania Rom de Chile; SA Roma (US); American Romani Union; Romano Lil (Canada); Western Canadian Romani Romani Alliance.

[76] The Declaration can be found at http://www.philology.ru/liloro/romanes/declaration_eng.htm (accessed 5 April 2008). It was an output of the meeting "The Roma people: The other son of Pacha Mama - Mother Earth, Continental Meeting of the Roma people of Americas".

[77] Only one Roma NGO (PROROM Proceso Organizativo del Pueblo Rom de Colombia) with 2 delegates was present in Santiago (Klimova 2003, 293).

urged to "eliminate all the legal and real barriers that obstruct the full exercise of the civil, political, economic, social and cultural rights of the Roma (Gypsy) people" (Santiago *Plan of Action*, para 136). Romani NGOs in the region were primarily culturally focused prior to the WCAR and have subsequently become more cognisant of rights issues (Tchileva 2004). They have continued to forge alliances with IOs: for example, Argentinean Rom Jorge Bernal was invited to submit a Working Paper to the WGM,[78] the OHCHR has funded a community-led training of Romani leaders in Latin America in 2007, and in Colombia, Romani NGO ProRom has been active politically under the direction of Dalila Gómez Baos (who ran for the Senate in 2006 (Stanley 2006)). They have also featured prominently in the regional Durban follow-up activities. Provisions on Roma are included in the Santiago Más Cinco and DRC regional prepcom outcome documents.[79]

The comparison between the impact of the WCAR on Roma in Europe and Roma in Latin America shows that the process was a much stronger political opportunity for norm entrepreneurship in its earliest stages and in its less ambitious forms. Nascent norms emerged in Latin America where state socialisation to Romani rights was low, where transnational mobilisation was weak and where (regional) norms on Roma had not yet been institutionalized at the surpra-state level. Far-reaching norms on 'stateless nation' status were beyond the accepted "logic of appropriateness" for states.

Beyond the WCAR, IOs have recognized Roma as a distinct community and have entrenched Romani concerns as transnational concerns. Several caveats, however, are needed to understand the effect of IO support to norm entrepreneurship.

IOs have been less successful in their role in socializing states to emergent norms for Roma, especially at the local level. For example, in the EU accession Review Reports researchers found that the "emphasis is on acknowledging the existence of formal measures rather than the evaluation of implementation" (Hughes and Sasse 2003, 15). The establishment of structures to prevent discrimination and to work towards the full inclusion of Roma has not changed deeply entrenched social practices of discrimination.

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[78] UN Doc. E/CN.4/Sub.2/AC.5/2003/WP.17 (5 May 2003).
[79] UN Docs. A/HRC/4/111(15 January 2007): p. 9, para 12; p. 13, para 17; A/CONF.211/PC.3/3 (18 June 2008): para 4.

Norm emergence also has been undermined by the haphazard approach to normative frames by IOs, which have focused variously on non-discrimination rights, on minority rights, on nationhood and on transnational minority status (PER 2001, 7). Even within the same institution there have been divergent messages: in CERD, for example, members at the thematic session on Roma wanted to know more about whether Roma constituted a 'nation' at the same time as focusing on non-discrimination as the dominant rights frame for Roma.[80] The CoE champions minority rights for Roma while the EU sticks to non-discrimination frames. The norms are being institutionalized under divergent frames and cannot build to a clear and consistent norm cascade.

The norms adopted have not always fit local interests of Romani communities. In the process of norm entrepreneurship, Romani diversity has been obscured by homogenizing frames. This has served the needs of IOs seeking to make transnational policies for Roma. Vermeersch (2006) argues that IOs "have been actively shaping a view on the Roma that does not always coincide with (and sometimes contradicts) the way in which Romani activists have framed their issues and demands" (186). Universal norms are created for a 'fictional' transnational Roma that when applied in practice do not always adapt well to particular experience of local communities. For example, Romani groups can have divergent views of education policies for their children, with some even preferring the 'segregation' of their children in distinct Romani schools (albeit with reforms), a practice that has been widely condemned by IOs.

Some Roma perceive that the homogenization of their individual communities into a transnational group puts the onus for response on IO institutions and not individual states (Vermeersch 2006, 195). IOs set budgets for Romani-focused activity that is a fraction of the actual financing needed to overcome the social marginalisation of Roma. States busy themselves in international fora discussing Romani issues to detract attention from their failure to initiate similar discussions at home. This is compounded by the fact that none of the institutions created by IOs for Roma has had the power to intervene directly in country situations. Too much work is concentrated in Western capital cities; one Ukrainian Rom activist interviewed said his cooperation with the CoE occurred only in Strasbourg.[81]

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[80] See, for example, UN Doc. A/55/18, para 450 (a) and CERD/C/SR.1423 (11 September 2000): para 39.
[81] Interview with Fedor Kondur, May 2008.

A fifth caveat to IO support to norm entrepreneurship is the poor coordination of IO activities. In the words of one Romani activist: "The EU's criticism is not really helpful because it's not clear what we should ask from the government when we refer to it […] there is little communication about this from the European institutions" (quoted by Vermeersch 2006, 199). Despite some token efforts at coordination initiatives,[82] IOs persist in unilateral measures; for example, the absence of the CoE at the European Roma Summit in 2008 was criticized by Romani leaders.

The final caveat concerns the critical issue of representation. At the European level, building a Romani organisational platform has served the interests of IOs, keen to have a constituency of Romani actors to input into and endorse their policy proposals. Consultative bodies like the MG-S-ROM, the Decade of Roma Inclusion and the ERTF have been established. The ability of these institutions to 'represent' Roma continues to be questioned. There are no accountability mechanisms built into these consultative bodies such that Roma who object to policy recommendations of IOs can seek redress. Moreover, activists report that many of the participants are not Roma but government (or government endorsed) actors. Vermeersch (2006) finds the feeling among Romani activists is:

> increasing involvement of Romani activists on the European level did not necessarily integrate them in domestic and local decision making. On the contrary, many of the Romani activists who became progressively more successful on the European level experienced more and more difficulties in gaining support from Romani communities at home. (195)

How Roma seated in these institutions see fit to use their position of influence is highly relevant to norm entrepreneurship success. Romani activists have complained that many of their counterparts working in IOs "have lost their independence and become part of 'the establishment'" (PER 2006, 14). According to the director of ERIO, many Roma participating in such IO bodies come with vaguely defined recommendations for change that IOs pick up, translate into policy papers, and offer as Romani-endorsed policy without further consultation or input.[83] IOs are floundering without Romani staff

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[82] See, for example, the *International Conference on the Implementation and Harmonization of National Policies on Roma, Sinti and Travellers: "Guidelines for a Common Vision"*, Bucharest, May 2006, http://www.osce.org/conferences/roma_b_06.html (accessed 10 March 2008).
[83] Interview with Ivan Ivanov, May 2008.

and rely too heavily on these consultative bodies when they are neither accountable nor representative.

Notably, IOs have been less open about cooperating institutionally with Romani INGOs like the IRU or RNC. They have created parallel institutions wherein IOs are better able to determine the agenda. The institutional bodies established by IOs have not satisfied the most ambitious of Romani proposals, i.e. permanent representation in the UN, CoE and EU. The ERTF is a test case to determine whether permanent representation in IOs is viable; so far, it appears to be failing that test. IOs clearly want and need Romani input; Romani leaders want to have input - but the approaches of each side differ substantively and procedurally. They do not always understand each other and their interaction seems to end in mutual frustration rather than clearly articulated goals and shared ownership.

IOs have played a vital role despite the caveats noted above. IOs have helped states to change the discourse on Roma and to include rights in this discourse. IOs have also provided the all-important funds to enable Romani norm entrepreneurs to operate. At the European level all signs point to further institutionalisation of strategies to assist Roma and IO funding to support these efforts. Whether these strategies will lead to norm internationalization depends much on the future role IOs play in strengthening the capacities of both Roma and states to move beyond norm elaboration to norm adherence.

The role of INGOs in supporting Romani interests also has been important for norm emergence. They have created space for dialogue among Roma and between Roma, governments and IOs for norm elaboration and socialisation; have built Romani capacity to use international institutions for emergence; and have helped to put Romani concerns onto the international agenda through effective reporting on violations of their rights and through strategic litigation.

INGOs have also faced some criticisms. INGOs have had undue influence over the landscape of Romani norm entrepreneurship. This is one consequence of creating international norms ahead of domestic change. INGOs have been in a position to influence the emergence of standards on Roma along with a handful of Roma activists

but have done so without mass social mobilisation on the part of Roma (Klimova-Alexander 2005, 140; Vermeersch 2006, 211). Norm emergence has been influenced strongly by INGO perceptions of what those norms should be; for example, the development of the CERD General Recommendation had more to do with ERRC lobbying than calls from Romani leaders. INGOs speak the institutional language of IOs and have formulated normative proposals that fit this language. This has expedited the adoption of norms but it has not necessarily produced a normative landscape that Romani leaders or Roma at large would have chosen themselves. The gap created by a lack of agreement among Romani leaders on normative frames has been filled partly by INGOs, which appear less willing to push the envelope in the way that actors like the IRU aim to do in its calls for recognition of the Roma as a non-territorial 'nation', for a seat at the UN or for group-specific standards like a Romani Charter. INGOs tend to stick within the confines of existing standards of international human rights and minority rights law (ERRC is exemplary of the former; MRG's approach, more of the latter). Although they strive to privilege the Roma as a distinct case among minority groups, there are evidently limits to which INGOs are willing to champion norm innovation for Roma.

This practice feeds the perception by some Romani leaders that 'gadjo' INGOs/NGOs are unjustly speaking *for* Roma. The critique is summed up by the term 'Gypsy industry' denoting the community of civil society organisations and private agencies that have emerged to seek funding for Romani-focused initiatives. In some respects, INGOs are in a better position to secure these funds because donors prefer administratively to deal with large budget projects than small budget, localized projects of the type that the bulk of Romani NGOs would pursue. There also has not been a strong institutional relationship between INGOs and Romani INGOs. The IRU, for example, sees itself as a quasi-governmental institution with constituent authority to represent Roma vis-à-vis IOs and states, one that does not require an intermediary INGO to facilitate this interface. On the other hand, the IRU's overtly 'political' identity and comparatively weaker knowledge of IO institutional approaches, means that IOs appear cautious about liaising with it, opting instead to invite representatives of 'expert' INGOs like the ERRC to give input on Romani issues. The effect is that the divergence of views on Romani norms and policy espoused by Roma is replaced by the normative voices of INGOs (Vermeersch 2006, 208). Moreover, INGOs do not share

the same commitment of Romani leaders to group esteem as a political project, and although they share an interest to end discrimination they are not in the business of nation-building.

Important lessons can be learned from the Romani experience of norm entrepreneurship, lessons that may have implications for the transnational mobilisation of other minorities. Roma are firmly on the international agenda in Europe, discursive positions of states have changed and attention to Roma has been institutionalized across several IOs. The support to norm emergence is not matched, however, by efforts at norm adherence.

Norm emergence on group-specific rights for Roma has been aided by rational and ideational interests of states. In the early 1990s, the marginalization of Roma became a transnational concern, as violence and more open borders pushed and pulled Roma to migrate in greater numbers. Roma were unwanted for various economic and social reasons in their home countries and the countries they newly inhabited. Their poverty, deprivation and treatment, however, were an affront to Europe's self-image as progressive, just and equal. Discrimination motivated states to be rid of the 'gypsy' problem but espoused ideational commitments to non-discrimination and minority rights provided the normative framework for their action. This hypocrisy is one factor that continues to undermine the success of norm adherence on Romani rights. Norm acceptance in international fora by a small number of elite state actors has demanded less social transformation than norm adherence by state actors in the domestic sphere, where material costs of norm adherence are higher. While several ideational statements in support of Roma have been made by states, proposals that would have real bite - like the EU Roma Directive - have not been accepted. No critical state exists in the case of Roma that could influence a norm cascade; Hungary and the Czech Republic, for example, have adopted a strong discursive position in favour of Roma on the international stage but the emerging norms are a long way from domestic internalization.[84] Roma in all states are weak constituents with minimal material leverage, lacking financial power, political representation, or kin state allies.

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[84] See, for example, the Czech Republic's prioritisation of Romani issues during its tenure as EU President, including the development of the Integrated Platform on Roma Inclusion; Hungarian MEPs have taken the lead in seeking an EU Strategy on Roma within the European Parliament. In contrast, increased violence against Roma has been reported in 2008 and 2009 in both the Czech Republic and Hungary (Rorke and Nicolae 2009).

Roma have been unable to increase their leverage in part because they have not invested in better mobilisation strategies. Perceptions of expertise and political legitimacy have been key problems. Romani activists are criticized for focusing too much on the reiteration of problems and on (transnational) political projects and not enough on detailed and concrete policy solutions. There is no common and clear normative platform and competing views of rights and identity undermine the impact of their collective voice. Roma have struggled with the issue of legitimate representation, precipitating IO and state interest to create institutions like the ERTF. Romani mobilisation remains an elite and divided affair and the calls to engage Roma at the grass roots level are used more rhetorically than effected in practice. No mass mobilisation of Roma exists. Romani engagement in legislative politics has been undermined for several reasons but among these is the lack of focus by Romani leaders to make this a priority goal. Their 'repertoires of contention' have been weak: transnational information exchange is accessible only to a limited audience; symbols of Romani identity exist but are not widely used nor recognized; and material leverage has not been harnessed - the possibilities for such during the EU accession process resulted only in institutional rather than ideational changes vis-à-vis Roma. Local Romani NGOs have focused attention on using international funds to create small-scale projects that have had little effect on institutional discrimination in the domestic sphere. Many Romani victims of rights violations are fearful of mobilizing, believing that the government or police are unlikely to protect them from retaliation by those who are accused of committing the crimes.[85]

Activity at the international level and at the grassroots level largely appears to have failed to tackle socialisation at the all-important middle level where government institutions – both national and local – are responsible for norm adherence. The grassroots NGOs are not always well disposed to conduct advocacy for reform (not least because of low levels of social mobilisation among Romani populations) and the Romani elite are preoccupied with the international sphere. If norms are institutionalised without sufficient socialisation at the level of the individual, discrimination is not easily countered even with national action plans and EU funds. There is evidence that many elite government actors have been socialised to Romani

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[85] This experience was expressed in interviews with Fedor Kondur and Ivan Ivanov, both with experience in working with litigation on behalf of Roma.

rights, at least in terms of rhetoric at the international level: for example, when discussing the UN decade to combat discrimination in 1988, the delegate from Czechoslovakia reported, "Although the incorporation of gypsy population into the life of Czechoslovak society was not complete, there was no discrimination against that group".[86] Such a statement would rarely be uttered today by states in international fora when discussing Roma, but the sentiment of this statement still holds for many state actors working at all levels of government.

Norm emergence on Romani rights has taken place in boardrooms of capital cities across Europe attended by a limited cadre of Romani, IO and government actors. The greater challenge is building a wider constituency of norm entrepreneurs. Most Roma have little or no awareness of the standards and policies adopted in their name nor have they participated in debates on the appropriate identity and rights frames for Roma. The mechanisms of accountability for norm adherence rely inordinately on the goodwill of non-Romani actors. Increased political representation of Roma will be harder to secure than NGO representation (mostly due to financial and discrimination barriers) but is arguably more effective for norm adherence in the long term. One caveat is necessary, however: with low levels of trust among Roma for political actors – including Romani political actors – the election of one or two Roma into parliamentary positions is unlikely to be more than a symbolic gesture and will not alter the balance of power for Romani groups. Institution-wide commitments are needed, with pressure from above and below to implement a firmly entrenched legal and policy framework that meets the needs of Roma. The desired EU Directive on Roma is one such example.

Roma have been the victims of their own success in many ways. There are many IOs interested to support their norm entrepreneurship but the lack of coordination between these IOs and among Romani actors, and the divergent interests of IOs, has had three negative effects: it has fragmented the organisational platform of Roma; it has enabled external IOs to take too much of a lead in determining the normative frames and policy goals of Romani norm entrepreneurs; and it has weakened the policy coherence on group-specific Romani rights. The intense interest of IOs in Romani concerns also has eliminated the need for strong social mobilisation from below and clearly articulated

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[86] Mrs. Broznakova, Czechoslovakia, UN Doc. A/C.3/43/SR.8 (18 October 1988): para 6.

demands. The easy access to policy dialogue in IOs has made electoral politics less imperative, with the effect that leaders are removed from and less accountable to local realities. INGOs have championed their cause on the national and international stage but are less well-equipped for the tougher challenges in norm adherence. Sub-groups within the broader Romani identity frame have tried to assert their own identity in an effort to claim distinct representation - it pays to be distinct as regards access to resources and a say in how they are distributed. Identity frames constructed to mask heterogeneity are fragile and any groups seeking to forge a transnational identity must be aware of those sub-groups who will at some stage want to 'go it alone'. The Romani experience remains too inward-looking: Romani activists have conceded "the fact that Roma are often thought of as a 'special minority', not related to any other, has prevented them from seeking coalitions with other interest groups or minorities in similar situations" (PER 2006, 15).

Thanks to norm entrepreneurship, Roma are extraordinarily privileged among minorities in international discourse. The engagement of international actors in the Romani cause has made an important impact on their status in society and pushed states to accept publicly their failures towards Roma. The pathway to norm emergence - elite centred, lacking local community engagement, largely dependant on IOs and INGOs and concentrated in the international sphere - has unfortunately not fostered firm roots for norm adherence. Romani actors and their international partners need to alter the course of the norm entrepreneurship to adopt new strategies that are better suited for norm adherence challenges.

CHAPTER II: DALITS AND NORM ENTREPRENEURSHIP ON CASTE-BASED DISCRIMINATION

> We have begun a new life
> We have found our own temples
> Regained our lost faith
> All are equal here.
>
> <div align="right">Harish Bansode</div>

Introduction:

In a process that has spanned nearly three decades, representatives of caste-affected groups have worked to bring international attention to the plight of their communities as a means of putting pressure on caste-affected states for domestic reform. They have done so by building transnational social mobilisation and by using political opportunity structures available at the international level. The 2001 World Conference Against Racism (WCAR) was one such structure, serving as an important catalyst for accelerated mobilisation and norm emergence. Both before and after the WCAR, however, important developments have occurred that provide a long-view of norm entrepreneurship around caste-based discrimination. This chapter will show how caste-affected groups and their allies have secured international recognition of their identity and concerns and institutionalized new norms for state behaviour by using a sound 'adjacency' strategy for norm emergence. The process of constructing an effective transnational advocacy network (TAN) to facilitate this work will also be considered. Their efforts at norm entrepreneurship have been met with opposition from the Government of India, which has objected to international attention to this issue and the consideration of caste under the rubric of racism. The caste TAN has responded with a twofold strategy: first, to expand the scope of communities being considered beyond India and South Asia; and second, to replace the terminology of caste with a wider frame focusing on discrimination based on work and descent. Most states have been reluctant to challenge India's obstinacy but the caste TAN has been assisted by several international actors in their norm entrepreneurship. Two key allies will be given particular attention: the UN Sub-Commission on Human Rights and CERD. Actors

within these institutions have given certification to the new global identity frame of caste-affected groups and supported their claim that caste-based discrimination is prohibited in international law, including under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The main focus in this chapter will be on the experience of Dalits in India, who constitute nearly 170 million of the estimated 240 million Dalits across South Asia and the 250 million caste-affected persons around the world. Dalit leaders from India have figured most prominently in international advocacy on caste and it was India-based or focused NGOs that were the first to make caste an issue for international attention at the UN. India also has been a "critical state" for norm emergence on caste-based discrimination, positioned with the largest population of caste groups and the most extensive domestic legal framework for the protection of low caste groups. The Government of India nevertheless remains the strongest opposition force in international fora against the elaboration of new norms on the prohibition of caste-based discrimination and the recognition that caste be considered within the scope of ICERD. This chapter will consider some of the internal and external factors that have shaped India's opposition to norm entrepreneurship.

Caste in contemporary society:

A wide range of groups are embedded in structures of caste or analogous systems. These groups are found in certain states of Africa and Asia and among diaspora communities in other parts of the world. They include the Dalits (or 'Untouchables') of South Asia, the Buraku people of Japan, the Dime of Ethiopia, the Sab of Somalia, and the Osu of Nigeria, to name a few.[87] It is estimated that some 250 million people worldwide are relegated to a 'low-caste' or 'out-caste' status by the societies in which they live. They are united under the caste umbrella by a number of common experiences, including the ascription of their status by birth, their predominance in (and sometimes restriction to) certain low-status and 'polluted' occupations (e.g.

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[87] Some twenty states have been identified as having caste-like structures in their traditional societies (i.e. not among resident diaspora groups). These are: Algeria, Bangladesh, Burkino Faso, Ethiopia, Guinea Conakry, India, Japan, Kenya, Libya, Mali, Mauritania, Nepal, Niger, Nigeria, Pakistan, Rwanda, Senegal, Somalia, Sri Lanka and Yemen (IDSN and DNF 2005, 3).

blacksmiths, leather workers, sweepers, servants, entertainers), restrictions on marrying outside their group, and a general regard as being 'impure' peoples.[88] The impact of their status as low caste peoples is typically a lower level of human development, social segregation, discrimination, and even violence targeted against them.

The largest caste-affected group is the Dalits, numbering approximately 240 million across South Asia and in the diaspora.[89] Dalits are designated within the Hindu caste system as 'Untouchables'. Untouchables are at the lowest level of the social hierarchy, considered to be outside of (and socially below) the four *varnas* of the Hindu caste system, namely the Brahmins (priests), Kshatriyas (warriors), Vaishyas (farmers) and Shudras (labourers, servants). Each of the varnas of the caste system is heterogeneous, comprised of up to hundreds of *jatis*, specialized designations linked to labour type and sometimes language. The origins of the caste system are disputed but the majority holds the view that it was established during the Aryan invasions of the Indian sub-continent around 3000 B.C. The Aryans are said to have subjugated the indigenous populations of the region through the caste structure, legitimized further by subsequent sacred and legal texts of Hinduism.

Dalits are formally outside the caste hierarchy but nevertheless are constrained by the caste power structure. They are considered ritually impure and are relegated to performing the most menial work-based tasks in society such as manual scavenging, leather tanning and preparation of bodies for cremation. They typically live in segregated parts of villages and are not permitted to share access to the same water resources or to enter Hindu temples because of their 'impurity'. Their status within the caste system is often interpreted as conferring a right upon higher castes to treat lower castes as they will, including with impunity. As a consequence, violence and discrimination against Dalits is rife in India: according to official statistics a serious crime is committed against a Dalit every 18 minutes, including murder, rape and beatings (IDSN n.d., 5). Access to justice for Dalits is poor: many do not report crimes against them for fear of retaliation and of those cases involving offences against Dalits

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[88] See E/CN.4/Sub.2/2003/24 for the UN Sub-Commission's assessment of common features, paras 45-56.

[89] Dalits are estimated to comprise 15-20% of the population of India; 20-30% of the population of Sri Lanka; between .25-1.2% in Pakistan; 3-4% in Bangladesh; and 15-20% in Nepal. There are an estimated 50,000 Dalits in the UK (DSN-UK 2006). Source: IDSN, http://idsn.org/caste-discrimination/caste-exists-where/ (accessed 29 May 2009).

that do make it to court, some 89% or more result in acquittal (Human Rights Watch and CHRGJ 2007, 55). Much of the violence against Dalits stems from individuals attempting to defy the caste system, for example, by asserting land claims rights or attempting to take upper caste members to court for crimes committed against Dalits. The economic status of Dalits is disproportionately low: in India, the poverty level in urban areas for Scheduled Castes (including low castes and Dalits) is 39% compared with a national average of 24% (Chronic Poverty Research Centre 2005, 16).

There are a wide range of responses made by governments that aim, directly or indirectly, to address the inequalities and discrimination faced by caste-affected groups. At a minimum, most caste-affected states have legislation on non-discrimination to which caste-groups can appeal. In some cases, the right to non-discrimination on the grounds of 'caste' is explicitly mentioned (e.g. in Bangladesh, Burkina Faso, India and Nepal).[90] The measures for implementation of these laws frequently fall short and most states have failed to elaborate special measures in the form of policy or targeted legislation to overcome the negative effects of caste.

The most proactive states in this regard are India and Nepal, which have taken concrete steps to eradicate caste-based discrimination. In both cases, the *de facto* conditions of Dalits belie the *de jure* provisions adopted with the intention of ameliorating their social and economic status. The Constitution of India, for example, makes 'Untouchability' and caste-based discrimination illegal.[91] Article 17 holds:

> "Untouchability'' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability'' shall be an offence punishable in accordance with law.

The Constitution replaces the term 'Untouchability' with that of Scheduled Castes, used to denote low caste and Dalit populations.[92] The Constitution also authorizes the government to implement special measures of affirmative action for the purposes of overcoming the effects of discrimination against Scheduled Castes and Scheduled

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[90] UN Doc. E/CN.4/Sub.2/2004/31 (5 July 2004).

[91] There are several articles of the constitution that give attention to untouchables and caste-based discrimination. See Goonesekere report, UN Doc. E/CN.4/Sub.2/2001/16, (14 June 2001), p7-8.

[92] The term derives from the period of British colonization, in which caste groups were ordered through the British census taking by creating a list or 'Schedule' of groups. These same lists ordered the *adivasi* (indigenous peoples) populations of India and named them as Scheduled Tribes.

Tribes.[93]   Several laws[94] elaborate on these provisions, principally the *Untouchability Offenses Act 1955*, later amended in 1976 and renamed as the *Protection of Civil Rights Act 1955*; and the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.* Both prescribe criminal responsibility for a wide variety of offences. A system of reserved seats in parliament for Scheduled Castes and for public sector employment is also in place, constitutionally entrenched in Articles 330, 332 and 335, and elaborated further by the Mandal Commission in 1980 (Jaffrelot 2006, 183).

To monitor the implementation of these provisions a National Commission for Scheduled Castes was established.[95]   The National Commission is a statutory body, whose chairman and vice- chairman have a rank of Union Cabinet Minister and Union Minister of State respectively and the members of the Commission enjoy the rank of Secretary to the Government of India. The Commission can investigate individual complaints, advise on government policy vis-à-vis Scheduled Castes and monitor general trends in the implementation of relevant legislation.[96] The Government of Nepal established a similar body in 2002, the National Dalit Commission. No other caste-affected state has established a caste-focused monitoring body.[97]

Given the long-standing provisions outlawing caste-based discrimination and untouchability and offering affirmative action policies towards low caste groups, the lack of progress in realizing improvement in the lives of the targeted groups is striking. A small cadre of Dalit middle classes has emerged, thanks in part to their successful use of these measures. The majority of Dalits, however, continue to live in conditions of extreme poverty. Many are unable to benefit from the opportunities afforded by the reservation system, some because they lack the minimal educational requirements to take up the posts but also because the reservations provisions are not enforced fully and are only voluntary in the private sector (Human Rights Watch and CHRGJ 2007, 9-10 and 43-44). Most individuals in positions of power still come from the dominant castes

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[93] Indian Constitution Article 15. (4).
[94] See also the *Bonded Labour (Abolition) Act 1976* and the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993*, both of which principally benefit Dalits who are concentrated in these 'occupations'.
[95] The office was initially a Commissioner under the authority of Article 338 of the Constitution and subsequently consolidated as a formal Commission for Scheduled Castes and Scheduled Tribes in 1978. This Commission was divided in two in 2004 into the National Commission on Scheduled Castes and the National Commission on Scheduled Tribes. See http://ncsc.nic.in/index2.asp?sid=160 (accessed 5 May 2009).
[96] See http://ncsc.nic.in/index.asp (accessed 29 May 2009).
[97] See UN Doc. E/CN.4/Sub.2/2004/31 (5 July 2004).

and have not been socially persuaded against caste-based thinking. Legal enforcement of the *Prevention of Atrocities Act* and the *Protection of Civil Rights Act* remains weak (Keane 2007, 250). The National Commission for Scheduled Castes in India (and in Nepal) is under-resourced and has weak powers of enforcement.

Most political parties court the Dalit vote, offering promises that are rarely kept. One party has an explicit Dalit focus, the Bahujan Samaj Party, established in 1984. The party holds power in India's largest state of Uttar Pradesh, where the party leader Kumari Mayawati is the first Dalit woman to hold the post of Chief Minister. The party was founded with an expressed mandate to represent Dalits but has been active in reaching out to other castes. The role of Dalits in influencing domestic politics has been studied extensively (e.g. Shah 2001; Lerche 2008; Jaffrelot 2003) and it is clear that Dalits are important constituents who can be used to secure power in India's pluralistic system. Dalits are also active at the local government level, frequently represented in *panchayats* (village councils). At all levels, however, upper castes retain the balance of power, affording Dalits less influence over decision-making.

Despite the obvious intentions within the Constitution to transform India into a more equitable and possibly 'post-caste' society, the caste system remains a powerful identity structure. For Dalits, the system is at once marginalizing and empowering. Their identity as 'Untouchables' is still pertinent for most of their social interactions, acquiescing them to discriminatory and derogatory treatment in the interests of a wider social order they have been socialised over centuries to respect. Politically, their collective identity as Dalits remains a potentially powerful mobilisation force, underscoring their shared experiences and common goals. Being 'Dalit' is the very foundation of their political power. Paradoxically, they rely on the system they seek to eradicate for their strength to eradicate it. This strength has manifest in various forms of mobilisation that have changed over time.

Dalit mobilisation: from domestic resistance to transnational advocacy

The current cooperation between Dalits and other caste-affected groups at the international level is predated by a long development at the domestic level of political

awareness and self-organisation. The mobilisation of Dalits in India has the longest history. The roots of this mobilisation are varied, stemming from endogenous resistance to the hierarchical structure of Hinduism, to the influence of external actors in shaping social relations. What has emerged is a strong Dalit consciousness that has translated into a vehicle for collective representation and advocacy. The sustained move to the international sphere is a later development, led first by Dalit diaspora groups and subsequently strengthened in cooperation with INGOs and international institutions. This section will examine first the origins of Dalit mobilisation in the domestic sphere before turning to an analysis of the contemporary organisational platform that has made transnational advocacy by Dalits possible.

Precursors to the modern Dalit movement

Anti-Brahminism:

Challenges to the inequalities created by the caste structure are said to have appeared first in the *Bhakti* spiritual movement in the 14th and 15th centuries (Kananaikil 1993, 401). The movement aimed at reforming Hinduism and included among its disciples individuals drawn from the Untouchable caste (Kananaikil 1993, 401). This movement later strongly influenced anti-Brahmin movements emerging in the mid-19th century, lead by Jotirao Phule (1827-90) (Kumar 2000, 26). Phule, himself from a Shudra caste, drew inspiration from the experience of emancipated Black African slaves in the United States (to whom he dedicated his book *Slavery* (1873)), and from the thinking of Thomas Paine, an 18th-century political theorist on natural law and human rights (Jaffrelot 2005, 15). He believed that low castes were peoples indigenous to the territory of modern India who had been subjugated by external invaders represented by the Brahmin caste (Jaffrelot 2005, 16). The anti-Brahmin movements collectively rejected the hierarchical structure of Hinduism, advocated for worship of a single deity and sought to give the low castes a stronger sense of their own political power vis-à-vis the (unjust) dominance of the minority Brahmin class. Their ideas were both socially and politically radical and they made concrete efforts to put them into action: for example, Phule created the first 'emancipatory' society for lower castes, the Satyashodak Samaj (Society for the Search of Truth) in 1873 (Jaffrelot 2005, 17). One

anti-Brahminical group even went so far as to advocate for the creation of a separate non-Brahmin state (Kumar 2000, 28).

British colonizers and missionaries:

The British colonial authorities chose to include markers of caste in census taking and in particular adopted the *varna* system of classification in their efforts to administratively organise the colony's population. Several authors have debated the role of the colonizers in constructing the modern view of caste in India. Through their systematization of the population by caste (and more broadly by religion) the British are said to have given new meaning to identities that had previously been materially and politically less significant (Waldorp 2004, 283), a legacy that continues to impact on social and political relations in India today.

Although the British accepted the caste structure they did not adopt the caste ethos and formally treated all castes with equality before the law. Schools were established for children from the 'Untouchables' from 1892, contributing to a small increase in the nearly null literacy rate among the 'Untouchable' caste (Jaffrelot 2006, 174). The British also recruited individuals into military and administrative posts without discrimination on the basis of caste, thus enabling a cadre of 'Untouchables' to improve their economic and social status (Kananaikil 1993, 403). Some affirmative action policies were introduced, including reserving some 8.5 percent of posts for 'Untouchables' in the civil service (Jaffrelot 2006, 174). When the British introduced moves to autonomy and ultimately independence for India, members of the low caste groups, including 'Untouchables', were represented among those participating in the consultation processes for self-rule (Kananaikil 1993, 407). Many lower caste leaders expressed preferences for British rule over continued subordination in a 'free' India and were thus granted these concessions in large part to co-opt them to the Congress agenda, marking one of many failed political promises (Shah 2001, 30-31).

British Christian missionaries also focused on Dalits in their attempts to convert them to Christianity. Many Dalits were receptive to religious conversion, and the majority chose Christianity (others chose Islam or Buddhism). The number of conversions taking place near the end of the 19th century was so high that it became a political

threat: as one author notes, "conversion acquired political overtones because it affected the communal balance of power" (Webster 1996, 200). The less integrated into the Hindu hierarchy, the more power Dalits had to independently negotiate their interests without deference to caste order.

Ambedkar and the 'Dalits'

The early challenges to the caste status quo came to influence some of the thinking of the first leader of the modern Dalit movement: Dr. Bhim Rao Ambedkar (1891-1956). Dr. Ambedkar was born an 'Untouchable' and was the first person to politically mobilise the Dalits as a distinct community. He famously rose to the level of Law Minister in Nehru's Congress government and was the chief architect of the Indian Constitution. Ambedkar tried to seize upon a moment of intense change in Indian society to position the Dalits as a key political constituency. He had a good relationship with the British (not least for being educated in the West, including at the London School of Economics and Political Science!), who regarded him as the foremost leader of the Dalits. He used this relationship to secure Dalit representation in important decision-making processes around decolonization.

Ambedkar was firmly against the caste structure of Hinduism, encouraging mass conversion to Buddhism, and consequently was never aligned with the Hindutva nationalism. His beliefs regarding the liberation of Dalits and the eradication of the caste system also brought him into direct conflict with Karamchand Gandhi, alias Mahatma Gandhi (Jaffrelot 2005, 60-68). Gandhi rejected the inequalities and discrimination created by 'Untouchability' but did not reject the caste system *per se*, arguing that the ordering of groups under Hinduism into specific duties was good for society. Gandhi termed the 'Untouchables' the *harijans* or 'children of god' and supported grassroots organisations in an effort to uplift them socially. He felt that Ambedkar's efforts to mobilise the Dalits as a distinct (non-Hindu) community were divisive. When Ambedkar made a proposal for separate electorates for Dalits during the Round Table Conferences on self-rule in 1930-1933, Gandhi went on hunger strike to oppose the bid until Ambedkar was forced to capitulate. In return, Gandhi and Ambedkar settled on a system of reserved seats in the legislative council for Dalits under the Poona Pact (1932).

Ambedkar went on to attempt to establish a political party base for Dalit representation, beginning with the Independent Labour Party (ILP) in 1936 and followed in 1942 with the Scheduled Castes' Federation (SCF), a party focused specifically on Dalits. Seeing the gains made by Muslims (heading towards securing their own state, Pakistan), the SCF made similar bids for recognition as a 'minority' and for separate Dalit territories to be designated (Jaffrelot 2005, 81). These claims were not successful and Ambedkar subsequently reverted to the horizontal strategy of the ILP of forging alliances with other 'depressed classes' in India in a bid to bolster electoral power. The resultant Republican Party of India was broader in its base but without the electoral structure he sought to create before the Poona Pact, he was never able to achieve a critical mass of support. Dalits were also courted by other parties, including the Congress party, which was instrumental in the creation in 1926 of the first pan-India low-caste organisation, the All India Depressed Classes' Association (Jaffrelot 2005, 89).

Ambedkar's focus was the domestic sphere but he was skilled at capitalizing on political opportunities outside, demonstrated by his savvy use of contacts with British officials and his understanding of the important political opportunity afforded by the self-rule processes. There is also evidence of his engagement with the early days of the UN and efforts to forge transnational solidarity links with African Americans. Correspondence exists from Ambedkar to W.E.B Dubois, an early leader of Afro-descendant mobilisation. Both men were interested to use the UN to put pressure on governments to address the situation of their constituents, Ambedkar proposing an appeal in 1947 (Ambedkar 2003, 358-59).[98] Ambedkar also proposed the establishment of an "impartial international tribunal" to assess Dalit demands vis-à-vis the Congress government (Ambedkar 2003, 363).

Ambedkar's legacy as a founding father for the contemporary Dalit mobilisation is profound. His statue figures prominently around India, his picture is found in Dalit homes and Dalits will often greet one another with the phrase *Jai Bhim*, meaning 'Victory to Dr. Ambedkar' (Shah, et al 2006, 146-150). His manifesto for Dalit emancipation continues to impact on the Dalit leaders that have followed him, albeit none with the same stature as Ambedkar himself.

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[98] No records have been found to confirm that the appeal was issued formally to the UN.

Dalit militancy: The Dalit Panthers

A new post-Ambedkar wave of militant activism was introduced in the 1970s with the creation of the Dalit Panthers. The Panthers emerged in Bombay in 1972 and drew their name from the Black Panthers in the US. Prominent among the movement's leaders were two Dalit writers, Namdeo Dhasal and J.V. Pawar (Shah 1990, 329) and Raja Dhale, also a Dalit (Kananaikil 1993, 409). The Panthers aimed to respond to what was perceived as increased violence against Dalits and persistent impunity for those committing these crimes. The Panthers were prepared to respond similarly with violence, directed particularly against Brahmins and other high caste groups, and several riots took place throughout the 1970s (Shah 1990, 330). The movement receded due to internal disputes and failed to reach a critical mass of supporters beyond the urban sphere (Kananaikil 1993, 409).

Dalit cultural identity:

The Dalit militancy was paralleled by the development of a Dalit cultural movement in the 1970s, centred principally on the fields of literature, music and sociology. The movement remains to this day and has two broad objectives: first, to create a contemporary pool of cultural resources for Dalits; and second, to link contemporary Dalit identity to an ancient cultural past. Much of the contemporary cultural artifacts, in the form of poetry, plays and music, have a strong resistance tone, with the aim of using art as a means of political mobilisation and/or commentary. Excerpts from the work of two Dalit poets illustrate well the general sentiment (Pantawane 1986, 83-85):

> But I am a new sun
> Independent, self-illuminating,
> Possessed of a new spirit
> I reject your culture
> I reject your Parmeshwar centred tradition
> I reject your religion based literature.
> <div align="right">V.L. Kalekar</div>
> We have begun a new life
> We have found our own temples
> Regained our lost faith
> All are equal here.
> <div align="right">Harish Bansode</div>

Linking Dalit culture also to ancient roots is part of a project of distinguishing Dalit identity from Hindu identity writ large. This means reaching to the practices of pre-Hindu and pre-Aryan indigenous societies. With little hard evidence of this ancient culture, much of the practice has been constructed and projected on to the past. Dalit 'national' heroes have also been created, such as Uda Devi, a Dalit woman who led a revolt against the British in 1857 and whose story has been used by various political parities and "reshaped […] according to their own political agendas" (Narayan 2004, 219).

The sum effect has been to use a glorious past to bolster the Dalit collective identity. Indeed, the history of Dalit mobilisation need not be 'invented' nor its history 'imagined', featuring as it does a long line of important activists that have influenced the contemporary movement. The anti-Brahmins were the first to conceive of 'rights' for Dalits, drawing from the liberal enlightenment thinkers and anti-slavery movements. They forged early forms of social organisation built upon by Ambedkar. Ambedkar's vision of Dalit emancipation and political rights, revealed in his extensive writings, continues to shape the goals of contemporary Dalit activists. His experimentation with political party mobilisation, his efforts to forge horizontal alliances with similar groups and his use of external powers to influence domestic political processes have been lessons for national Dalit NGOs. Likewise, the unsuccessful attempts at more militant tactics by the Dalit Panthers have likely dissuaded current civil society actors from using this approach. These experiences have pushed the mainstream of Dalit activism in a particular direction, combining grassroots civil society empowerment with international advocacy within a rights-based frame.

The contemporary Dalit movement:

The contemporary Dalit movement is a web of organisations at the national and international level joined in "insider-outsider coalitions" of advocacy, research and/or funding relationships. Some of these actors have forged a TAN that is constituted by both vertical and horizontal relationships: horizontally, between domestic Dalit/caste NGOs within and (to a lesser extent) across borders; and vertically, by interactions of domestic NGOs with international NGOs and other IOs. The network is aided greatly

by international donors, which serve as both targets and enablers of norm entrepreneurship.

Domestic Dalit actors:

The Dalit movement in India is comprised of a wide spectrum of actors, from NGOs and community-based organisations, to political parties, religious organisations, trade unions, epistemic communities and grassroots social movements.[99] Only a small number of these actors has had any direct engagement in norm entrepreneurship internationally and the principal among them will be introduced here.

The predominant Dalit NGO in India that works in the international sphere is the National Campaign on Dalit Human Rights (NCDHR). The NCDHR was created as a national Dalit platform in 1998 and now has branches in 14 Indian states. Since 2008, Vijay Parmar is the National Convenor, with four General Secretaries: Civil and Political Rights - Prasad Sirivella; Dalit Women - Vimal Thorat; Economic and Cultural Rights - Paul Divakar; and Land Rights – Manas Jena. Although it is a national platform, it has a strong international focus and an interest in normative change at the core of its mandate. The first in its list of stated aims is "That India and the International Community recognise and uphold that Dalit Rights are Human Rights".[100] The UN is a key advocacy target for the organisation, and their demands include that the UN:

- Recognise that Dalit Rights are Human Rights.
- Appoint a Special Rapporteur or Working Group on the practice of untouchability in South Asia.
- Pressurise the Indian Government to adhere to the UDHR, CERD and other international standards, by bringing within the purview of Human Rights any form of discrimination and violations against Dalits, by both the State and civil society
- Identify caste discrimination in Article 1 of the UN Convention on the Elimination of All Forms of Racial Discrimination.[101]

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[99] There are some Dalit organisations that have been important in using a rights frame for Dalit advocacy, including in India the Dalit Maha Sabha, Dalit Sangarsh Samithi, and the new Dalit Panthers.
[100] http://www.dalits.org/aims.htm (accessed 27 July 2007).
[101] http://www.dalits.org/demands.htm (accessed 27 July 2007).

There is also an explicit transnational view of the organisation's objectives, including to "Strengthen the unity and solidarity of Dalits and Dalit movements across the nation and the world".[102] Finally, the NCDHR asserts the collective identity of Dalits in seeking "To highlight the culture and contribution of Dalit Communities to society".[103] The NCDHR's early years focused on agenda-setting at the domestic and international level, to raise awareness of caste-based discrimination and, through norm emergence, bring pressure for reform on caste-affected states. In recent years, the NCDHR has turned its attention from norm emergence to norm adherence, and have restructured to concentrate their work domestically into four priority "movements", namely on civil and political rights of Dalits, economic and social rights, land rights and the rights of Dalit women.[104]

Other key national Dalit NGOs include the Navsarjan Trust, established in 1989 by Martin Macwan, a prominent Dalit activist and former convener of the NCDHR who was also a leader in the WCAR. The Navsarjan Trust, now led by Manjula Pradeep, is based in Gujarat where it conducts most of its work on legal aid, social work and advocacy capacity building[105] but also has an eye on international fora (albeit reverting mostly to domestic action since the WCAR). The National Federation of Dalit Women was founded in 1993 under the direction of Ruth Manorama and is based in Bangalore. The National Convention of Dalit Organisations (NACDOR), headed by Ashok Bharti, is another umbrella organisation of some 300 NGOs focusing primarily on domestic advocacy and capacity building.[106] Other Dalit rights organisations with some international activism include Sakshi Human Rights Watch – Andhra Pradesh (est. 1999), HRFDL (Human Rights Forum for Dalit Liberation) – Tamil Nadu (est. 1999), Dalit Bahujan Shramik Union, Dalit Panthers of India (not directly associated with the earlier Dalit Panthers) and People's Education for Action and Liberation (PEAL) – Tamil Nadu. People's Watch-Tamil Nadu is a human rights organisation that includes attention to Dalit issues in its work.[107] A large number of grassroots Dalit NGOs also exist, which occasionally participate in international fora. Epistemic communities have also formed important research centres: among them are the Indian Institute of Dalit

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[102] http://www.dalits.org/objectives.htm (accessed 27 July 2007).
[103] *Ibid*.
[104] http://www.ncdhr.org.in/ncdhr2/aboutncdhr (accessed 7 May 2009).
[105] http://navsarjan.org/navsarjan/aboutus (accessed 1 July 2009).
[106] http://www.nacdor.org/ (accessed 5 May 2009).
[107] http://www.pwtn.org/ (accessed 5 May 2009).

Studies (IIDS), the Indian Social Institute and the K. R. Narayanan Centre for Dalit and Minorities Studies at the Jamia Millia Islamia, all based in New Delhi. The University Grants Commission in India has recently designated funds for start-up institutes on Ambedkar studies and on social inclusion, demonstrating an increasing focus on Dalit concerns.[108]

A small number of Dalit/caste organisations from other countries are active in norm entrepreneurship. Nepal has several Dalit-focused NGOs with the most prominent being the Dalit NGO Federation - Nepal (DNF), established in 1996 and directed by Tirtha Bishwakarma. The DNF is an umbrella organisation for some 200 Dalit NGOs. They have been very active in the international sphere, in particular working with UN human rights bodies, and have had good links with government institutions (in contrast to Indian Dalit civil society). Their strategic goals for 2006-2009 include to "Promote pro-Dalit polity to ensure Dalit rights/representation in the mainstream socio-political processes" and to "Build national and international solidarity to strengthen Nepalese Dalit rights movement".[109] The Feminist Dalit Organisation (FEDO) of Nepal has also been visible in international fora through its President, Durga Sob. In Sri Lanka, the national Dalit platform is the Human Development Organisation; in Pakistan, the Pakistan Dalit Solidarity Network was created in April 2009,[110] building on existing domestic advocacy; and in Bangladesh, the Bangladesh Dalit and Excluded Rights Movement (BDERM) was created as a national platform in 2008, following an earlier organisation, the Bangladesh Dalit Human Rights (BDHR). Each of these latter three Dalit organisations is smaller in scope and capacity than either the NCDHR or the DNF but nevertheless maintain some presence in international meetings among Dalit representatives. In Japan, the Buraku Liberation League (BLL), established (under a different name) in 1922, now serves as a national platform.[111] The BLL founded a key INGO working on caste issues, the International Movement Against All Forms of Discrimination and Racism (IMADR) in 1988. In Africa, civil society organisations of caste-affected groups are barely in evidence, with most international advocacy conducted by academics from the states in question. Among the exceptions is the Centre for Minority Rights Development (CEMIRIDE) in Kenya. In October 2008, the

[108] http://www.thehindu.com/2008/11/19/stories/2008111950450100.htm (accessed 5 May 2009).
[109] http://www.dnfnepal.org/aboutus/stategic.php (accessed 10 August 2007).
[110] http://www.thenews.com.pk/print1.asp?id=171039 (accessed 5 May 2009).
[111] http://www.bll.gr.jp/eng.html (accessed 5 May 2009).

Nigerian Humanists organised a national conference on the Osu caste system with some 100 participants, evidence of the potential of African activism.[112] Sometimes members of African caste-affected communities will also participate in international actions directly, usually with the support of an INGO or the IDSN.

All of these actors face significant challenges in their mobilisation. Uniting Dalits across India has proven extremely difficult. Many cite the size of the country and Dalit population as an obstacle – there are just too many people to coordinate a unified movement. There is a social hierarchy among different Dalit *jatis* (there are over 400 *jatis* among Scheduled Castes) that impacts on solidarity (Shah 2001, 26). In addition to linguistic and cultural diversity, Dalits are also divided by religion and rights; in India, Dalits of Hindu, Buddhist or Sikh faiths are recognised as Scheduled Castes, but Christian and Muslim Dalits are not, with the effect they cannot access constitutionally entrenched guarantees for Dalits. NGOs headed, for example, by Christian Dalits may be perceived as Christian-based organisations impeding cooperation with other non-Christian groups. Organisations have different operational approaches, some focused on international advocacy and/or project based initiatives that rely on funding, others on voluntary grassroots mobilisation. Those who are politically engaged are spread across the spectrum of parties. Many Dalits who rise to positions of authority are co-opted by upper castes and fail to offer to Dalit communities the strong and informed leadership they need.

Engaging in advocacy on Dalit rights also can be dangerous: Human Rights Watch documents what it calls the "criminalization of social activism" in India by police authorities and also retaliation by upper caste groups against Dalits who speak out against them (Narula 1999, 153). Some Dalits have been persuaded to take up violence themselves: Dalits figure prominently in the armed Maoist movements in India (i.e. the Naxalites) and Nepal, afforded access to opportunities and power within these movements that is not readily attainable in mainstream society. Extreme poverty, weak access to land or to justice and the persistent unwillingness of government to take action has pushed some Dalits to these extreme measures, joining forces with indigenous peoples (tribal peoples) that dominate these movements. This has no doubt impacted on the way government views their constituency, made all the more palpable in India given

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[112] See http://www.iheu.org/node/3322 (accessed 15 December 2008). The International Humanist and Ethical Union, an INGO based in London works on 'untouchability' issues in several states.

the success of the Maoist rebels in Nepal in overthrowing the monarchy. Prime Minister Singh of India proclaimed in April 2006 that the "problem of naxalism is the single biggest internal security challenge ever faced by our country", a problem he identified as "directly related to underdevelopment [of tribal areas]".[113] In Nepal, the democratic transition spurred by the conflict with Maoists has given increased space for Dalit political participation, evidenced not least in the new draft constitution that includes stronger attention to Dalit concerns (IDSN 2009b).

Although domestic political opportunity structures exist, the persistence of caste-based discrimination and the many factors inhibiting mobilisation of Dalits account for the interest of some Dalit NGOs to seek alternatives in the international sphere. Therein they find a space where caste prejudice is less penetrating and mobilisation is easier to achieve with fewer players. Activists report also that media attention for international advocacy is much higher than attention generated by domestic initiatives alone. The number of actors from the domestic Dalit movement that are engaged internationally is small. Many lack access to information, resources and/or have weak capacity to engage with international institutions. Others prefer to focus on the opportunities afforded by the political and legal institutions at home. As is the case with many other civil society actors, those Dalit activists who do engage in the international sphere or across borders have usually done so by forming relationships with INGOs.

International NGOs:

Dalit NGOs have developed close partnerships with INGOs to forge an exceptionally strong TAN. Those INGOs engaged in the caste TAN are primarily Dalit solidarity organisations or human rights-focused INGOs. Human rights-focused INGOs function both as advocacy partners and as sources of funding. They focus primarily on utilizing international human rights monitoring mechanisms to advance normative emergence on caste-based discrimination and to bring pressure to bear on governments in caste-affected countries. They sometimes fund Dalit representatives to travel from their home countries to international meetings to speak on behalf of their communities often with personal testimonies. They may also fund local advocacy capacity building initiatives

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[113] *PM's speech at the Chief Minister's meet on Naxalism*, April 13, 2006   New Delhi
http://www.pmindia.nic.in/speech/content.asp?id=311 (accessed 10 June 2008).

targeting Dalits.   These INGOs have been responsible for producing several publications on Dalit issues, lending the authority and credibility of the organisation's name to bring the concerns to a wider audience. The key human rights INGOs active on Dalit issues include Human Rights Watch (HRW); the International Movement Against Discrimination and Racism (IMADR); MRG; the Lutheran World Federation (LWF); the Asian Human Rights Commission; and Anti-Slavery International. All of these organisations are based in the North.   The most prominent individuals from these INGOs in the norm emergence process have been Smita Narula (HRW), Atsuko Tanaka (IMADR) and Peter Prove (LWF).

Several Dalit solidarity organisations have also emerged over the last decade. These include the: Dalit Solidarity Network United Kingdom; Dalit Solidarity Network Belgium; Dalit Solidarity Platform Deutschland; Dalit Solidarity Network Denmark; Dalit Network Netherlands; Dalit Collectif France; and Dalit Solidarity Network Sweden. Such organisations are usually established by concerned individuals with an interest in Dalit communities rather than by the Dalit diaspora (who instead form representative organisations for Dalit issues). They are important for keeping caste-based discrimination in the public eye, particularly in countries like the UK and US where there are sizeable Dalit diasporas. The Dalit Solidarity Network UK (DSN-UK), for example, was established in 1998 by Reverend David Haslam initially with an exclusive focus on India but later expanded to address caste-based discrimination more broadly. It is housed in the offices of Anti-Slavery International. The stated aims of the organisation include to "Influence policy by highlighting issues of caste-based discrimination to relevant national and international institutions, bilateral agencies and government bodies".[114] The domestic presence in the UK gives them a privileged position for influencing the UK government and other UK-based actors like international corporations working in South Asia. Jeremy Corbyn, MP, is Chair of the DSN-UK, further opening the conduits to parliament.[115] For example, in June 2007, the DSN-UK tabled a motion in the UK Parliament urging the government "to make representations to the Indian Government to urge for the effective implementation of laws protecting Dalits from violent attacks."[116] In March 2007, they worked with a delegation of Dalit representatives that came to London to brief UK officials on caste

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[114] http://www.dsn-uk.org/ (accessed 27 July 2007).
[115] Jean Lambert MEP and Rob Marris MP are also Patron Trustees of the DSN-UK (as at May 2009).
[116] The Early Day Motion 1604 was tabled on 5 June 2007.

issues.[117]   More recently they have focused their attention on the private sector, encouraging UK companies with offices in India to address caste-based discrimination within their operations. DSN-UK has faced criticism from diaspora groups: for example, the Hindu Council in the UK has sent letters of concern regarding DSN-UK's portrayal of caste-discrimination in the UK and its efforts to have it made illegal under domestic law.[118] New Dalit solidarity networks are emerging, linked in part to significantly increased media attention to Dalit issues (IDSN 2007, 4). The political impact of these national networks is often weak, however, and they function primarily to express solidarity with caste-affected groups and keep their issues publicly visible. The DSN-UK is one of the most active networks and they have achieved issue recognition and some agenda-setting. While there is an evident ideational commitment to these emerging norms on caste by some government actors, the UK Government has not been persuaded to take actions on caste at a political level with the Government of India.

The hub of the diverse Dalit solidarity networks is the International Dalit Solidarity Network (IDSN) based in Copenhagen. It is coordinated by Rikke Nöhrlind. The IDSN was established in March 2000 as a focal point for transnational advocacy on caste-based discrimination.   It is constituted by member organisations that are themselves national Dalit or caste-focused NGOs (usually platform NGOs) or solidarity NGOs. These NGOs form a governing Council, wherein INGOs are also invited to participate. According to their website:

> IDSN brings together organisations, institutions and individuals concerned with caste-based discrimination and aims to link grassroots priorities with international mechanisms and institutions to make an effective contribution to the liberation of those affected by caste discrimination.[119]

The IDSN is not focused only on Dalit issues and extends its remit to address analogous systems of discrimination based on work and descent in both Asia and Africa. The substance of IDSN's work is almost exclusively international advocacy. In a division of labour between the national Dalit solidarity networks and the domestic Dalit/caste

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[117] http://www.dsn-uk.org/other/PressRelease220307.pdf (accessed 27 July 2007). A similar briefing was organised by the DSN-UK and MRG on the Human Rights of Dalit Women in November 2006.
[118] Interview with Meena Varma, May 2008. Caste or descent are not included as prohibited grounds of discrimination under the UK's *Equality Act* (2006).
[119] http://www.idsn.org/ (accessed 28 July 2007).

NGOs, the IDSN acts as an interface with key IOs, including the UN, European Union, and European Parliament. They have also begun to focus on working with the private sector and with international financial institutions such as the World Bank and the Asian Development Bank, prompted by advocacy shifts in national Dalit movements interested to boost representation of Dalits in the private sector. As the central player of the caste TAN's organisational platform, IDSN facilitates transnational initiatives and channels information on caste-related developments both horizontally and vertically. IDSN has also been instrumental to building up the capacity of nascent Dalit NGOs in caste-affected states. Among their key initiatives was a research cooperation project with the IIDS to deepen understanding of Dalit issues across several south Asian states through country reports, generating information that is now used for advocacy.[120]

Donors:

International donors have been funding and advocacy *partners* to the caste TAN and advocacy *targets* of the caste TAN. Governmental and inter-governmental donors have been persuaded to make Dalits a priority focus of their development work as one means of exerting pressure on governments of caste-affected states. The key bilateral donors are DANIDA (Denmark) and the UK Department for International Development (DFID). DANIDA has been highly active in supporting Dalits in its Nepal country programme and also channels funds for Dalits through DanChurchAid. DFID earmarks its funds for Dalits through prioritization of the socially excluded, evidenced especially in its work in India and Nepal. In the past it has not named Dalits explicitly in its country programme documents but the most recent 4-year plan for India does so clearly,[121] providing evidence of socialisation and norm emergence. At the European Commission, one major funding line, the European Initiative for Democracy and Human Rights (EIDHR), indicated in one call for applications that it "pays special attention to the rights of minorities, the rights of indigenous peoples and the issue of caste discrimination".[122] The naming of caste-based discrimination for funding demonstrates successful agenda-setting by the caste TAN (caste is included as an issue *distinct from* indigenous peoples or minorities) and a change in policy commitments.

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[120] http://idsn.org/country-profiles/ (accessed 6 May 2009).
[121] Compare the *Three Faces of India: DFID India Country Plan 2008-2015*, which discusses Dalits and caste-based discrimination with *Partnership or Development: DFID India Country Plan 2004-2008* which mentions neither Dalits nor caste.
[122] A/59/375 (21 September 2004): para 34.

The caste TAN must constantly exert pressure on the Commission, however, to keep their issues visible on the agenda: activists report that the Commission staff recently are more inclined to say that caste issues need no specific mention but can fall under other remits, including general discrimination, vulnerable groups or minorities. Among the private foundations, the Ford Foundation has been active in India since 1952 (Lerche 2008, 242), responsible, *inter alia*, for seed funding to the highly influential 1999 HRW report *Broken People* on caste discrimination. Many of the private foundations active in funding development in the global South also have a Christian base, which can sometimes be controversial for Dalit organisations in receipt of support from such organisations. Among the international development NGOs active in funding Dalit initiatives are DanChurchAid, Cordaid, Chrisitan Aid and the Catholic Committee against Hunger and for Development (CCFD). At the regional level, the establishment in 2003 of the Dalit Foundation was significant, given that it is based in India with a mandate to provide grants to Dalit-focused initiatives across South Asia.[123] The funding sources listed on their website are entirely endogenous and the organisation explicitly supports advocacy-based work by Dalits.

Bringing 'caste-based discrimination' to the international sphere:

There have long been international influences on Dalit action, from the abolition of slavery to the American civil rights movement and the Black Panther militancy, and the political and economic opportunities afforded by the British under colonialism and through missionaries. With the exception of appeals to the British authorities during decolonization and Ambedkar's overtures to the UN, until the 1970s the focus and sphere of Dalit advocacy was strictly domestic. It took another twenty years before Dalits were making more sustained interventions at the international level, primarily within UN fora. These initial efforts at international advocacy were not well coordinated but they did manage to concentrate attention on international *human rights* institutions of the UN. This work forged early pathways within these institutions that had a strong influence on subsequent norm entrepreneurship by the caste TAN and

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[123] http://www.dalitfoundation.org/ (accessed 29 May 2009).

helped to shape their normative agenda within a human rights – and specifically non-discrimination - frame.

The internationalization of advocacy on caste-based discrimination was enabled initially through the diaspora of Dalits that had migrated to Western states. A handful of organisations were established in the early 1970s and 1980s both inside and outside India that engaged in some transnational cooperation (Bob 2007, 176). Louis (2003) cites the Federation of Ambedkarites and Buddhist Council established in the UK in 1970 as the first such organisation, undertaking actions to highlight the problems faced by Dalits in India (224). The Ambedkar Mission of Canada, located in Toronto, had a similar mandate. It was established by Darshan Chaudhary in the mid-1970s (Louis 2003, 225), later refounded by Yogesh Varhade as the Ambedkar Centre for Justice and Peace (ACJP) (currently based in Canada, the US and India). Bob (2007) also names the Chennai-based Dalit Liberation Education Trust (DLET) and the Volunteers in Service to India's Oppressed and Neglected (VISION) based in Washington, D.C. as pioneering Dalit NGOs (176).

These early organisations targeted human rights institutions and four figure prominently in this initial period (i.e. 1982-1998): the UN Sub-Commission on Human Rights; the UN Working Group on Indigenous Populations; the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the World Conference on Human Rights (1993).

The first UN space in which the Dalit identity was asserted by civil society was the UN Sub-Commission on Human Rights. VISION, established in 1978, first participated in the Sub-Commission in 1982, where its president, Dr. Laxmi Berwa, presented an intervention retelling the egregious issues faced by Dalits in India (Joshi 1986, 138). Dr. Berwa was sent on behalf of two other Dalit NGOs (the Ambedkar Mission of Canada and the Shri Guru Ravidas Sabha in California) and under the auspices of MRG (Joshi 1986, 135-139). After his intervention there is a long period of unexplained Dalit silence in the UN until the early 1990s. The only evidence of international action in the intervening period was an international meeting on 'Minority Strategies: Comparative Perspectives on Racism and Untouchability' held in New York in 1983.[124] The meeting

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[124] The major output of the meeting was the publication of a book; see Joshi, 1986.

was organised by MRG, which had its own Working Group on Untouchables to unite activists and academics from India, Britain and North America (Joshi 1986, vii). Both the Ambedkar Mission and VISION appear to have been engaged in the process as well (Joshi 1986, ix).

In 1991, Yogesh Varhade[125] of the ACJP attended the WGIP. It is not clear if the members of the WGIP readily accepted the Dalits as an 'indigenous people' (although the ACJP website includes a photo of Varhade with the Working Group's then Chair, Erica-Irene Daes!).[126] Two more domestic Dalit NGOs were present at the 1993 session of the WGIP (Dalit Youth Movement, Dalit Solidarity Programme).[127] The Working Group was a good entry point for Dalit NGOs because, unlike the Sub-Commission, participation in the WGIP did not require NGOs to have ECOSOC status with the UN. In 1994, many Dalit NGOs shifted from the WGIP to the WGM for their advocacy. The DLET made its first appearance at the WGM in 1997, the NCDHR in 1999 and several other Dalit NGOs have followed since.[128] The reason for the shift is not clear: it may be a factor of greater understanding of the mechanisms; a difference in self-perception of Dalits within the various identity categories at the UN; a rejection of their presence at the WGIP by other indigenous activists; or greater access to funding to attend the WGM than the WGIP. Funding is likely a significant factor. The INGO MRG has been funding NGOs to attend the WGM over the past decade and has frequently supported the attendance of Dalit NGOs.

The DLET and the ACJP participated in the 1993 World Conference on Human Rights in Vienna.[129] The conference appears also to have stimulated some transnational cooperation. At the Asian regional prepcom in Bangkok, March 1993, NGOs adopted a resolution that called for, *inter alia*, "the United Nations [to] take appropriate steps to eradicate the practice of untouchability, which is a crime against humanity, and discrimination on the basis of caste, religion, and other factors".[130]

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[125] The author interviewed Mr. Varhade as a guest on her student radio talk show, Rights Talk and organised a public lecture by Mr. Varhade at McMaster University, Hamilton, Ontario, Canada in 1996.
[126] http://www.ambedkar.net/ACJP%20%20UN/Forms/AllItems.aspx (accessed 31 July 2007).
[127] E/CN.4/Sub.2/1993/29 (23 August 1993).
[128] For example, also present at the 1999 session was a Dalit women's rights branch of the NCDHR: Vedika. At the 2000 session, the NCHDR and the Dalit Cultural Front were present. At the 2006 session, the Feminist Dalit Organisation (Nepal) attended.
[129] A/CONF.157/MC/1 (24 June 1993).
[130] E/CN.4/Sub.2/1994/NGO/23 (9 August 1994): para 8.

In the mid-1990s, several Dalit NGOs and INGOs tried to secure a UN investigation into caste, with a particular focus on India. In 1994 and 1995, the INGO International Human Rights Association of American Minorities (represented by Varhade) made calls to the UN Sub-Commission to "send a fact-finding team to India to get firsthand information on […] human rights abuses endured by the Dalits, and provide the Indian Government with recommendations for the establishment of a credible system for Dalit human rights protection".[131] In 1996, the DLET, ACJP and the World Council of Churches[132] submitted communications regarding the situation of Dalits in India to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, urging him to conduct a country visit.[133] The Special Rapporteur of this period, Mr. Gélé-Ahanhanzo, did manage some preliminary examination of the issue, including consideration of the position of CERD, with a view to determining whether caste-based discrimination "could be regarded as racial discrimination".[134] India submitted a written reply to the Special Rapporteur's queries, repudiating the accusations made by NGOs and asserting "the term 'caste' denotes a 'social' and a 'class' distinction and is not based on race".[135] In the end, Mr. Gélé-Ahanhanzo made no concrete assertions as to whether the issue of caste should be considered under his mandate, concluding only that "specific attention should be given to the situation of the untouchables in India" and that a country visit was needed.[136] The country visit to India never materialised but the exchange increased international attention on caste.

The queries of the Special Rapporteur were compounded by those made by CERD to India during the review of its periodic report on ICERD in 1996. The ACJP and the South Asian Human Rights Documentation Centre (SAHRDC) provided shadow reports/information to CERD for its examination of India's periodic report urging them

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[131] E/CN.4/Sub.2/1995/NGO/14 (27 July 1995): para 7. See also E/CN.4/Sub.2/1994/NGO/23 (9 August 1994): para 10.

[132] The World Council of Churches had supported since the early 1990s a call by Dalit members to give attention to caste-based discrimination. The Dalit Solidarity Programme (later the Dalit Solidarity Peoples – DSP) was established in 1992 by Dalit leaders and became a platform for inter-faith cooperation, prompting the WCC to take up caste issues through its UN advocacy work. See http://www.oikoumene.org/en/resources/documents/wcc-programmes/unity-mission-evangelism-and-spirituality/just-and-inclusive-communities/dalits.html (accessed 28 June 2009).

[133] E/CN.4/1997/71 (16 January 1997): para 127.

[134] E/CN.4/1999/15 (15 January 1999): para 88.

[135] *Ibid*, para 91.

[136] *Ibid*, para 100.

to raise the issue of discrimination on the basis of caste.[137] This is reportedly the first time any NGO had submitted a shadow report on caste-based discrimination to a UN treaty body. It was an auspicious move for subsequent norm entrepreneurship on caste because it pushed CERD into taking a juridical position on whether caste fell within the remit of the committee. CERD made clear that caste-based discrimination did fall within its mandate, specifically under 'descent' in Article 1.1. The Indian delegation firmly rejected this assessment[138] but the dialogue positioned CERD as an early ally of advocates on caste and ICERD as a relevant international standard.

By the late 1990s, Dalit NGOs and INGOs were exploring new institutions and approaches in their continued efforts to get international attention on caste. The DLET focused its efforts on interventions at the WGM in May 1997 and May 1998.[139] In 1998, the World Council of Churches urged the Sub-Commission "to undertake a study on caste-based discrimination and its manifestations in contemporary forms of slavery in the south Asian region".[140] The intervention was made under the agenda item 'contemporary forms of slavery' marking a shift away from earlier interventions emphasizing racial discrimination or under the 'prevention of discrimination and protection of minorities' agenda item in the Sub-Commission.

These early representations of Dalit issues within international institutions were sporadic and lacked significant impact at the time. There did not appear to be a sustained effort to work with any one institution within the UN but a hopeful effort to raise the issue in as many fora as possible. The Dalit concerns did not fit easily into any identity frame either – indigenous rights, minority rights and racial discrimination were all attempted. Moreover, the normative agenda was only nascent – at most, activists sought to hold governments to account for existing domestic commitments on caste-based discrimination rather than creating new normative standards. Some points were made, however: Dalit concerns should be considered a human rights issue and caste-based discrimination was within the remit of ICERD. These advocates also put the Government of India on the defensive, prompting the Indian delegations to forge a

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[137] See Therese Boyle, "Fighting India's caste system from a photo lab on Spadina", *Toronto Star*, 31 October 1996, p. A1; and http://www.hrdc.net/sahrdc/about.htm (accessed 28 June 2009).
[138] CERD/C/304/Add.13, (September 17, 1996).
[139] E/CN.4/Sub.2/1997/18 (10 July 1997); E/CN.4/Sub.2/1998/18 (6 July 1998).
[140] E/CN.4/Sub.2/1998/SR.19 (20 August 1998): para 36.

position from the first Dalit intervention in 1982 at the Sub-Commission that caste-based discrimination was a matter of internal concern (Joshi 1986, 139).

Formulating a normative agenda on caste:

Norm entrepreneurship by Dalits in the international sphere only started to solidify in the late 1990s when they began to build stronger horizontal relationships between Dalit groups and vertical relationships with INGOs and experts within IOs. From this organisational platform a second wave of transnational Dalit activism began (1998-2008) and a normative agenda evolved.

The beginning of this second wave can be marked by the foundation of the NCDHR in October 1998 and by the *First World Dalit Convention* held in Kuala Lumpur the same month, organised primarily by Dalit NGOs from the diaspora in the US, UK and Canada under the name of the Dalit International Organisation.[141] Both India and the UN human rights machinery are mentioned in their recommendations, which include a call for "the implementation of fundamental 'Human Rights' instrument for Dalits in India and other parts of the world" [sic]. A related follow-up event was held in London in September 2000, the *International Dalit Human Rights Conference*, also focusing on UN mechanisms in its recommendations.[142] This was organised by the Voice of Dalits International, a UK-based solidarity NGO. It also concentrated on India and failed to mention other caste-affected communities. These initiatives were important steps in consolidating transnational cooperation on Dalit advocacy but the norm emergence agenda was mostly absent, the cooperation serving primarily to put pressure on India.

Norm entrepreneurship on caste became more evident when Dalit activists forged stronger alliances with key human rights INGOs. The most important early international actor was Human Rights Watch (HRW). Bob (2007) reports that for many years Dalit activists had struggled unsuccessfully to get major human rights NGOs interested in caste-based discrimination until 1997 when HRW appointed Smita Narula to oversee a major research project on the situation of Dalits in India following increasing reports of

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[141] http://www.ambedkar.org/Worldwide_Dalits/first_world_dalit_convention.htm (accessed 15 August 2007).
[142] http://www.ambedkar.org/Worldwide_Dalits/IDHRConference.htm (accessed 15 August 2007).

violence against them (176). The report, *Broken People: Caste Violence Against India's "Untouchables"* (Narula 1999), was published in 1999 and aimed to expose the issue to the international community. HRW was aided in its research by several Dalit activists, including Paul Divakar, Aloysius Irudayam, Henri Tiphagne, Ruth Manorama and Martin Macwan, who came together to reflect on the emerging report. Through a trio of meetings in Bangalore and Delhi it was agreed that to make the HRW report effective, a campaign was needed. The result was the creation of the NCDHR as a focal point. It was the first national coalition promoting Dalit human rights issues *qua* human rights, adopting the epithet "Dalit rights are human rights" as its rallying call. They undertook important domestic lobbying, using the golden jubilee of India's independence and the 50th anniversary of the UDHR to frame a major campaign that gathered 2.5 million signatures against caste-based discrimination. They also undertook a major project of documenting violations of human rights of Dalits, including publishing in 1999 a *Black Paper* on caste.

Although the campaign was visible, their leverage against the government was still weak. This work was supplemented with efforts to get the UN to take action in support of Dalits. Activists witnessed the impact of the Beijing and Vienna world conferences on domestic reforms and understood that India valued its reputation within the UN. By framing Dalit issues as human rights issues, they strategically situated their concerns within the (international) human rights discourse, enabling access to related political opportunity structures. It was hoped that international pressure would boost national advocacy and catalyse domestic reforms in an "insider-outsider" coalition effort.

NCDHR began to enlist further allies in the international sphere. One of the earliest stimulants was a meeting on contemporary forms of racism convened by the Geneva-based INGO the International Council on Human Rights Policy in December 1999 (2000). The meeting was organised to feed into the WCAR processes and brought together a select few actors from around the world to examine key issues of relevance. Among these was the issue of caste-based discrimination, represented by a working paper by Smita Narula of HRW. Martin Macwan of the Navsarjan Trust and then co-convener of the NCDHR and Atsuko Tanaka of IMADR were also present at the discussion. (Notably, the same meeting also included a key activist on Roma, Dimitrina Petrova, a member of CERD, Mr. Theo Van Boven and several Afro-descendant

experts). The meeting provided an important space to build up a nascent cooperation on a shared issue: HRW was engaged in India with the NCDHR and IMADR was long-linked to caste-issues through the Buraku Liberation League and had conducted some advocacy work on discrimination against Dalits.[143]

In March 2000, a meeting was convened in London by the NCDHR and attended by HRW, IMADR, other Dalit NGOs, the few existing Dalit Solidarity Networks and interested INGOs, including Anti-Slavery International and the LWF. Together they established the International Dalit Solidarity Network as a vehicle for collective action on caste. The initial focus was on Dalits and the WCAR was one of the political opportunity structures in their sights. Peter Prove of the LWF reports that he raised the possibility at that meeting of securing a UN Sub-Commission resolution and report on caste-based discrimination, using existing good relations with some key Sub-Commission members.[144] This set the caste-TAN down a norm emergence path, one that would take them through the UN Sub-Commission, cooperation with CERD and embroiled in controversy at the WCAR.

Three important factors shaped the normative agenda of the caste TAN: the desire to work within the UN; the absence of "caste" or Dalits in the lexicon of international law; and the opposition of India. Dalit advocates had long used human rights language to frame their concerns. Given that South Asia lacks any regional human rights institution the UN was the only IO with relevant state membership that could offer political opportunity structures for human rights advocacy. Members of the IDSN recognised there was a good chance to embed their claims institutionally within this UN human rights regime.

The caste TAN also had a degree of freedom regarding where in this human rights regime to focus their attention. There is no mention of 'caste' in any international human rights treaty (Keane 2005, 93) and the UN human rights mechanisms had only dealt with the issue sporadically. Dalits and their allies therefore invested in institutionalizing the concept of caste-based discrimination within international law.

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[143] In the August 1999 Sub-Commission, IMADR made its first intervention on Dalit issues, under the agenda item 'Prevention of discrimination and protection of minorities'. E/CN.4/Sub.2/1999/SR.19 (9 November 1999): para 81.
[144] Interview with Peter Prove, May 2008.

This has helped to set clear parameters on what state practice should be and establishes a role for human rights monitoring mechanisms to encourage and scrutinize this practice. Previous advocacy by Dalits had moved in and out of various mechanisms within the UN but two figured more prominently: the Sub-Commission and CERD. The Sub-Commission was an obvious ally because of its mandate to explore new human rights issues. CERD had been supportive in the past in considering caste-based discrimination to fall within the scope of ICERD. Members of the IDSN, such as Peter Prove and Atsuko Tanaka, had good relations with key actors in both of these institutions and recognised the potential for collaboration on norm emergence.

In these efforts the caste TAN faced one major opposition: the Government of India. India rejects any call for caste to be considered at the international level, asserting that its own advanced domestic measures are more than adequate and provide the appropriate remedies. The government is especially opposed to caste being considered under the rubric of racial discrimination, thus undermining attempts to use ICERD for norm entrepreneurship. Dalit leaders recognize that "caste may not be race" but maintain that in effect the practices are similar, with some going so far as to claim that caste is the first and/or worst form of racism (Thorat and Umakant 2004; Berg 2007; Macwan 2004). Their position has been disputed by some in civil society. Several prominent Indian academics, including André Béteille, Dipankar Gupta, and Soli Sorabjee, argue that while caste-based discrimination should be addressed, Dalits are politically, legally and scientifically misguided in their attempts to assert that caste is a form of racism, and, moreover, to use the UN as the vehicle for verifying their claims (Thorat and Umakant 2004). NGOs have made similar statements: for example, at the Sub-Commission in August 2000, a representative of the Delhi-based INGO the International Institute for Non-Aligned Studies, proclaiming himself a "founding member of the Dalit Panthers" argued that "Despite what some Western countries said in an effort to divert attention from their own racism, the oppression of scheduled castes and tribes in India arose not from racist practices but from rigid religious attitudes".[145] The tone of the interventions suggests a protectionist attitude vis-à-vis 'Western' criticism of India and Dalit leaders feel they are being rebuked for exposing the issue to international attention. The government itself has argued that any attempts by the UN to assert normative standards for the prevention of caste-based discrimination have in fact

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[145] E/CN.4/Sub.2/2000/SR.7 (9 January 2001): para 71. See a similar statement by the Indian Council of Education at the 2001 Commission on Human Rights, E/CN.4/2001/SR.15 (2 April 2001): para 23.

been a thinly veiled attack on one state, namely India. Until recently, with the exception of some capitulations of Nepal to CERD, no other caste-affected state had openly supported the development of new norms on caste-based discrimination nor accepted it to be within the scope of ICERD. India's stance was more or less unchallenged at the time.

To counter India's objections and diffuse its influence as a "critical state", the caste TAN has taken two tacks. The first is to expand the number of communities - and thus the number of states - being considered in the caste discourse, focusing not exclusively on Dalits or India but on groups across Asia and parts of Africa, in addition to the diaspora. This process was both proactive and reactive. Members of the IDSN report that the more they examined the issue of caste the more communities they found to be affected by analogous systems.[146] According to one INGO actor, this expansion had the added positive impact of building solidarity links across affected communities, with the effect that "Dalits could be the leaders, supporting others rather than being supported".[147] The second tack is to avoid the language of caste in the normative agenda and to use instead 'discrimination based on work and descent'. This process was reactive. The language was initially formulated within the Sub-Commission upon the insistence of the Sub-Commissioner from India, Soli Sorabjee. It was clear that he would not support Sub-Commission investigation on the issue if caste was the explicit focus (Prove 2004). This language also fit well with 'descent' as viewed by CERD and the two institutions have converged over time in their consideration of caste discrimination.

The normative agenda of the caste TAN quickly came to focus on three primary goals: recognition, norms and mechanisms. They wanted to secure recognition of caste-affected groups and of caste-based discrimination as a violation of international human rights law. Recognition of caste-affected groups would raise their profile in international society and increase the ability of these groups to gain the support of international actors in pushing for change at the domestic level. The acceptance that caste-based discrimination was a violation of international law would provide a short-cut to norm emergence by drawing on existing standards to outline a normative profile for the prohibition of caste-based discrimination without having to create new standards

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[146] Interview with Rikke Nörhlind, June 2008 and with Peter Prove, May 2008.
[147] Interview with Peter Prove, May 2008.

from scratch. The studies of the Sub-Commission could provide authoritative research on the groups and applicable international law; the WCAR could name caste-affected groups and recognize the prohibition of caste-based discrimination, serving as a soft law standard; and CERD could reiterate its claims that caste-based discrimination came under 'descent' in ICERD, firmly entrenching it in international law. Activists admit that the rubrics of racial discrimination and descent are not a perfect fit with caste-based identities and structures but reason that it is closely related and constitutes a sound "adjacency" strategy for norm emergence. The propensity for CERD to argue in this way further persuaded advocates to use this as the foundation of their normative claims. States also would need guidance on appropriate behaviour for eradicating caste-based discrimination and the Sub-Commission, WCAR and CERD could elaborate this in their respective recommendations to states. Finally, monitoring mechanisms to investigate state compliance with these emerging norms were also needed; the WCAR follow-up mechanisms and CERD could assist in this regard but the creation of a UN Special Rapporteur with specific responsibility to investigate caste-based discrimination would be even better.

The caste TAN thus used its expertise, allies and experience to launch a strong norm entrepreneurship process. The next sections will examine in more detail this process within the WCAR, the Sub-Commission and CERD.

Dalits at the World Conference Against Racism: "cast out caste!":

Dalits and those affected by caste-based discrimination were the least successful 'victim' group at Durban in terms of the outcome documents but arguably one of the most successful in making their voice heard within the international community. Some 200 Dalit delegates were present in Durban, after maintaining a steady presence throughout the preparatory processes. Their primary goal for Durban was to ensure that the final outcome documents included reference to caste-based discrimination, thus securing recognition of a new collective identity within international standards and laying the ground for group-specific norms. The biggest obstacle to their success was the Government of India, which did not want caste-based discrimination discussed, arguing that to include caste in the WCAR would be "diluting focus on racism and

racial discrimination per se".[148] At the WCAR, Dalit activists believed they could use other states to put pressure on India. Moreover, the WCAR would be an intense and condensed process with a much higher political and media profile than the UN Sub-Commission or CERD, so the chance for making gains over a shorter time period and with global attention was high. The first two world conferences to combat racial discrimination made no mention of caste but this third event offered an important opportunity for (normative) change.

The caste-based coalition focused initially on agenda-setting in the inter-governmental dialogue and the parallel NGO fora. For example, Paul Divakar of the NCDHR was appointed to sit on the International Steering Committee of NGOs that organised the NGO Forum in Durban. The regional preparatory meetings in Asia were key to moving the issue from regional to global attention. The Asia-Pacific NGO Forum was held 17-18 February 2001 just prior to the Asia Regional inter-governmental prepcom, held in Tehran 19-21 February. While the Asia-Pacific NGO Forum Declaration makes strong statements on the issue of caste, it is noticeably absent from the inter-governmental document because of objections from India (and reticence from other states). The NCDHR pursued several pre-Durban campaigns and convened a satellite NGO preparatory meeting focused exclusively on caste-based discrimination, entitled the *Global Conference Against Racism and Caste-based Discrimination: Occupation and Descent-based Discrimination Against Dalits,* New Delhi*,* 1-4 March 2001 (Louis 2003, 198-199). The participants were drawn from Asia, Europe and the US, and several references are made to African countries in the outcome documents.[149] It proved another useful opportunity for norm elaboration and TAN strategising.

Strong support on caste-based discrimination came also from the WCAR preparatory Expert seminars and the NGO parallel fora to the regional inter-governmental preparatory conferences. For example, the Expert Seminars in Geneva[150], Addis Ababa[151] and Bangkok[152] all noted the issue of caste-based discrimination, as did the NGO fora declaration from Europe. Paul Divakar was also a participant at the Bellagio Consultation that offered OHCHR inputs for the initial draft of the DDPA; he managed

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[148] UN Doc WCR/IC.2001/Misc.3, p. 37.
[149] See http://wcar.alrc.net/mainfile2.php/Statements/7/ (accessed 5 April 2007).
[150] UN Doc. A/CONF.189/PC.1/9 (12 March 2000), para 29.
[151] UN Doc. A/CONF.189/PC.2/4 (14 March 2001): para 41 (d).
[152] UN Doc. A/CONF.189/PC.2/3 (26 April 2001), paras 55, 145; Conclusions paras 17, 20 (ii), 21.

to secure a recommendation that "Groups subject to discrimination on the basis of *descent* (such as the *Dalits and the Burakumin*)" be considered at the WCAR.[153] Outside of the WCAR processes there was also support. At the international level, the European Parliament urged "the EU and its member States to voice its concern regarding caste discrimination and to formulate strategies to counter this widespread practice".[154] Domestically, some groups were able to use the WCAR to solicit media interest and bring greater attention to their cause; in India, for example, there was dramatically increased public debate on caste in the run-up to Durban. As Smita Narula (2001) describes it:

> By mid-August, Indian papers were ablaze with articles on caste versus race, and conferences throughout the country debated the merits of the Indian government's position − a position taken in the absence of consultation with Parliament, or the country's national commissions on human rights, women, and scheduled castes and scheduled tribes.

At the WCAR NGO Forum, Dalits and other caste-affected groups made a strong presence; Dalits alone constituted over 200 representatives. They used a number of symbolic tools to raise their profile, drawing on established "repertoires" of contention (Tilly 2004) from rallies to hunger strikes. Those in solidarity with Dalits wore head and armbands reading "Dalit Rights are Human Rights" and sported black vests with the words "Cast out caste-based discrimination". Marches to traditional Dalit drumming drew additional attention and the world's media was quick to pick up on the visible and highly emotive calls of the Dalit representatives.

The NGO Forum proved an important institution for highlighting the absence of attention to caste-based discrimination in the official WCAR documents. At the NGO Forum, Dalits and other caste-based groups formed a distinct caucus (the Dalits and Caste Discrimination Caucus) and had a Thematic Commission, giving them voting leverage on the final contents of the NGO *Declaration and Programme of Action*. The caucus organised itself to participate in all thematic sessions, raising awareness of the Dalit position in each. There was also visible solidarity between groups like Afro-Descendants, Roma and Dalits; one NGO Forum event featured representatives of each group on the same panel, focusing on "Institutionalized Racism/Casteism". Roma

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[153] See *supra* note 23.
[154] *European Parliament Annual Report on Human Rights in the World 2001*, adopted 5 July 2001. See http://uk.geocities.com/internationaldalitsolidarity/eu/challengefull.html (accessed 29 May 2009).

especially felt a connection to the Dalits, given the former's perceived historical roots as low-caste groups in India. This advocacy strategy and solidarity enabled the caucus to secure a prominent place in the NGO Forum outcome documents: a section on "Caste and Discrimination Based on Work and Descent" with seven paragraphs (paras 84-90) is included in the *Declaration* and ten paragraphs under a similar heading in the *Programme of Action* (paras 60-70). The sections make demands for, *inter alia*, legal protection of Dalits; recognition of work and descent based discrimination, including caste discrimination and untouchability, as crimes against humanity; prohibition of exploitative labour; reparations; social and economic rights; and the appointment of a UN Special Rapporteur. Caste is included in the list of grounds for protection against discrimination in several places in the document. The term "casteism" is also used, an innovative framing to portray caste-based discrimination as an equivalent to racism. The paragraphs are not limited to discussion of Dalits: a distinct paragraph on the situation of some 3 million Buraku people in Japan is included (NGO *Declaration*, para 89) and several caste-affected groups in Africa are also named (preambular para 52); these references are evidence of the global reach of caste-based solidarity developed through the WCAR but also the continued importance for the individual communities to assert their own identity within the caste frame.

At the inter-governmental conference Dalits also took a prominent place. The prestigious *Voices* event during the conference lunch hours featured Dalits among eight focus groups and Dalits were chosen as one of three communities (in addition to Afro-descendants and Palestinians) to address an exclusive Heads of State roundtable, wherein President Castro among others firmly denounced caste-based discrimination.[155] The Dalits and Caste Discrimination Caucus also had support from state actors in India. The Indian National Human Rights Commission made a plenary statement to the WCAR arguing in favour of using the WCAR as an opportunity to discuss caste, against the official Government of India position.[156] Dalit NGOs invited the participation of four Indian MPs who also spoke out against the government's policy on excluding caste in the WCAR agenda and for failing to discuss the issue in parliament prior to Durban.[157] Although two members of the Indian delegation were Dalit, NGO campaigners did not feel that they could rely on them to support their calls.

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[155] Interview with Paul Divakar, November 2008.
[156] See http://www.dalits.org/nhrcstatementwcar.htm#statment
[157] Rahul Singh, "Indian MP shocks in support of Dalits", *Conference News Daily*, 31 August 2001, p 2.

Furthermore, a small number of Dalit NGOs at the WCAR were reportedly governmental NGOs (GONGOs), expressing the government line.

Until a late stage in the intergovernmental negotiations of the WCAR *Declaration*, one draft paragraph (73) with language on "discrimination based on work and descent" remained. The paragraph had a rocky road to Durban. Caste-based discrimination was not mentioned in the initial draft DDPA prepared by the UN High Commissioner for Human Rights. At the first prepcom in March 2001, Barbados requested that language on caste be included in the draft text, only for the proposal to disappear from the draft a few days later; Switzerland then (re-)proposed the text at the second prep-com in May 2001. When the language was removed again, over 100 civil society representatives staged a protest march at the meeting in Geneva.[158] Finally, Guatemala took up the baton at the third prepcom in August 2001, requesting in the final hours that the text be reinserted. These states did not take up these proposals endogenously – they were accepted after intense lobbying by actors in the caste TAN.

The final draft of the paragraph in question called upon states: "To ensure that all necessary constitutional, legislative and administrative measures, including appropriate forms of affirmative action, are in place to prohibit and redress discrimination based on work and descent" (Prove 2004b, 322). In the first few minutes of the opening session of negotiations in Durban, India asked that paragraph 73 be removed as a point of order. Through quick lobbying, members of the Dalits and Caste Discrimination Caucus managed to secure diplomatic support for retaining the paragraph, convincing the Guatemalan delegation to object to removal of the paragraph on procedural grounds so that at a minimum it could be negotiated openly.[159] The caucus also secured support from Argentina, Canada, the Holy See, Namibia, Norway and Syria. The EU member states had internal disagreement on whether to openly support the language (with Denmark and the Netherlands in favour) and made no public declarations either for or against (Prove 2004b, 323). Switzerland reportedly withdrew its earlier support for the paragraph under pressure from the US and India.[160] There was a proposal for informal

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[158] The walk-out took place on 30 March 2001. Among the participants were representatives of indigenous peoples and Afro-descendants. They wore signs reading "Caste Untouchable in WCAR?". See http://www.hurights.or.jp/wcar/E/Frame/2ndprepcom.htm (accessed 18 April 2009).
[159] Interview with Peter Prove, May 2008.
[160] Atsuko Tanaka, *World Conference Against Racism: Success or Failure?* http://www.imadr.org/old/geneva/wcar2001.assessment.html (accessed 28 March 2007)

parallel negotiations on paragraph 73 but it was clear that India would only accept mention of 'descent' and not 'work and descent', thus rendering the paragraph meaningless for caste advocacy.[161] About 150 supporters of the Dalits and Caste Discrimination Caucus began a hunger strike on the 6 September in protest against the attempts to remove paragraph 73.[162]

India's position on caste in the WCAR was consistent with previous statements made in international society that caste is not race and moreover should be considered an internal matter. At stake was their identity in international society. Durban was a highly symbolic space for India, in which the government hoped to portray India as a leader in the global eradication of discrimination. In his statement to the plenary, the representative of India noted that Durban was the city where Gandhi launched his Satyagraha movement and that India was the first state in 1946 to raise objections to apartheid in South Africa. His statement acknowledges caste-based discrimination and India's efforts to tackle it but staunchly objects to its consideration by the conference, going so far as to say: "We are not here to engage in social engineering within member states. It is neither legitimate nor feasible nor practical for this World Conference or, for that matter, even the UN to legislate, let alone police, individual behaviour in our societies".[163] In addition to discrediting international attention to caste, there was also an effort to discredit those NGOs raising caste in the WCAR: according to Divakar, "there was much media debate and expert opinion which branded the activists as anti-national, as stooges of Christian missionaries and agents of the West" (Divakar 2004, 318, see also Macwan 2004, 32). Numerous prominent intellectuals stood with the government position, arguing that the representation of caste as racism was factually inaccurate and regressive (e.g. Dipankar Gupta, André Bétaille and Soli Sorabjee) (Thorat and Umakant 2004, Ch. 3-5). The government was using as much soft power as possible to maintain its self-styled image as leader against colonialism, oppression and racism (Visvanathan 2004, 251).

Under pressure from India, no state was willing to push hard for the retention of the paragraph (Banton 2002b, 359). The Government of India thus prevailed in its

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[161] Interview with Rikki Nöhrlind, June 2008.
[162] http://www.hri.ca/racism/dailyupdates/Gmfinal.shtml (accessed 18 April 2007).
[163] Statement by Mr. Omar Abdullah, Minister of State for External Affairs (2 September 2001): http://meaindia.nic.in/speech/2001/09/02spc01.htm (accessed 10 July 2009).

objective of excluding mention of caste in the final DDPA. Although this was a blow for the caste TAN, their impact can be measured in other ways. The issue of caste was by no means invisible in the Durban process. Indeed, the government's attempts to push out consideration of caste arguably made it more visible. As Smita Narula noted, "intense Indian political lobbying ensured that the situation of Dalits stood alone as the only issue to have been systematically cut out of the governmental conference's documents" (Narula 2001). The world's media put the spotlight on caste and India in an unprecedented way. The caste TAN also managed at Durban to socialise states to the issue of caste-based discrimination, gaining some new allies (such as Guatemala) that have remained supportive in the norm entrepreneurship process post-WCAR.

This experience shows that actor characteristics do matter in norm emergence, particularly of "critical states", even where ideational acceptance of emerging norms is strong. The Government of India had to work hard to see caste removed from the WCAR agenda; in that forum, it had the leverage to trade other material interests with states open to seeing caste recognized. The overshadowing of other contentious issues such as reparations and Palestine created an atmosphere of pressure in which paragraph 73 became a lesser priority for states rushing to secure a consensus outcome in the final hours of the conference. Perhaps most importantly, India was a key ally of the Western Group in seeing down the claims of the G-77 regarding reparations for colonialism and the slave trade, making them less willing to speak against India on caste.

Without the impetus of Durban, it is unlikely the mobilisation on caste would have reached so far and so high in such a short space of time. Durban did not advance the normative agenda on caste in the way advocates had hoped but it did enable processes of norm elaboration, agenda-setting, TAN building and state socialisation. These gains have provided a base for launching other developments in norm emergence. Before turning to the important role of the UN human rights institutions in these developments, a brief overview of actions in other international fora follows.

Post-Durban mobilisation: creating political opportunities for socialisation and persuasion

Post-Durban mobilisation by the caste TAN has aimed to socialise international actors and states to the concerns of caste-affected communities and to persuade them to exert pressure on caste-affected states. After Durban, the caste TAN focused on bringing new actors into a dialogue on caste. In late 2004, the IDSN co-convened the *International Consultation on Caste-Based Discrimination: Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector* in Kathmandu. The output was the *Kathmandu Dalit Declaration*, providing nearly 100 paragraphs of recommendations. This was an important contribution to norm elaboration, drafted with direct participation of caste-affected groups. Among the most prominent national events was the India-wide *Bhopal Conference: Charting A New Course For Dalits For The 21ˢᵗ Century,* held in January 2002, which issued the Bhopal Declaration of detailed recommendations to the Indian government and the private sector (the momentum of this Declaration was lost when the MP championing it, Digvijay Singh, was not reelected in 2003). This meeting was followed up with an International Dalit Conference in Vancouver in May 2003 (Lerche 2008, 249). The caste-based mobilisation around the 2004 World Social Forum held in India is also noteworthy (Smith 2007; Bob 2007). At the World Social Forum Polycentric held in Karachi in 2006, the South Asian national Dalit platforms consolidated to form an umbrella organisation, the South Asia Dalit Rights Forum (later renamed the Asian Dalit Rights Movement (ADRM)). At the People's SAARC Summit in Kathmandu in 2007, they issued a 'Charter of demands' asking, *inter alia*, that South Asian governments "Declare 2007- 2017, the SAARC (South Asian Association for Regional Cooperation) Dalit Rights Decade with concrete Acts, Policies, Programmes and Action Plan".[164] The socialisation of SAARC to caste-based discrimination is an important innovation given that Dalit activists have previously focused almost exclusively on national or UN (and some EU) institutions in their advocacy. The scope for SAARC to include human rights in its mandate is unclear but the issue of caste could be an important catalyst for change in this direction and more attractive to India, diffusing unilateral scrutiny given the presence of Dalits in most SAARC member states.

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[164] See http://nepaldalitinfo.net/2007/03/31/218/ (accessed 5 May 2009).

The caste TAN increasingly has targeted influential states, aiming to change their discursive position on caste and to bring external pressure to bear on governments of countries with caste-affected groups. They have focused on EU institutions and on the governments in countries where Dalit solidarity networks are based. This work typically is led by Dalit solidarity NGOs or INGOs with domestic Dalit NGOs providing verifying information and representing caste-affected groups in briefings to decision-makers in the North. The IDSN has worked with the European Parliament to secure a number of statements and resolutions in favour of Dalits in India.[165] The US Congress has also issued several statements encouraging the government of India to do more for Dalits.[166] The UK Parliament has had debates on the issue of caste-based discrimination, with a focus on India.[167] A hearing on caste discrimination was held in September 2008 in the Danish Parliament under the auspices of the Foreign Affairs Committee (IDSN 2009, 27). All of these initiatives have fallen short of proposing economic or other sanctions against India, despite calls for such action from Dalit activists engaged in dialogue with these institutions.[168] They have, however, socialised new actors to their cause and institutionalised discursive positions in a handful of declaratory statements.

In April 2009, the UN convened a Durban Review Conference (DRC) to assess progress in implementation of the DDPA. Dalit advocates were active in the DRC processes. This engagement was tempered by the absence of any reference to caste or to 'discrimination based on work and descent' in the WCAR documents but activists focused on references to 'descent' in lieu. India raised objections to the accreditation of several Dalit-focused NGOs, including the IDSN, the National Federation of Dalit Women and People's Watch Tamil Nadu.[169] At the preparatory sessions the delegations of both India and Nepal underscored their objections to consideration of caste within the DRC. In contrast, the interventions of the EU Member States referenced the CERD General Recommendation XXIX to support discussion of caste in the DRC and the accreditation of caste-focused NGOs. The vigorous efforts of the Indian government to

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[165] See, for example, the European Parliament resolutions on the human rights situation of Dalits in India of 19 December 2006 and 1 February 2007.
[166] See, for example, the resolution of the US Congress, Resolution 139 (1 May 2007).
[167] See, for example, a transcript of the debate held in May 2007: http://www.idsn.org/Documents/eu/pdf/HouseCommonsdebate8May2007.pdf (accessed 10 August 2007).
[168] See the testimony of Paul Divakar, NDCHR, to the European Parliament in December 2006: http://www.europarl.europa.eu/comparl/deve/meetings_hr/20061218/divakar.pdf (accessed 10 July 2009).
[169] See, for example, UN Doc. A/CONF.211/PC.2/7 (n.d): 11-12.

prevent accreditation of so many Dalit NGOs was a clear sign that little political will existed to open up space for discussion on caste. Despite this, several states referred to caste-based discrimination in their high-level DRC interventions, including Nepal, Bangladesh, Pakistan, Mauritius and Slovenia, evidence of a change in discursive positions. Caste-focused advocates held a series of successful side-events and organised an effective media strategy, thus keeping their issues on the agenda. Given the preeminence of Durban in the transnational mobilisation of caste-affected groups their absence in the DRC outcome document was noted by several news reports and NGO interventions.[170]

State and international actors may be more socialised to the realities of caste-based discrimination but still unwilling to persuade India into reforms. No state actively pushed for inclusion of discrimination based on work and descent in the DRC. Members of the caste TAN report that some British MEPs have been obstructive in their efforts to pass the European Parliament resolutions on Dalits.[171] At the end of 2007, the caste TAN had an initial commitment from the European Commission to adopt a specific line of work on Dalits but witnessed a retreat by the Commission following country consultations (including with India) on their proposals. While individual staff members of the Commission remained supportive of the work, the official line was that such actions could be mainstreamed under work on minorities and vulnerable groups.

These meetings nevertheless have been important political opportunity structures for bringing together caste TAN members, for engaging international institutions in dialogue with representatives of caste-affected communities and for elaborating their normative agenda. These 'self-created' political opportunity structures can be contrasted with caste TAN use of existing UN human rights institutions. The processes of norm elaboration and institutionalisation, and state socialisation in these institutions has been vital to norm emergence and will be considered in some depth in the next section.

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[170] See, for example, UN Information Service Meeting Summary, *NGOs Address Durban Review Conference on Issues Arising from the Objectives of the Conference*, UN Doc. RC/09/12 (24 April 2009); and the IDSN Newsletter May 2009 providing a summary of media coverage of Dalit issues in the DRC, http://www.idsn.org/index.php?id=244 (accessed 6 May 2009).

[171] Other British MEPs have been instrumental in securing the resolutions, such as Jean Lambert (Greens, UK) and Claude Moraes (Party of European Socialists, UK).

Embedding claims on 'caste': the role of UN human rights institutions

The caste TAN targeted the WCAR because the discourse and outcome of the WCAR processes would have been an effective stepping-stone to future (hard law) norms for the prohibition of caste-based discrimination. In the end, Durban could not deliver but it was never the only focus of their international advocacy. Two other bodies stand out: the UN Sub-Commission on Human Rights and the UN Committee on the Elimination of Racial Discrimination (CERD). This section first will trace the process of norm institutionalization within these two bodies and then discuss briefly other actors that have been part of this process, including the UN Special Rapporteur on racism and the UN Special Rapporteurs on discrimination based on work and descent. Each has taken slightly different approaches to caste in their efforts to situate the discussion within existing norms whilst also expanding them.

The UN Sub-Commission on Human Rights: naming caste-based discrimination

The UN Sub-Commission is an important forum for norm elaboration and institutionalization because it is mandated to examine emerging issues in the field of human rights. This has given the caste TAN a receptive environment for developing a broader understanding of caste-based discrimination and its prohibition in international law.

The first goal was to secure a Sub-Commission study on the issue, echoing earlier calls by Dalit advocates. The caste TAN was successful where past advocates were not because they had expertise on how to secure a report and strong relations with Sub-Commissioners willing to pursue this agenda. At the August 2000 session Paul Divakar of the NCDHR made an intervention urging the Sub-Commission to "commission a study of the situation of Dalits in South Asia and similar communities in Japan, Senegal and Nigeria".[172] MRG, Pax Romana and the Lutheran World Federation also addressed caste in their interventions at the same session, the latter recommending a "study of discrimination based on caste or descent".[173]

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[172] UN Doc. E/CN.4/Sub.2/2000/SR.8 E (11 August 2000): para 48.
[173] *Ibid*, paras 43, 50 and 7 respectively.

The Sub-Commission responded to these calls and passed Resolution 2000/4 on Discrimination Based on Work and Descent at the August 2000 session recommending, *inter alia*, a working paper on the subject. This was the first such resolution of the Sub-Commission on the issue of caste and came only after a heated debate among the Sub-Commission members. Notably, the language of caste is not used in the resolution, nor are terms such as 'Dalit' or 'Untouchable'. The principal objections came from Sub-Commissioner Soli Sorabjee (then Attorney-General of India) who was unable to accept the language of 'caste' given its strong association with India. He (informally) proposed instead the formulation 'discrimination based on occupation and descent', later morphed into 'work and descent' to secure a sound corresponding French translation of 'l'emploi et l'ascendance' (Prove 2004, 152-3). By keeping the frame broad, the Sub-Commission could proceed with the study without raising the alarm among concerned states that might have a pretext to object if caste-based discrimination were the explicit focus. The formulation of the 'work and descent' term created a new category of community in the international lexicon, namely those groups affected by discrimination based on work and descent. This was not the terminology initially sought by the caste TAN or Dalits in particular but it did enable further consideration of the issue at a critical juncture.

In August 2001, pursuant to Sub-Commission Resolution 2000/4, Sub-Commission expert Rajendra K.W. Goonesekere, a Sri Lankan national, presented his working paper on discrimination based on work and descent. He provided a preliminary analysis of the relationship between ascribed occupation and discrimination and attempted to outline the legal framework for its prohibition, referring firstly to the inclusion of 'descent' in ICERD and CERD's interpretation thereof "to mean not solely race but tribal or caste distinctions as well".[174] Goonesekere limited the paper's focus to India, Sri Lanka, Nepal, Japan and Pakistan but stated that further study of African countries in particular was warranted. Goonesekere's decision to name countries directly in the paper and to structure it around state practice was lauded by advocates on caste (Prove 2004, 154). At the same time, it put him into direct confrontation with the named states and both India and Pakistan made interventions to the Sub-Commission expressing their objections to the report (Prove 2004,155).

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[174] UN Doc. E/CN.4/Sub.2/2001/16 (14 June 2001): para 4.

Goonesekere was not re-elected to the Sub-Commission in 2002 with the effect that no further report on discrimination based on work and descent was presented at the August 2002 session of the Sub-Commission. Some have speculated that his non-election was motivated by a desire of certain parties, in particular the Government of India, to undermine further attention to the issue (Prove 2004, 156). Nevertheless, the Sub-Commission did persevere and in June 2003, Sub-Commissioners Asbjørn Eide and Yozo Yokota submitted an expanded working paper. They included a wider focus on several African countries. They also proposed an analytical framework of commonalities across cultures on this kind of discrimination, drawing the conclusion that "This form of discrimination is distinct, in its combination of causal factors and expressions, from other forms of discrimination examined in the history of the Sub-Commission".[175] This statement suggests the need to recognise a discrete category of inquiry within the Sub-Commission, separate from existing categories like minorities or racial discrimination long common to the agenda of the Sub-Commission. The authors also try to solicit greater engagement by other UN agencies in addressing work and descent-based discrimination, marking a good example of the socialisation role of the Sub-Commission.

Eide and Yokota submitted a second expanded working paper in July 2004. This paper provides an analysis of the legal provisions on work and descent-based discrimination in several countries along with a review of CERD and CRC comments on state periodic reports relevant to the issue. Further research is also provided on diaspora communities where descent-based discrimination exists, in particular among the South Asian and Somali diaspora. The speculation made in the 2003 paper that Romani communities might be considered also in their analysis is here dismissed, on the basis that Roma are "already covered by a range of international and regional instruments in the fields of human rights and minority rights, through provisions which are specific to them".[176] The reference implies that work and descent should be considered separately from minority rights.

The paper concludes with a proposed framework for a draft set of principles and guidelines for the elimination of discrimination based on work and descent and a recommendation to appoint a Special Rapporteur to prepare a finalized version. The

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[175] UN Doc. E/CN.4/Sub.2/2003/24 (26 June 2003): para 58.
[176] UN Doc. E/CN.4/Sub.2/2004/31 (5 July 2004): paras 68-69.

authors demonstrate a clear desire to see this discrimination asserted within the framework of international human rights law, giving a helpful endorsement to norm emergence on caste. The report recommends that:

> The principles expounded in the [principles and guidelines] document should, at a minimum, include the following:
>
> (a) Discrimination based on work and descent is a form of discrimination prohibited by international human rights law, including the International Convention on the Elimination of All Forms of Racial Discrimination. The basis of this prohibition in international human rights law could be further explicated.[177]

The suggestion for "explication" provides an important norm emergence platform for reinterpreting existing standards and for perhaps creating new standards specifically on discrimination based on work and descent.

The Government of India was not satisfied with the Sub-Commission's persistence in making discrimination based on work and descent a major focus of its work. Upon presentation of the August 2004 expanded working paper, a representative of the Government of India made the following intervention:

> India remain[s] fully committed to achieving a society in which all its citizens [a]re equal, irrespective of religion, language, caste, birthplace or gender, and its democratic system provide[s] effective remedies for the pursuit of that ideal. It would be a travesty to treat discrimination based on work and descent as a simple human rights issue. Therefore it would be counterproductive for the Sub-Commission to develop a set of principles and guidelines on the question. Moreover, by addressing matters already dealt with by other United Nations bodies, and by focusing almost entirely on one specific country, the working paper failed to respect the mandate of the Sub-Commission.[178]

The statement shows that India remained committed to keeping caste-based discrimination an issue for domestic concern only, even three years after Durban. It is therefore significant that in April 2005 when the UN Commission on Human Rights had before it the proposal for a Special Rapporteur to prepare a set of principles and guidelines on discrimination based on work and descent, India did not block the appointment. This was enabled by a *modus vivendi* between the caste TAN and India to

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[177] *Ibid*, para 76.
[178] UN Doc. E/CN.4/Sub.2/2004/SR.8 (10 August 2004): para 27.

focus on 'work and descent' instead of caste explicitly. Moreover, the caste TAN made clear to the Indian delegation that being obstructive as India had been in Durban would only serve to increase attention to the issue.[179]

Yozo Yokota and Chin-Sung Chung were appointed as the Special Rapporteurs to prepare a comprehensive study and to finalise a "draft set of principles and guidelines for the effective elimination of discrimination based on work and descent".[180] The mandate was operationally weak, offering no provisions for country visits or regional meetings. The process of consultation and research on the report was facilitated greatly by the IDSN and its domestic NGO partners. They organised a series of 'informal' (i.e. not by government invitation) visits to Bangladesh, Pakistan and India to meet with Dalit representatives (IDSN 2007, 3). Plans to hold additional consultations in Africa never materialised. They engaged international institutions through a consultation organised by IDSN in Geneva in March 2006, attended by representatives of caste-affected groups, INGOs, and UN agencies including the World Bank and the ILO. A specific meeting on Dalit women's rights was held in The Hague in November 2006. Finally, an informal consultation on the draft principles and guidelines was convened in Kathmandu in April 2007 by IDSN and OHCHR, attended also by two other UN Special Rapporteurs (on racism and on indigenous peoples).

The Special Rapporteurs submitted their proposed principles and guidelines in June 2007 but the adoption was forestalled by institutional changes in the UN. With the replacement of the Commission on Human Rights by the Human Rights Council, the Sub-Commission was abolished and not all of its mandates were transferred over automatically to its replacement body (the Advisory Committee). India is still a member of the Council and the caste TAN struggled to get any state to expend the political capital necessary to push for the adoption of the principles and guidelines. According to one member of the caste TAN, the response from potentially supportive Western Group delegations has invariably been "we sympathise but India is a very respected member of the [Council] and is held in high esteem because they are seen to bridge the gap between Africa and Europe".[181] The principles and guidelines were finally made public

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[179] Interview with Peter Prove, May 2008.
[180] Sub-Commission Resolution 2004/17 (12 August 2004): para 4.
[181] Interview with Meena Varma, May 2008.

in May 2009, submitted only as a working paper of the HRC and therefore not formally endorsed.

The final report prepared by the Special Rapporteurs provides an overview of their activities, state submissions and the "Draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent".[182]   Only five states officially submitted information: Japan, Colombia, the Republic of Croatia, the Federal Republic of Germany and Mauritius. Many of the recommendations are drawn from consultations with caste-affected communities (primarily Dalits) and international actors, including the UN Special Rapporteurs on racism and on the human rights of indigenous people.   The Draft Principles and Guidelines make clear that "Discrimination based on work and descent is a form of discrimination prohibited by international human rights law".[183] A definition of discrimination based on work and descent also is offered:

> Discrimination based on work and descent is any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life. This type of discrimination is typically associated with the notion of purity and pollution and practices of untouchability, and is deeply rooted in societies and cultures where this discrimination is practiced.[184]

The definition is notable for two reasons. First, it is modelled on Article 1.1 of ICERD, and the authors make note that the definition "accordingly supports and encourages consistency with existing international law on the subject of discrimination, and should be read as such." This is important for "adjacency" in developing new norms on caste discrimination. Second, it does not subsume caste-based discrimination within ICERD *per se* but appears to establish this as a distinct form of discrimination. This could allay objections like those of India because it does not frame caste-based discrimination specifically as *racial* discrimination. This also opens up the possibility of a completely new international instrument, what some advocates have termed an International Convention Against the Elimination of all Forms of Caste-based Discrimination. The

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[182] UN Doc. A/HRC/11/CRP.3 (18 May 2009).
[183] *Ibid*, p. 8, para 4.
[184] *Ibid*, p. 8, para 2.

report concludes by acknowledging that "the issue of discrimination based on work and descent is regarded as a *specific* and important human rights issue to be properly addressed by the international community" (emphasis added), one that is found not only in South Asia but also in "parts of Africa, Latin America, and the Middle East and some countries of Western Europe". [185] Some 53 paragraphs of guidelines also are offered to states.

The achievement of securing two Special Rapporteurs on discrimination based on work and descent was vital for the continuation of norm emergence and marked the realisation of a goal articulated at Durban in the NGO Forum outcome document. The reports, meetings and country visits of the Special Rapporteurs have kept the issue at the forefront of UN human rights dialogue and pushed states to engage in this dialogue. It has reinforced caste-based discrimination as a global concern necessitating intervention from the (global) UN level. The principles and guidelines developed by the Special Rapporteurs will mark stronger institutionalisation of the norms, an important step in norm emergence.

The Committee on the Elimination of Racial Discrimination: bringing caste into ICERD

The fact that descent-based discrimination has not been well explored juridically (Keane 2007) in the past means that norm entrepreneurs have a greater scope for shaping new understandings of that norm and its implementation. Rather than trying to secure an entirely new international standard specifically on caste in the short term, the caste TAN has sought instead to 'reuse' an existing standard by expanding the normative interpretation of Article 1.1 of ICERD defining racial discrimination for the purposes of the treaty application. Article 1.1 includes 'descent' among the categories upon which racial discrimination can be based. CERD has interpreted this to cover caste-based discrimination, understanding caste as a system based on status at birth. Using ICERD also serves to frame Dalit concerns within an area of international law, i.e. racial discrimination, that is a deeply entrenched norm and widely considered part of the 'obligations *erga omnes*' of states making it a matter of international concern.

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[185] *Ibid*, p. 19, para 64.

CERD is in a strategic position for norm emergence and socialisation, legitimated by its authority to review and comment on state practice and to establish jurisprudence on themes pertaining to the interpretation of ICERD in practice. CERD has prompted caste-affected states to consider their obligations towards caste-affected groups in light of their ICERD commitments and thereby to see the prohibition and prevention of caste-based discrimination as part of international human rights law. States that might not otherwise recognise that caste-affected groups exist within their territory may be publicly called to account for obligations towards these communities by CERD. In this regard, the Committee also relies heavily on information from civil society actors in the form of shadow/alternative reports. These reports help to secure recognition of caste-affected groups and their concerns at the international level. CERD also has the mandate to produce General Recommendations to help states understand better the scope and application of the ICERD and undertook to elaborate a General Recommendation on Article 1, paragraph 1 of the Convention (Descent). This has proven to be an important instrument of norm emergence and institutionalisation.

State reports:

CERD has reviewed state reports of several countries where caste-based discrimination exists, including Nepal, Bangladesh, India, Japan, Mali, Nigeria, Pakistan, Senegal and Yemen (Keane 2007, 8; Thornberry 2004, 125). The earliest and the most important interactions have been with India. India ratified ICERD in December 1968. In 1986, it submitted its eighth and ninth periodic reports to CERD and after a gap of ten years submitted a consolidated report of its tenth to fourteenth periodic reports in 1996. In the 1986 session, CERD asked several questions about scheduled castes and untouchability, to which the Indian delegation responded without hesitation, making no apparent objections to the queries.[186] By 1996, the government's tone had changed, following a more pointed approach by CERD in expressing its opinion that caste came under 'descent' in ICERD. The periodic report submitted in 1996 presents the following explanation of the government's view:

> Article 1 of the Convention includes in the definition of racial discrimination the term "descent". Both castes and tribes are systems based on "descent" since

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[186] *Report of CERD to the General Assembly, 42nd session, Supplement 18*, UN Doc. A/42/18 (1 January 1987): paras 745-783.

people are normally born into a particular caste or a particular tribe. It is obvious, however, that the use of the term "descent" in the Convention clearly refers to "race". Communities which fall under the definition of Scheduled Castes and Scheduled Tribes are unique to Indian society and its historical process. As conveyed to the Committee during the presentation of India's last periodic report, it is, therefore, submitted that the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention. As a matter of courtesy to the members of the Committee, the Government is, however, happy to provide any information that they may require on this subject.[187]

India submitted its next (consolidated) periodic report in 2006. The position on caste within ICERD is maintained.[188] The delegates detail their objections to considering caste within ICERD, arguing, "Caste was an institution unique to India, and had not entered into the considerations of those who drafted the Convention".[189] This includes India, which had originally proposed the category of 'descent' under Article 1.1 in the treaty drafting process, reportedly not to address caste but "based on concerns regarding discriminatory treatment against Indians in their own land while under colonial rule, and to persons of Indian descent in countries where they had settled in large numbers".[190] The Indian delegation also noted with some criticism that "The Committee had first raised the issue of caste-based discrimination within the concept of discrimination based on descent over 30 years after its establishment",[191] implying that the current views of CERD were *ex post facto* and motivated by something other than impartial juridical analysis.

CERD nevertheless has asserted its interpretative authority; in the Concluding Observations on India's report in 2007, CERD "maintains its position expressed in general recommendation No. 29 "that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".[192] As a point of law, both the position of CERD and India are arguable. David Keane's (2007) in-depth analysis of caste-based discrimination in international law sums up the dialectic well, finding "descent was

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[187] CERD/C/299/Add.3 (29 April 1996): para 7.
[188] CERD/C/IND/19 (29 March 2006): paras 16-17.
[189] CERD/C/SR.1796 (2 March 2007): para 7.
[190] *Ibid*: para 8. Research by David Keane (2005) into the Indian interpretation of 'descent' suggests rather that descent was meant to address forms of inherited privilege on "account of dynastic or family status", as put forth during the elaborations of the Indian Constitution (113).
[191] *Ibid*: para 8.
[192] CERD/C/IND/CO/19 (5 May 2007): para 8.

unrelated to caste when it was introduced into article 1(1) of the ICERD. Nevertheless, CERD is entitled to interpret the provisions of the Convention in a manner that allows the treaty to engage with all forms of racial discrimination" (237).

Despite India's obstinacy, the February 2007 review of the state report provided an important platform for renewed Dalit mobilisation at the international level. Dalit NGOs cooperated with the Center for Human Rights and Global Justice and HRW to produce an extensive shadow report, *Hidden Apartheid: Caste Discrimination Against India's Untouchables* (2007). This was complemented by several other NGO submissions,[193] including a coalition-based submission by the NCDHR.[194]

The NGO actors and the CERD Country Rapporteur for India, Linos-Alexander Sicilianos, were keen to capitalize on what they regarded as a marginal shift in the Indian position: the Indian Prime Minister Manmohan Singh at a national meeting on minorities and Dalits in December 2006 acknowledged:

> Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of untouchability was apartheid in South Africa.[195]

The reference to apartheid is highly significant in the context of ICERD. Article 3 of the convention reads:

> States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

This article was a key legal pretext for state sanctions against the South African government during apartheid and in its periodic reports to CERD during this regime, the Government of India was keen to report on the actions it had taken.[196] Indeed, India was at the forefront of the international critique of apartheid in South Africa (Klotz 1995, 41-43). There may be a strong fear that international criticism could befall India in a similar vein, including under the auspices of ICERD Article 3, criticism that may be

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[193] See http://www.ohchr.org/english/bodies/cerd/cerds70-ngos.htm (accessed 10 August 2007) for a list of NGO electronic submissions.
[194] http://www.ohchr.org/english/bodies/cerd/docs/ngos/shadow-report.pdf (accessed 10 August 2007).
[195] CERD/C/SR.1796 (2 March 2007): para 21.
[196] See, for example, UN Doc. A/42/18 (1987): para 777.

accompanied by, *inter alia*, economic sanctions as in the case of South Africa. That the Indian Prime Minister chose to use the language of 'apartheid' was surprising and so far he is the only senior official to make such an assessment; the Bharatiya Janata Party (BJP) objected outright to his unilateral change to the government line (Berg 2007, 58). CERD Member Sicilianos declared that in light of the Prime Minister's statement "the position of the Indian delegation seemed simply untenable".[197]

CERD has been active in raising the issue of descent-based discrimination with an increasing number of countries (Thornberry 2005, 39).[198] In this dialogue, states have taken a range of responses, from openly accepting that ICERD includes caste (Nepal),[199] to adopting the Indian interpretation and rejecting that ICERD includes caste (Japan),[200] to denying that caste-affected communities exist within their territory (Nigeria).[201] CERD has also raised the issue in its review of diaspora states, such as the UK: in the Concluding Observations issued in 2003, CERD implies that the UK should consider adopting legislation for the prohibition of descent-based discrimination.[202] This had the effect of introducing a completely new issue into the scope of the UK's reporting on ICERD, which has never previously mentioned caste.

Although the interpretations by CERD hold weight in international law, it is state practice that ultimately determines the scope of Article 1.1. Given that India is the "critical state" in this issue because it has the largest caste-affected population, so long as the Government of India refuses to accept this interpretation of ICERD, the scope of Article 1.1 remains in question. It is worth noting here that other UN treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and

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[197] CERD/C/SR.1796 (2 March 2007): para 21.

[198] Compare, for example, CERD's Concluding Observations on Pakistan's report in 1997, which only notes caste in passing, with the Concluding Observations on Pakistan's report in 2009, which includes substantive recommendations on caste. UN Docs. CERD/C/304/Add.25 (23 April 1997) and CERD/C/PAK/CC/20 (16 March 2009).

[199] See, for example, CERD/C/452/Add.2 (30 July 2003). In the CERD review of Nepal's periodic report in 2004, the state delegation even included a member of the National Dalit Commission.

[200] See Japan's periodic report, which fails to mention the Buraku: CERD/C/350/Add.2 (26 September 2000); and Japan's rejection of CERD's view of 'descent' as applying to the Buraku: CERD/C/SR.1444 (11 June 2001): para 28.

[201] In the CERD review of Nigeria's periodic report in 2005, the Nigerian delegate reported that "The so-called caste system had never been institutionalized and, after generations of intermarriage, had now died out." CERD/C/SR.1722 (22 August 2005): para 10.

[202] "The Committee recalls its general recommendation XXIX, in which the Committee condemns descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention, and recommends that a prohibition against such discrimination be included in domestic legislation. The Committee would welcome information on this issue in the next periodic report." CERD/C/63/CO/11 (10 December 2003): para 25.

Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women, have also raised issues pertaining to caste-based discrimination in their dialogues with states (Keane 2007, 240-248).[203] The more CERD and other treaty bodies can socialise states to their views, the greater the likelihood that changes in state practice will occur and a new norm could emerge regardless of India's objections.

CERD General Recommendation on Descent:

CERD's efforts to see states give more attention to the issue of caste and analogous systems have been facilitated by the adoption in 2002 of General Recommendation XXIX on Article 1.1 of ICERD (Descent). The General Recommendation was an important step in the institutionalization of new norms prohibiting caste-based discrimination. It has given CERD a concrete reference point for its critique of state practice and gives states a standard of achievement against which to measure their own implementation of ICERD vis-à-vis caste-affected communities. CERD also has facilitated an "adjacency claim" by situating caste in an existing normative framework to hasten and increase the likelihood of its acceptance.

The thematic discussion was modeled on the first thematic discussion for a CERD Recommendation on Roma held in 2000. The thematic discussion format brought together several NGOs, experts and the state delegations of India and Nepal in a quasi-formal dialogue. The NGOs present were primarily INGOs or domestic NGOs from Africa and Asia. Some 23 NGOs made statements to the thematic discussion, including one joint statement undersigned by 26 NGOs[204] such as the NCDHR and other South Asian national Dalit platforms, IDSN, IMADR, Lutheran World Federation and five African NGOs from Nigeria, Senegal, Kenya, Niger and Somalia (Louis 2003, 244, ft 65; Tanaka 2004, 115; Thornberry 2004, ft 35). The precise selection of participating NGOs was largely engineered by members of the IDSN with a specific intent to ensure representation from beyond Asia (Tanaka 2004, 106). The emphasis on NGO and especially personal testimony (Tanaka 2004, 115) in the thematic discussion format has provided a direct interface between caste-affected groups and CERD.

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[203] For CESCR, see the Concluding Observations on India's report, from 2008: UN Doc. E/C.12/IND/CO.5 (5 August 2008).
[204] There are no summary records for this part of the discussion with NGOs.

The proposal for a thematic discussion on 'descent' came in August 2001, following recommendations from members of the IDSN for such a session. According to Paul Divakar, a visit of CERD member Patrick Thornberry to India earlier in 2001 as part of an MRG workshop on advocacy training for Dalits was also an important catalyst. The timing was crucial, picking up the ball from the Sub-Commission after Goonesekere's absence threatened to derail the momentum on examining caste (Tanaka 2004, 106-107). Four members of the Sub-Commission also participated (Thornberry 2004, 126), providing a direct link between their discourse on discrimination based on work and descent with that of CERD.

The substantive scope of the thematic discussion was the source of some controversy. Not all CERD members were convinced that discrimination based on work and descent should be the main focus and were more inclined to using the rubric of 'descent' for a discussion on people of African descent, particularly post-WCAR where the group figured so prominently (Tanaka 2004, 105). Given the absence of 'work and descent' in the WCAR outcome documents, however, the focus on caste came to be privileged, evidence of the drive of some members of CERD to ensure caste would get an international hearing post-Durban. The Recommendation is not *limited* to caste-based discrimination; indeed it explicitly notes "discrimination based on 'descent' includes discrimination […] based on forms of social stratification such as caste and analogous systems of inherited status" and gives reference to "persons of Asian and African descent and indigenous and other forms of descent in the Durban Declaration and Programme of Action" (preamble). Furthermore, several CERD members, and in particular Raghavan Pillai from India, took pains to stress that caste-based discrimination should not be the only focus of discussion.[205] Thornberry emphasises in his account that the broad approach "is politically and conceptually important lest the Committee be seen to be picking on a particular State or States, or demonizing a single social system" (Thornberry 2004, 127). His caution was prudent, given that the Indian delegate, Rajesh Prasad, stated his concern that "the thematic discussion has been transformed into a debate of the situation allegedly (pertaining) to a particular country" (cited by Louis 2003, 242). In this regard, the IDSN's efforts to bring non-Indian and non-Asian NGOs to the discussion was equally prudent.

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[205] For Mr. Pillai's testimony, see CERD/C/SR.1531(16 August 2002): paras 4-10.

The Committee decided not to attempt a definition of 'descent' (Thornberry 2005, 38). This has kept the self-identification of groups affected by descent-based discrimination more open. The content of the Recommendation is broad, focusing on practical measures in several areas such as education, women's rights, the media and civil, economic, political and social rights. One of the first suggestions is that states "Consider the incorporation of an explicit prohibition of descent-based discrimination in the national constitution" (para 2). Securing such a measure would be another key step for achieving norm emergence, designating a *distinct* category for this kind of discrimination and necessitating new action on the part of states.

In both its review of state reports and its elaboration of General Recommendations, CERD has proven to be a key elaborator and socialisation agent for new norms on the prohibition of caste-based discrimination. It has established a broad-based understanding of 'descent' in order to address the experiences of a wide range of affected groups. In so doing it has also avoided accusations of targeting individual states. As CERD increases the number of states to whom it addresses its concerns on 'descent'-based discrimination, it is directly contributing to norm emergence. As Thornberry points out, "Not all governments have objected to CERD activity [on caste], and even where objections have been lodged, the objecting governments have striven to emphasise the positive and ongoing nature of their efforts to combat this form of discrimination" (Thornberry 2004, 131). This presents a dilemma for the caste TAN: in the short-term, use of CERD is helpful for norm entrepreneurship in the absence of other mechanisms but in the long-term, creation of a distinct mechanism might overcome the objections of states to the 'race' frame that CERD conveys. CERD can influence the discursive position of states, enable the norms to strengthen and to stimulate new "logics of appropriateness" either within ICERD or (ultimately) adjacent to it.

The UN Special Rapporteur on racism:

Although the first Special Rapporteur on racism made some preliminary investigations into caste, the second Special Rapporteur, Doudou Diène, has made caste a key theme in his work. Activists credit Diène for making a personal commitment to this issue but

the shift can be attributed also to the work of members of the IDSN in raising the profile of the issue within the UN, evidenced in part by an increasing number of communications on caste issues to the Special Rapporteur, including from African countries.[206] In his 2003 report to the UN General Assembly Diène recommended "The question of castes […] should be given priority in the follow-up to the Durban Conference, the fight against all forms of discrimination and the promotion of human rights worldwide".[207] Furthermore, in a 2007 report, he noted the relevance of caste-based discrimination to his mandate and announced his intention to focus on this issue in several activities in 2007.[208] A country visit by the Special Rapporteur to Japan in 2005 was important for bringing attention to the Buraku community, an effort facilitated in large part by IMADR. Diène has also reiterated his interest to visit India as part of a regional visit including also Pakistan and Nepal to examine, *inter alia*, caste-based discrimination.[209]

The Government of India has maintained its view that caste should not be seen within the purview of 'racial discrimination', criticizing Diène for undertaking this in his mandate.[210] Diène for his part emphasizes the 'related forms of intolerance' aspect of his mandate to accommodate attention to caste without entering directly into debates on the normative aspects of this issue. His impact is nonetheless normative, because through his work caste-based discrimination is being kept on the international agenda. A small number of other Special Rapporteurs, like that on adequate housing and on violence against women, have also mentioned Dalits or other caste-affected groups in their regular reports and country visits. The cumulative effect is that attention to caste-affected groups becomes more and more a 'mainstreamed' consideration of Special Rapporteurs' thematic reports and country visits, thereby contributing to the norm emergence and socialisation processes.

Assessing the impact of UN institutional allies:

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[206] See, for example, A/HRC/4/19/Add.1 (5 June 2007) and E/CN.4/2006/16/Add.1 (27 March 2006).
[207] A/58/313 (22 August 2003): para 42.
[208] A/HRC/4/19 (12 January 2007): para 28.
[209] A/HRC/4/19/Add.1 (5 June 2007): para 100.
[210] A/HRC/5/SR.2 (5 July 2007): para 12.

The three human rights institutions given attention in this section, the Sub-Commission on Human Rights, CERD and the Special Rapporteurs on racism and on discrimination based on work and descent, have each been important for enabling the emergence of a new set of norms pertaining to caste-based discrimination. They have been both leaders and followers in this process, at once dependent on NGO input and pressure whilst also taking the lead in asserting their own interpretations.

The (quasi-) permanent status of these institutions has meant that the issue of caste could be considered in a longer-term process than that afforded by the WCAR. Indeed, each of these institutions was considering caste well before and after the WCAR. Moreover, given that the WCAR outcome documents failed to mention caste-based discrimination, the caste TAN has been excluded from benefiting from the WCAR follow-up mechanisms. These human rights bodies have therefore served as an important alternative space. The regularised meetings of the Sub-Commission and CERD have given caste-advocates stable and predictable fora against which to plan long-term joint advocacy strategies. The fact that states are engaged directly in dialogue with each of these institutions has also made them important socialisation agents for states; CERD and the Special Rapporteur on racism in particular are able to engage in detailed country-specific recommendations on adhering to emergent norms on the prohibition of caste-based discrimination. Both have demonstrated their willingness to raise these issues even in the face of state opposition.

Certain members of CERD, the Sub-Commission and the Special Rapporteur on racism have also become socialised themselves to the issue of caste and have taken personal initiatives to see that the issue is considered further within their operational mandates. CERD proved the most dynamic of the UN Treaty Bodies in the early 2000s, prompting IDSN members to target their cooperation with key CERD members like Patrick Thornberry and Morten Kjaerum.[211] The epistemic community of human rights experts has proven a good pool from which to draw allies. These actors, conscious of the vagaries of international diplomacy from years of experience, have also successfully manoeuvred the discussions on caste through the rocky waters of state obstruction. Despite their insistence they are not acting according to a political agenda in their

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[211] Interview with Peter Prove, May 2008.

investigations of caste (e.g. Thornberry 2004, 126), the actors understood the sensitivity of the issue to many states.

The collective outputs of the Sub-Commission in its working papers on work and descent, CERD in its General Recommendation and Concluding Observations, and the Special Rapporteur in his annual/country reports have begun to shape norms on caste-based discrimination. States now have a body of recommendations that spell out clearly their responsibilities vis-à-vis caste-affected communities. The principles and guidelines prepared by the Special Rapporteurs on work and descent will solidify this further. The more the norms are institutionalised, the less free will states be to deny knowledge and application of them.

These actors have been aware of the factors that can enable new norms to emerge. The adjacency principle is well understood by international lawyers and the experts have been careful to link their understanding of caste-based discrimination to the existing framework of international human rights law. This is most obvious in the case of CERD that has used a widely ratified treaty, ICERD, and a vague concept, 'descent', in which to embed the caste issue. By framing the protection of caste-affected groups under an existing norm – i.e. non-discrimination based on descent – the caste TAN has taken a short-cut to norm emergence, accessing an existing legally-binding standard and review structure. The trade-off has been the reluctance of states – particularly India – to accept the 'racial' rubric conferred by ICERD. The long-term development of a distinct standard and mechanism not associated with race *per se* may alleviate some of these state objections.

The frames used to construct this normative discourse have not come solely from the caste TAN but have been shaped in tandem with (and certified by) these international actors: the Sub-Commission created the frame of 'work and descent'; CERD has placed the emphasis on 'descent'; and the Special Rapporteur on racism has asserted that caste-based discrimination is a 'form of intolerance' within his mandate. Activists and IOs have used alternatives to 'caste-based discrimination' strategically to advance the normative agenda despite state opposition. In doing so they have not made recognition of the Dalit identity *per se* a priority, substituting this identity for more generic formulations.

This expansion of the identity frame is one way in which the outputs of CERD, the Sub-Commission and the Special Rapporteurs have helped to frame the issue as global. Being UN actors, their attention to the issue already suggests a global, as opposed to regional, relevance of this issue. In their commentaries they have consistently maintained that the issue of discrimination based on work and descent extends far beyond South Asia, not only to other Asian and African states but to diaspora countries as well. The next section will look further at the construction of the global identity frame and consider how it has both enabled and constrained transnational advocacy on caste.

Constructing transnational identity: Dalits, caste, and 'work and descent'

'Framing' of issues and identities is a crucial part of norm entrepreneurship. Through effective framing, Dalits have forged transnational links with other caste-affected groups, found useful allies in human rights institutions, challenged the assumptions of caste hierarchy and justified the need for caste-specific mechanisms in international law. This section will examine the framing process, starting with framing in the domestic sphere and then moving to the international discourse. Given that Dalits and other caste-affected groups have been pushed to the margins on the basis of socially constructed notions of privilege and 'pollution', it seems only fitting that these groups should use new social constructions of their own design for emancipation.

Challenging terms: creating new identity frames

Dalits have had to contend with many identity frames imposed on them from above. The British introduced 'depressed classes' and 'scheduled castes', Gandhi termed them *harijans* (children of God), upper castes termed them 'Untouchables' and even the term 'caste' is said to be a European import, derived from the Portuguese 'casta' (or Latin *castus*, meaning 'purity of breed'). The term 'Dalit' is not endogenous to the Hindu

caste system but was created as a tool for mobilisation and empowerment. The term originally means 'broken people' in the Indic language Marathi. It was introduced by Ambedkar into the anti-caste discourse and has been used to denote the status of Dalits as a *people* rather than a social category, supporting as well their claims to be the original inhabitants of the Indian sub-continent. Ambedkar, and his predecessor Phule, shared the view that 'Untouchables' were the pre-Aryan inhabitants of India, subjugated by the invaders into positions of low status. Ambedkar went further to argue that Dalits were originally Buddhist peoples and the Hindu religion was imposed upon them, a view designed to unite Dalits across India that were embedded in highly fragmented sub-castes and regional cultures (Jaffrelot 2005, 41). The Dalit identity frame has over time taken on cultural markers as well, to unify and to build esteem for the identity. The manipulation of the identity frame in this way has aimed to consolidate the social and political mobilisation of Dalits at the same time as emancipating Dalits from the caste structure of Hinduism. This frame also potentially positions the Dalits for ethnogenesis. Many Dalit leaders no longer regard Dalits as mere 'outgroups' but as distinct communities with a shared social and cultural history portrayed as indigenous to the territory of modern India. The contemporary Dravidian movement in southern India has predicated its bids for secession on similar grounds, staking its claim in the liberation of a 'people' classified as backward classes by the Aryan invaders from the North (Gupta 2004, 71). The construction of the Dalit identity frame has important parallels with the construction of the 'indigenous peoples' identity frame: in both cases, the frame contends they are original inhabitants who retain certain (moral and material) entitlements having been unjustly denied equality by external 'colonising' forces. Dalits are unlikely candidates for secession but the Dravidian movement sets an interesting precedence and at least one Dalit leader admits that the armed mobilisation tactics of the Naxalites (or Nepalese Maoists) have benefited all Dalits by pushing actors to take their claims more seriously.

The term 'Dalit' did not take on political significance in India until the early 1970s when the Dalit Panthers used it in their discourse (Louis 2003, 145), gaining currency from the Dalit cultural movement's use of the term in the 1960s (Shah 2001, 22). The frame is clearly seen as empowering for domestic actors, building esteem of community members. This continues to be the preferred term of Dalits in India, on the international stage, and in other states where 'Untouchables' exist.

The Dalit frame has not been transposed to other caste-systems, however, and the transnational coalition of caste-affected groups assert a number of different identity frames locally. In Japan, 'buraku' refers to a village where 'outcastes' live and Buraku people are the (outcaste) people from that village. Such communities were originally designated as Eta (extreme filth) and Hinin (non-human) classes.[212] The government now uses instead the term 'Dowa' to describe these 'buraku'. In other caste-systems, the names given to caste-affected group usually translate as 'slaves and slave descendants' or 'caste peoples' in local languages (see, for example, Stevens 2004). It is easy to understand why leaders within these communities would wish to articulate new identity frames that provide constituents with a greater sense of empowerment and which can become a vehicle for mobilisation.

Creating a global identity frame:

Bringing these diverse communities into the common 'caste' frame is a recent innovation. Ambedkar himself said, "Untouchability among the Hindus is a unique phenomenon, unknown to humanity in other parts of the world" (cited by Louis 2003, 44). By finding a frame broad enough in which to situate very diverse experiences, however, advocates on caste have been able to swell their numbers and thus their leverage. The leverage is further enhanced by the fact that the groups using the caste frame extend well beyond one sub-region (i.e. South Asia) and across continents. This means that more states are implicated in the issue, increasing the justification for caste to be considered at the international level and in international law.

The global 'work and descent-based discrimination' frame is primarily a construction of INGOs, international experts and a small cadre of Dalit activists rather than of domestic caste-advocates writ large. Advocates were savvy to the constraints of the international system regarding norm elaboration, understanding that targeting a new norm at a single state or sub-region would be difficult. They accepted the need to steer the discussion away from spotlighting India and the Hindu caste system and towards the elaboration of broad-based concepts applicable to multiple (even all) states. The use of the 'work and

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[212] http://blhrri.org/blhrri_e/blhrri/buraku.htm (accessed 30 August 2007).

descent' and 'descent' frames are evidence in point – neither use the language of 'caste' directly - and the alternative possible frame of 'casteism' has not been widely incorporated in the international discourse. The expanded 'work and descent' identity frame enabled a greater focus on non-Dalit groups. For example, while the first report of HRW on caste (*Broken People*) examined only Dalits in India, its second report on caste was transnational, *Caste-Discrimination: A Global Concern* (2001). The report was issued in conjunction with the WCAR and included discussion of caste-analogous systems in Japan, Africa and in diaspora communities. By expanding the community of caste-affected groups, they could better use the WCAR as a political opportunity structure for their norm entrepreneurship goals.

Because of this broader frame, however, the pressure on India/Hinduism has diffused with the effect that Dalits have to share the spotlight with other groups. Given that Dalits are the overwhelming majority of the caste-affected populations (some 240 million of the estimated 250 million so-affected), they have made a calculated trade off of direct attention to Dalit identities for the chance to establish a new (global) norm on caste-based discrimination. There is a tension between transnational advocacy targeting individual state practice and transnational advocacy for norm elaboration. In the short-term, a conventional 'campaigning' approach to pressuring individual states can offer important gains, while in the long-term the prospect of norm emergence and internalization can mark an arguably more permanent and thus stable change in state practice. The former wouldn't necessitate a new transnational identity frame, but the latter has.

The two approaches are not mutually exclusive, however, and work in tandem to affect normative change. The transnational identity frame offers greater leverage to the individual groups sharing the frame and is a tool to open space for dialogue on individual groups' concerns within the blocked domestic sphere. All of the caste TAN actors interviewed for this thesis reported that they felt both the country focus and the normative focus were important. The timing of the WCAR propelled the normative agenda, prompting both the Sub-Commission and CERD also to respond. The caste TAN has secured a recognition within the UN that work and descent-based discrimination exists, that it is prohibited in international law and they have developed a set of draft UN principles and guidelines on this discrimination. This would not have

materialised if the only focus had been country-specific campaigning. In recent years there has been a shift back to country-focused advocacy: for example, India's submission of its periodic report to CERD in 2007 prompted a surge of domestic and INGO activity (e.g. in the form of preparing shadow reports). Members of the IDSN report that the major current of activity within UN fora now is to submit shadow reports to UN Treaty Bodies and also to the new Universal Periodic Review (UPR) system of the Human Rights Council. In both cases the efforts are state specific, although the focus on groups across Asia and Africa remains. Creating the global identity frame facilitated the norm emergence process, now providing a wide variety of caste-affected groups with new international standards to press for country specific change.

Using frames strategically: indigenous, minority or racism?

It is important to ask whether Dalits could have framed their identities within existing normative frames for marginalized groups rather than pursuing a distinct normative agenda. Three relevant frames come to mind: that for indigenous peoples, that for minorities and that for racial discrimination. Each comes with a ready set of institutions and standards that could have assisted Dalits in achieving their goals domestically. At various stages of their transnational advocacy activities, Dalits have worked within each of these frames but none has fit perfectly. The limitations of these alternative frames highlights the protection gaps that many marginalized identity groups face when trying to adapt global norms to local realities.

Early Dalit advocates were attracted to the WGIP. Before the WGM was established in 1994, Dalits did have an alternative in the form of the Working Group on Contemporary Forms of Slavery, first convened in 1975. Given that the 'work and descent' frame has emphasized this labour/bondage aspect of caste systems, it is surprising that Dalit NGOs did not direct themselves to this Working Group. It appears instead that the self-perception of Dalits as an 'indigenous people' fit well with the identity construction of Ambedkar and his followers. The difficulty they face in using this frame stems from competing domestic identities. In India and Nepal, for example, there are significant domestic constituencies who self-identify as indigenous peoples. In India the Scheduled Tribes or *adivasis* (original inhabitants) have constitutionally guaranteed rights and privileges similar to those recognized for Scheduled Castes. In Nepal, over 60 *janajatis*

or 'indigenous nationalities' are also officially recognized. For Dalit NGOs from these countries to declare themselves as indigenous peoples on the world stage would create tension with domestic groups with whom they might otherwise forge useful alliances given their overlapping interests. This has not prevented Dalit leaders from constructing an identity frame based in part on claims of cultural distinctiveness and historical antecedence, two key pillars of the global indigenous identity frame. The interest of Dalit leaders in securing better implementation of land rights[213] – a third key pillar of the indigenous frame – may prompt them in future to emphasise more this 'indigenous' aspect of their identity. The language of 'peoples' is already quite firmly entrenched in their discourse and the *Black Paper* on 'Land/Labour' issued by the NCDHR cites among other things an historical agreement from 1892 with the British (regarding so-called Panchami Lands) as a legal backing for land reform for Dalits.[214] This approach has strong parallels with the use of treaties negotiated by indigenous peoples with the British in other colonies to make claims against current governments.

Several Dalit NGOs have attended the WGM, often funded by MRG. The Government of India has been cautious about accepting the WGM as an appropriate forum for examining Dalit issues, arguing at the 2000 session, "The caste system is not strictly an issue of minorities".[215] The WGM was created with a mandate to review implementation of the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. Arguably, the Dalits do not fit well into any of these categories, displaying among them wide diversity in terms of ethnic, religious and linguistic characteristics. Moreover, the general international category of minority has proved difficult to meld with domestic interpretations. In India, for example, the state recognizes only religious minorities officially as minorities. Historically, Ambedkar and the Scheduled Castes Federation aimed for similar privileges to those foreseen for the Muslim minority population, i.e. separate electorates and separate territories. Ambedkar reportedly drew from the examples of the minority treaty system in Europe as well (Shah 2001, 32). He wanted to territorially concentrate

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[213] See, for example, point 1 of the "21 Point Action Agenda" of the *Bhopal Declaration* (agreed in 2002 as part of a national meeting on Dalits): "Ensure that each Dalit family will own enough cultivable land for socio-economic well-being". http://www.ambedkar.org/News/TheBhopalDeclaration.htm (accessed 30 June 2009).

[214] See "Dalit Right to Land and Labour: Fact Sheet III", in the *Black Paper*, NCDHR. See also "Call to retrieve Panchami lands for Dalits", *The Hindu – Online edition*, 13 December 2005, http://www.hindu.com/2005/12/13/stories/2005121319860300.htm (accessed 30 June 2009).

[215] E/CN.4/Sub.2/2000/27 (30 June 2000): para 54.

Dalits, removing them from villages where they were a marginal minority into spaces where they could make a majority (Jaffrelot 2005, 81). These kind of goals would best fit into the modern international standards for national minorities, wherein territorially concentrated groups are often afforded rights to autonomy and representation. In India, however, the concept of national minority is not used, thus limiting the effectiveness of such a frame. The use of a minority frame is complicated further by the fact that many religious minority groups include converted Dalits, who seek recognition both as religious minorities and as Scheduled Castes given that the social discrimination of caste continues to affect them.[216] Apart from the official status conferred by the term minority, the political attraction of constituting a 'majority' is evidenced in the BSP, the Bahujan Samaj Party that unites Dalits, tribals and other low caste groups: the term *bahujan* means majority (Waldorp 2004, 289). The party name has an important rhetorical resonance, highlighting the concentration of power in the hands of the numerical minority elite and the significant voting power of the marginalized majority. Dalit activists from Nepal similarly reject the minority label, arguing that "20% [of the population] are Dalits – this is not a minority. […] the Chetris and Brahmins they are 31% - we are 20% so why [would] we call ourselves minorities?".[217] The minority label seems only to be invoked domestically in those contexts where Dalits also belong to (Hindu or Christian) religious minorities, for example, in Pakistan, Bangladesh and Sri Lanka. These practices suggest an understanding of the label 'minority' principally in numerical terms. In contrast, at the international level, Dalit leaders have sometimes found an instrumental value in self-identifying as a minority, principally to have access to political opportunities and funding targeted for minority groups.

The third frame of 'racial discrimination' is perhaps the most contentious. The caste advocates have long used ICERD as a pillar of their advocacy and were drawn to the WCAR as a strong political opportunity structure. The Government of India insists that caste is not race and that caste-based discrimination does not constitute racial discrimination, including under ICERD. Ambedkar had a similar understanding and was adamant to represent the caste system as social, not genetic or 'racial', often comparing it to class rather than ethnicity (Waldorp 2004, 287). This suggests that the efforts of

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[216] The Government has been reluctant to accept them as Scheduled Castes because this would mean that non-Hindu minorities would have equal access to the Scheduled Caste reservation policies (Jenkins 2003, Chapter 6).
[217] Interview with Tirtha Bishwakarma, June 2006.

the contemporary Dalit movement to embed caste in the UN discourse on racial discrimination is at odds with how Ambedkar sought to represent the community. From a sociological perspective, caste and race constructs have much in common: in addition to the hierarchical and purity elements, the Hindu caste system is constructed into *varnas*, literally meaning colour; in contemporary Indian society, fair skin is valued socially more than dark skin and Dalits are typically perceived as darker. Many scholars and activists have elaborated on these parallels, both in terms of the social construction of racial and caste divisive systems and on the effect of discrimination on these bases in practice (Robb 1995; Thorat and Umakant 2004). What such studies often miss are the underlying political dimensions of race and racism, which help to explain the Indian position. These political dimensions of race are embodied principally in the colonial doctrines and post-colonial global divides. Part of the difficulty Dalits have faced in using a racism frame at the international level is that the post-colonial international discourse on racism makes racism exclusively an act of the West against the peoples of its former colonial territories (Banton 2002). By extension this means that decolonised states like India cannot themselves be internally racist. As another case in point, Paul Divakar reports that during his first intervention on caste-discrimination at the Sub-Commission, the delegate from Nigeria approached him to refute his concerns about the Osu community, claiming that such practices (of discrimination) did not exist in his country.[218] In response to such assertions, Dalits have tried to create an associated but distinct frame of 'casteism', the turn of phrase making obvious parallels to racism. The language of 'casteism' was prominent in the WCAR advocacy by Dalits but has never been taken up in the international normative discourse because of the restrictions on making an explicit link to caste (and to India by extension). Dalit appeals to the Special Rapporteur on *contemporary* forms of racism, and the Rapporteur's own view of caste in this aspect of his mandate, demonstrate how the caste TAN has sought to reconstruct ideas of racism in post-colonial societies.

The frames of 'indigenous', 'minority', and 'racism' have all proven to be inappropriate in some way for the Dalit experience, but this has not prevented Dalit leaders from using these frames to gain access to political opportunity structures. The willingness of Dalit leaders to accept the banal 'work and descent' terminology and to accept funding to attend fora such as the WGM suggests that they have been practically-oriented on the

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[218] Interview with Paul Divakar, June 2009.

international stage, taking a flexible approach to identity frames. This is reflected in the words of one Dalit activist, "some Dalits are represented as an indigenous community because we have our own culture, tradition, background. We are trying to fit wherever treaties talk about disadvantage based on birth and race".[219] This has given them a platform for articulating a new identity frame around caste-based discrimination, for socializing states and other international actors to this identity and for beginning the process of embedding this identity into the international lexicon and standards. The overarching goal of Dalit leaders nevertheless is the establishment of a unique global identity frame based on caste-like identities with an accompaniment of normative provisions directed exclusively towards their constituents. The fact that they have used a variety of frames to move them towards this goal has not diverted attention from the end game. According to Paul Divakar, "We are not satisfied with any of the terms… but using the basic principle of advocacy is to not rule anything out just because you don't have your language – work towards packaging your substance into that window which opens".[220]

Assessing the norm entrepreneurship of the caste TAN:

The global advocacy strategy of the caste TAN has been to use international institutions to emphasise norms that would spotlight state failures and set a minimum basic standard of achievement for the eradication of caste-based discrimination. They reasoned that external actors would be better equipped to recognise the need for reform than states bound internally by caste-based discrimination norms. The initial stages of their norm entrepreneurship focused on three primary goals: recognition of their identities and concerns; norm elaboration; and the creation of new mechanisms on caste. In each they have achieved some success thanks to the creation of an effective organisational platform, strategic framing of their identities and rights, good use of political opportunity structures and constructive cooperation with IOs. These gains have been made in spite of the continuous opposition of the Government of India and weak support from other states.

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[219] Interview with Sujatha Surepally, May 2005.
[220] Interview with Paul Divakar, November 2008.

Their success was aided by the establishment of strong forms of transnational social mobilisation. While earlier cooperation between domestic and international NGOs on caste had raised some awareness of the issues at the international level, it failed to build any organisational platform. The establishment of the IDSN was a crucial development that helped to bind nascent national platforms on caste and existing INGOs. Other caste-affected communities were soon incorporated into the mobilisation, creating a transcontinental network that increased the leverage of all participating identity groups. The caste TAN was born: caste-focused NGOs benefited from the expertise, information and resources of each other and INGOs to build a norm emergence campaign; and INGOs increased their credibility on caste issues through partnerships with caste-focused NGOs.

This campaign profited from one timely political opportunity structure: the WCAR. The caste TAN did not achieve their main goal at Durban but caste became a *cause célèbre*, affording a newfound recognition for caste-affected communities on the international stage. This expedited norm elaboration: although international human rights institutions had tentatively addressed caste prior to Durban, the failure to secure specific mention of caste within the WCAR appears to have galvanised interest in advancing the normative agenda. Individuals like Patrick Thornberry of CERD and Asbjørn Eide and Yozo Yokota of the Sub-Commission took a personal interest in keeping the issue alive. They helped produce interpretive texts detailing the normative scope and content of the prohibition of caste-based discrimination and secured a specific mechanism on work and descent in the form of the two Special Rapporteurs.

This normative discourse has been facilitated by strategic use of identity frames. Dalits and other caste-affected groups have asserted a distinct identity based on the common experience of caste and analogous structures. They argued successfully that this identity warranted a particular focus in international society, aided by the "certification" of this identity by IOs. When it became clear that India would not accept overt references to caste, the identity frame was adapted to 'work and descent'. This had the dual effect of side-stepping India's objections whilst also embedding caste in an existing normative frame of 'descent' under ICERD. CERD was prepared to endorse this interpretation regardless of state objections and the caste TAN gained a legally binding norm without protracted inter-state negotiations. The Sub-Commission further

legitimated the frame by elaborating on discrimination based on 'work and descent', which they confirmed is prohibited in international law. The caste TAN experience also supports Keck and Sikkink's (1998) assertion that emergent norms pertaining to 'bodily harm' or 'legal inequality' are more likely to be accepted. By emphasizing the structural inequality element of caste-based discrimination and the terrible effects on individual community members (such as extensive murder, rape, manual scavenging and the practices of 'untouchability') in the various reports and communications, the caste TAN has utilised these frames successfully.

Even with these successes, the caste TAN faces several obstacles in its ongoing efforts to achieve norm adherence. The first is its own fractured mobilisation in the domestic sphere. Dalit activists in India, for example, are split by region, religion, political allegiance, class and language. Those participating in the international sphere are few and can have divergent views on advocacy priorities and strategies to the majority of domestic activists who may not share their norm entrepreneurship goals (Berg 2007). Leaders also express deep frustration with the so-called 'victim narrative' used by Dalits to justify their lamentable position in society (Macwan 2004, 33).[221] As 'victims' they are not empowered for mobilisation and fail to seek justice reasoning that their status is preordained (and dissuaded by the failures of the state justice system for Dalits). Even where they are mobilised, they have weak social capital to influence decision-makers. They face a still deeply-entrenched "caste culture" that makes internally driven social reform a poor prospect. Many domestic commentators in India view the actions of caste leaders as a betrayal of national loyalty, either sharing Gandhi's view that these actions are divisive or regarding solicitation of external interest as a return to colonialism (e.g. Thorat and Umakant 2004, Ch. 5 and 6). Activists struggle with the fine line between the benefits of mobilisation as a distinct Dalit community and the ultimate goal of eradication of the structure that created their distinction.

There is no strong evidence of a norm cascade among states on the international stage. Only five countries had replied to the requests for information on caste as part of the Special Rapporteurs' study on work and descent. India is still reluctant to make caste an issue of international concern and continues to decline requests by Special Rapporteurs

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[221] Interview with Paul Divakar, November 2008.

(on work and descent and on racial discrimination) to conduct country visits. Japan has not changed its principled stance on caste issues (in line with India's) but did capitulate to invite the Special Rapporteur on racism to visit, giving domestic Buraku-focused NGOs a vital opportunity for advocacy. Nepal is an important exception and has been the most open of the caste-affected states to domestic reforms vis-à-vis Dalits. This appears to be a consequence both of emerging norms and of domestic factors. The elaboration of norms in the international sphere has socialised state and resident IO actors to these concerns and strengthened the leverage of domestic Dalit actors to press for change. The post-conflict transition has created space for emergent norms to take root. Nepal has a smaller civil society of Dalit activists than India but a much more open dialogue with government. Although Dalits remain a weak constituency, the championing of Dalit rights in the Maoist movement's manifesto has given rationalist motivations for the new government to respond in earnest. At the international level, Nepal has accepted CERD's view that caste is within the scope of the ICERD but it has not been highly vocal on its views given India's position. Other caste-affected states similarly have been reticent on the issue, in part because domestic caste-NGOs are relatively weak in all but India, Nepal and Japan. A notable change was in evidence at the DRC, however: for example, both Pakistan and Nepal in their interventions noted the need for the outcome document to focus on caste-based discrimination, suggesting that India's neighbours are increasingly socialised to international attention to the issue. They did not openly criticise India but their statements represent an important discursive shift that could be utilized for future norm emergence. Diaspora states are only beginning to understand the implications of caste-based discrimination within their populations (thanks in part to CERD questions) and Dalit solidarity networks have usually focused their attention on countries of origin rather than locally affected individuals.

In achieving a norm cascade, the position of India as a "critical state" was always clear. India has the largest population of caste-affected groups and its acceptance of the norm would be instrumental to broader norm internalisation. Its persistent criticisms of the Sub-Commission, CERD and the Special Rapporteurs have attempted to undermine the process of norm emergence. India's obstinacy is influenced by both internal and external factors. Internally, caste-affected groups are an important constituency, one that is courted by all political parties. The expressed interest in Dalit issues, however, is

often motivated by vote seeking: for example, the Bhopal meeting in 2002 was convened by the state of Madhya Pradesh, where the Congress government relies on low caste support (Lerche 2008, 247). The government across India has been able to placate Dalits with promises of a better future and a reservation system that is elusive to many. The balance of power in government institutions belongs to upper caste groups. They have limited motivation to relinquish this power and enforce laws that would protect the lower castes. Those parties focused on Hindu nationalism particularly (like the BJP in power during the WCAR) would be loath to denigrate Hinduism by emphasising its structural injustices. The association of some Dalits with armed movements like the Naxalites, however, suggests that the government cannot rely on social hierarchy for stability. Dalit NGO leaders may not represent a security threat but with the support of the international community, they can bring pressure to bear on the government.

It is this external pressure that India has strived to avoid, pressure that threatens to undermine India's preferred identity in international society. Successive Indian governments have rejected the framing of caste as a racial discrimination issue at the same time as proclaiming firm commitment to the eradication of caste-based discrimination. It is the *racism* aspect that is offensive to them. As discussed in Chapter 1, racial discrimination as a norm in international society holds great weight. It also has played an important role in post-colonial inter-state discourse. India's desire to present itself as a racism-free society is consistent with similar claims made by other post-colonial states. It cannot deny that caste discrimination persists but it can insist that the practice is not racist. This helps to portray India as a modern liberal and democratic state, projecting an image that intends to be more estimable than Western democracies that historically and currently grapple with racism. Moreover, by presenting caste-based discrimination as a particular phenomenon and a domestic concern, India sidesteps calls for international scrutiny of the issue.

India has been able to use its position in international society to dissuade other states from actively supporting the caste TAN. The caste TAN members report they have the moral sympathy of many states, but none are willing to expend the political capital necessary to meet their ideational concerns. India is among the most economically powerful post-colonial states and a regional hegemon, holding important positions in

the UN Security Council, as a trade partner and also on the UN Human Rights Council. It has made itself a bridge between the North and the South. Britain probably has the largest number of Dalits in the diaspora but is reluctant to take a hard line on caste no doubt because of its status as former coloniser and its desire to maintain a privileged position with the Government of India. The EU at large is dependent on India as a trade partner, making it similarly reluctant to harm relations. The discussion of caste at the DRC by Pakistan and Nepal can be interpreted from a rationalist perspective, these states aiming to undermine India's regional and international status by elevating caste as a focus of international attention. The EU support to Dalit NGO accreditation at the DRC, Slovenia's intervention at the DRC, Denmark's interventions on caste in the UPR (see footnote 222) and Guatemala's support during and after the WCAR, are evidence of shifting discursive positions that are not so easily tied to rational interests and could signal an increasing willingness to act in accordance with ideational commitments on caste-based discrimination.

Despite the weak support of states, the caste TAN has managed to institutionalise new norms for caste-affected groups but the important processes of state socialisation and persuasion have taken a back seat. Typically in norm entrepreneurship, socialisation and persuasion precede norm emergence. The caste TAN has done things in the reverse order for three key reasons. The first is the availability of political opportunity structures conducive to norm elaboration, such as the WCAR and the UN Sub-Commission. The second is the willingness of international actors to draft normative standards even in the face of state opposition. They have put the norms to paper and added the UN stamp of authority. States have been largely unable to stop these processes because they have taken place within independent expert (rather than inter-state) mechanisms like CERD and the Sub-Commission. The third factor has been the power of India to persuade states against openly accepting new norms focused on caste-based discrimination. Had the caste TAN relied solely on state persuasion, the norm elaboration was unlikely to occur, as was the case in Durban.

The availability and support of political opportunity structures for norm emergence has meant the caste-TAN has juggled both norm-focused and country-specific advocacy. These two objectives can be mutually beneficial but also compete for the time and resources of activists. It is not always clear whether this balance has fit the will,

objectives or interests of caste-affected communities themselves. For example, the efforts to draw in other Asian and African communities under the rubric of 'discrimination based on work and decent', may have benefited Dalits much less than other groups. For Dalit leaders, specific attention to the experience of Dalits and states in which Dalits reside might have conferred greater immediate gains than focusing energy and resources on norm development. The problem is that constructive dialogue on norm adherence has been blocked in most states and the political opportunities offered by norm entrepreneurship have been more effective than domestic advocacy in generating media and government attention. Moreover, the geographical, religious and cultural divides among Dalits undermines efforts to forge an effective horizontal alliance for country-specific (or Dalit-specific) advocacy. Cooperation with each other in norm entrepreneurship has in some ways been more productive than domestic mobilisation. The success in norm emergence has helped to open space domestically for better adherence to existing and/or emerging norms on caste-based discrimination.

With the norm elaboration well advanced, the caste TAN is focusing more attention now on socialisation, country specific work and use of new international fora with stronger sanctioning power. Greater efforts are being made to strengthen domestic Dalit platforms in other parts of Asia to exert pressure from below. Bilateral advocacy by the caste TAN targeting Western states and institutions (such as the EU) continues to bring pressure from above on caste-affected countries and keeps caste-affected groups a funding priority for donors (at least in South Asia). Treaty bodies are being supplied with relevant information on caste. The caste TAN is working more with the private sector and labour rights issues and beginning engagement with the ILO's monitoring mechanisms. The UPR of the Human Rights Council has also proved a useful forum in which states have been willing to raise the issue of caste-based discrimination.[222] The elaboration of norms has not been altogether abandoned and members of the caste TAN maintain a long-term vision of a legally binding instrument focused specifically on caste, such as an International Convention on the Elimination of All Forms of Caste-based Discrimination. The Special Rapporteur Chung has expressed her commitment to Dalit leaders to taking forward this proposal within the new UN Advisory Committee. In March 2009, on her first official visit to India and Nepal, the UN High Commissioner

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[222] States have raised the issue of caste-based discrimination during the UPR of Pakistan, India and Sri Lanka. Denmark is the only state to raise the question in all three UPRs. See, respectively, UN Docs. A/HRC/8/42 (4 June 2008); A/HRC/8/26 (23 May 2008); A/HRC/8/46 (5 June 2008).

on Human Rights, Navanethem Pillay, made strong statements condemning caste-based discrimination and encouraged the Indian Government "to show leadership in combating caste-based discrimination globally".[223] Whether they heed this call remains to be seen; the Government of India no doubt will consider the comparative material and identity costs of being an international crusader on caste versus maintaining its moral authority as a racism-free society *contra* the Western (colonial) experience.

Conclusions:

The mobilisation of Dalits has a long history that reached a crescendo with the WCAR but has not fallen silent since. The momentum created by the WCAR has had a positive impact in the domestic sphere; activists cite Prime Minister Singh's recognition of caste-based discrimination as akin to apartheid as a major victory. Nepal's new government is making efforts to include Dalits in the transition process. The deeply entrenched social structure of caste remains forceful, however, regardless of the constitutional and other statutory measures that outlaw it. Dalits have struggled to create a mass mobilisation to combat caste, undermined by internal division and the "victim narrative".

Nevertheless, the caste TAN has pursued a highly successful norm entrepreneurship process. They have united previously disparate groups across borders, raised the international consciousness of their existence and secured recognition from international institutions. They have created and used political opportunities to the fullest effect. They identified useful adjacency strategies for pursuing norm emergence. They have bypassed India's objections to consideration of caste in the international sphere by making alliances with IOs. The CERD General Recommendation, CERD questions on State party reports, and the outputs of the Sub-Commission and its Special Rapporteurs have institutionalised a normative discourse on caste at the international level.

The caste TAN is using this normative framework to socialise states and other actors towards norm adherence. In an "insider-outsider coalition" advocacy strategy, emergent norms have benefited advocates working in the domestic sphere by helping to open up

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[223] *Statement by Navanethem Pillay, High Commissioner for Human Rights at the National Human Rights Commission*, Delhi (23 March 2009): p. 5.

space for engagement with state actors. Dalit leaders remain hopeful that more Dalits themselves will demand their rights assertively. CERD and other treaty bodies will continue to press the issue with states through reporting dialogues. The guidelines and recommendations of the Special Rapporteurs on work and descent are readied for the implementation stage. National Dalit platforms are continuing their efforts at the domestic and regional level, socialising not only states and development actors but also IOs like SAARC. The civil society of caste-affected communities continues to benefit financially from increased donor awareness of their existence. Dalit solidarity networks continue to expand as international consciousness of the plight of Dalits grows bringing third states into the dialogue. As more actors become socialised to the concerns of caste-affected groups, they may well adhere to the norms domestically regardless of India's opposition to consideration of caste in the international sphere. This, coupled with India's domestic practice, may effect a norm cascade and internalization through the back door.

CHAPTER III: AFRO-DESCENDANT MOBILISATION IN LATIN AMERICA

Candil en la calle, oscuridad en la casa.
(Candlelight in the street, darkness at home.)

Introduction:

There are an estimated 150 million people of African descent in Latin America. Their experiences across the region are diverse. They constitute a large numerical majority in several states and a small numerical minority in others. They have different experiences of slavery and colonialism that influence their position in modern society. Some communities are urban and others are rural, many living in particular coastal regions or other territories they have settled in since their ancestors escaped slavery. There are variations in language, religion and tradition and they descend from different ethnic groups across Africa (Hall 2005, 363). They are rarely represented in government and typically have lower levels of human development. Some states have responded to their interests, in others, their interests remain largely ignored.

Overall the visibility of Afro-descendants has increased significantly in the past decade or so, marked by the pan-Latin American mobilisation of Afro-descendant leaders to push for greater inclusion of their communities and recognition of their rights. There is now a corpus of international standards designated specifically for people of African descent. The 2001 World Conference Against Racism (WCAR) and its preparatory events played a major role in this process but several other factors have contributed. This chapter will uncover these factors by examining Afro-descendant transnational mobilisation and the emergence of new international norms pertaining to people of African descent. Afro-descendant leaders have merged discourses on non-discrimination with the assertion of collective rights and ethno-cultural identity to create a new group-specific set of norms. They have created an 'Afro-descendant' identity frame to unite and empower a diverse group of communities. The international actors that have contributed to mobilisation and norm emergence will be reviewed, in

particular those focusing on development cooperation, international human rights monitoring and NGO capacity building. The chapter will also discuss many of the challenges faced by Afro-descendants in building transnational mobilisation. These include the constraints of 'racial' versus 'ethnic' identity formation in Latin America, the history of nationalism and 'racial democracy' in the region, and the forces of *mestizaje* (mixing) and *blanqueamiento* (whitening) that impede individual and collective self-identification as Afro-descendant. The Afro-descendant dialectic with the indigenous peoples' movement will be examined to reveal how the socialisation of states to the indigenous peoples rights discourse has both helped and hindered Afro-descendants' own claims. The post-WCAR outcomes also will be assessed, focusing on the Working Group of Experts on People of African Descent (WGPAD) and practice in the "critical state" of Brazil, to consider how norm emergence has progressed since Durban.

The geographical scope of this chapter will be limited primarily to Central and South America, termed here as Latin America. While the relationship between Afro-descendant activists in North America and Latin America has been significant, the movement as concentrated in Latin America is commonly considered a distinct entity and its experiences are more relevant to the focus of this thesis. The experiences of Afro-descendants in the Caribbean are also distinct, not least because Afro-descendants often constitute a majority of the population in many Caribbean states. The links between Latin American, Caribbean and North American Afro-descendant activists will be discussed where appropriate.

Who are Afro-descendants?

Afro-descendants are present in every state in Latin America and the Caribbean.[224] The largest population of people of African descent in Latin America is found in Brazil; indeed, Brazil has the second highest population of people of African descent in the world after Nigeria, estimated at around 73 million or 47 percent of the total

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[224] Unless otherwise specified, population figures here are taken from Inter-American Dialogue (2003) and Minority Rights Group (1995, xii-xiii).

population.[225] Several other states in South America also have significant Afro-descendant populations, including Colombia (26 percent), Guyana (45 percent), Suriname (41 percent), French Guiana (66 percent), Venezuela (10 percent), Ecuador (10 percent) and Peru (5 percent). Smaller populations of Afro-descendants of between 1 and 4 percent live in Bolivia, Uruguay and Paraguay. Most Caribbean states have a large majority population that is Afro-descendant. In Central America, Belize (47 percent), Panama (14 percent), Puerto Rico (23 percent), Costa Rica (2-3 percent), Nicaragua (9 percent) and Honduras (2 percent) have the largest populations of Afro-descendants. In North America, Mexico has an estimated 1 million Afro-descendants (1 percent),[226] the US has 34.7 million (12 percent)[227] and Canada has 662,000 (2 percent).[228] The population figures are often contested due to tendencies of self-identification in Latin America, leading to an under-estimation of actual population sizes.

Many Afro-descendants live in urban areas although in some countries there are specific geographical regions with a high concentration of Afro-descendants. These include the Bahia region of Brazil, the Atlantic-Caribbean coast of Honduras, Nicaragua and Costa Rica, the Pacific region in Colombia, Esmeraldas in Ecuador and Barlovento in Venezuela (Conniff and Davis 1994, 271). Many of the areas historically were settlement communities of former or self-liberated (escaped) slaves (the latter called maroons or *cimarrones*). Their territories are termed *quilombos* in Brazil and *palenques* elsewhere. These territories were *de facto* sovereign and independent, many being continuously settled since as early as the 16th century and vigorously defended against invasion.

Nearly all of the Afro-descendant population in Latin America are descendants of slaves. Slave labour was used primarily in Spanish and Portuguese colonies from the 16th century, later expanding into British, Dutch and French colonies from the 17th century. Some 40 percent of all African slaves were located in Brazil. Whereas the slavery of the region's indigenous populations was outlawed as early as 1542 in the

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[225] This figure is drawn by combining the official census categories of 'black' (preto) and 'brown' (pardo).
[226] Precise figures for Mexico were difficult to find; see Nasong'o (2008, 37-38) and Cevallos (2005).
[227] Figures are from the 2000 US Census (Grieco and Cassidy 2001, 3).
[228] Individuals under the category 'Black' in the 2001 Canadian census. See http://www40.statcan.ca/l01/cst01/demo50a.htm (accessed 26 November 2007)

Spanish colonies (1570 in Brazil) (Wade 1997, 27) slavery among the African populations was only first legally abolished under a series of independence movements beginning with Haiti in the late 18th century and was ended lastly in 1888 in Brazil (Conniff and Davis 1994, 180).

The socio-economic status of Afro-descendants is low and inequalities along racial lines persist across Latin America, with indigenous peoples and Afro-descendants concentrated in the bottom strata. Afro-descendants constitute one third of the region's population but fifty percent of those living in poverty (Zoninsein 2001). On a range of social and economic rights indicators, Afro-descendants do less well than whites and mestizos, although the publication of indicators disaggregated by ethnic or racial group was not common until recently. Discrimination is a major factor: for example, job advertisements may stipulate "neat appearance" widely understood to mean 'light skinned'. The available indicators demonstrate the persistence of high inequalities that have remained even when social welfare overall has improved throughout the region (Oakley 2001; Sutherland 2002, 9; Zoninsein 2001; Lebon 2007, 54). Afro-descendant women face intersecting discrimination based on gender and race and tend to score even lower levels of economic and social rights attainment (Lebon 2007; Safa 2005).

Many Latin American states have adopted legal and institutional measures to combat racial discrimination, including some that are specifically targeted for Afro-descendants. Access to justice for Afro-descendants in the region generally is poor and Afro-descendants often report they are targeted for police brutality (Adorno 1999; Guimarães 1999). ICERD is widely ratified in the region and general provisions on non-discrimination are common in national legislation. Some states have taken further steps to entrench anti-racial discrimination measures: for example, the 1988 Constitution of Brazil criminalises acts of racism with high penalties of imprisonment.[229] The legislation was complemented by a new institutional structure created also in 1988, the Palmares Cultural Foundation (*Fundação Cultural Palmares*), administered under the Ministry of Culture and the first federal agency with responsibility to address the social and cultural needs of Afro-Brazilians. Colombia, Cuba, Ecuador, Honduras, Nicaragua and Peru also have strong anti-discrimination laws, including some special provisions aimed at Afro-descendants (Inter-American Dialogue 2004, 5). At least seven countries

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[229] See Law 7716 of 1989 and Law 9459 of 1997. UN Doc. E/CN.4/2006/16/Add.3 (28 February 2006): para 7.

(Belize, Brazil, Colombia, Ecuador, Guatemala, Honduras and Nicaragua) have formally recognised land entitlements for people of African descent (Inter-American Dialogue 2004). Provisions for Afro-descendants are often introduced in the context of new national policies on multiculturalism. Federal Law 70 adopted in 1993 in Colombia (following the adoption of a new constitution in 1991) is widely cited as the strongest example, establishing for Afro-Colombians a number of special provisions including two reserved seats in Congress, land rights (for some communities) and teaching of Afro-Colombian history and culture in schools, albeit with mixed success in implementation.[230] Many measures have come post-WCAR, with governments either introducing or strengthening legal and institutional policies for Afro-descendants. Brazil established in 2003 the Special Secretariat for the Promotion of Racial Equality (SEPPIR) and introduced its first affirmative action policies in the spheres of state tertiary education and public sector employment. In Honduras, an Anti-Discrimination Commission was created in April 2004, on the 270th Anniversary of the arrival of the Garífunas in Honduras.[231] In April 2005, Peru established the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA), a body with ministerial status.[232] In Colombia, the Directorate of Black Community Affairs was replaced by the new Office of Ethnic Affairs within the Ministry of the Interior, where a presidential adviser now coordinates the formulation of ethnic policies.[233]

In spite of some positive steps in the public sphere, political representation remains weak. There are reportedly less than 100 Afro-descendant legislators in Latin America (excluding Caribbean states); in Brazil, only 17 of 594 congress representatives self-identified in 2007 as Afro-Brazilian (Mani 2006; Ribando Seelke 2008, 9). Although many Afro-descendants have overcome the obstacles (such as discrimination, funding, weak social capital) to run for political office they have often found it difficult to secure an electoral base, in large part because individuals tend not to vote along racial lines. Attempts have been made to bolster support for political representation of Afro-descendants both through reserved seats and through support networks among legislators. In November 2003, the first meeting of the Afro-Descendant Legislators of the Americas and the Caribbean was held, intending to establish a Black Parliament of

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[230] See UN Doc. E/CN.4/2004/18/Add.3 (24 February 2004): p 6; and Arocha (1998).
[231] UN Doc. E/CN.4/2005/18/Add.5 (22 March 2005): p 8.
[232] INDEPA replaced an earlier body established in late 2001, the National Commission of Andean, Amazon and Afro-Peruvian Peoples (CONAPA).
[233] UN Doc. E/CN.4/2004/18/Add.3 (24 February 2004): p 7.

the Americas (realised in August 2005 in San José, Costa Rica). The legislators continue to hold regular meetings, forging important links between Latin American legislators and the Congressional Black Caucus (CBC) in the US.[234] President Lula da Silva has also been praised for appointing four Afro-Brazilians to ministerial posts in his government in 2003, including three for Afro-Brazilian women. These efforts suggest that national political representation is increasing but only at a slow pace and in a select number of countries. Activists report that political participation at the municipal level, in particular where there are large populations of Afro-descendants, tends to be stronger.

One of the main obstacles to increased political representation of Afro-descendants is weak social consciousness and mobilisation along racial lines. There is very little social or material gain for individuals who self-identify as black/Afro-descendant, and while many will acknowledge a 'mixed' ancestry, few will claim to be wholly of African descent. The project of strengthening the Afro-descendant identity has long been regarded a prerequisite for other progress.

Forging an Afro-descendant identity frame: challenges and opportunities

Afro-descendant leaders have faced a significant challenge in creating an identity frame for mobilisation that would resonate among the Afro-descendant community and be recognised by wider society. Two key factors have undermined their efforts: the dominant ideology of 'racial democracy' and the privileging of indigenous peoples' identities. The former denies that racism exists and the latter has limited the gains by Afro-descendants in the transition to multiculturalism. Afro-descendant leaders have worked to imbue 'blackness' with a newfound (political) value in societies that generally devalue this identity and dissuade self-identification along racial lines. They have also learned from (and sometimes clashed with) indigenous peoples in their attempt to create space domestically and internationally for recognition and making rights claims.

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[234] The first meeting was held 21-23 November 2003 in Brasilia; the second on 19-21 May 2004 in Bogota; the third on 28-31 August 2005 in San Jose. They formulated two declarations through these meetings: the *Carta de Brasilia* and the *Carta de Bogotá* (Johnson 2007, 66).

From racial democracy to multiculturalism?

The notion of racial democracy espoused in Latin America for most of the 20th century asserted that because of racial miscegenation, rigid racial distinctions did not exist in the region. It was a popular ideology that gave the illusion of equality, helped to quell debate about hierarchies and contributed to a nationalism myth. Proponents maintained that due to different approaches to slavery and manumission, and a high degree of intermarriage and mixing (*mestizaje*), Latin American states were stratified less by race than by class when compared with the US, where blacks were socially and legally segregated (Wade 1997; Telles 2004). As a nationalist discourse, *mestizaje* of white, black and indigenous appeared outwardly as progressive but always maintained an implicit bias towards *blanqueamiento* (whitening) (Romo 2007; Wade 1997, 32). Instead of rigid racial lines, social hierarchy in Latin America was (and continues to be) constructed along a spectrum of colour with black on the bottom and white on the top. Individuals attempt to make social gains in 'whitening' themselves. In colonial times this colour diversity was known as 'las castas' (castes, or 'breeds') (Whitten 2007, 358), which privileged those who looked more European regardless of their actual parentage. Historically, this hierarchy was politically motivated: the white elite believed they could better secure power by reducing the large black population. The experience of slave rebellions, liberation and independence in the region (especially of Haiti in 1804) witnessed forcefully how collective Afro-descendant mobilisation could challenge political authority and military might of Europeans (see Naro 2003). The racial democracy myth and its enabling forces of *mestizaje* and *blanqueamiento* were powerful weapons against social unrest.

One of the early challenges to the racial democracy myth was a series of studies in the 1950s conducted by UNESCO in Brazil as part of a global project investigating racism; they revealed very little evidence of a 'racial democracy' (Winant 1999, 99; Wade 1997, 53). The dominant academic discourse in the region remained firmly Marxist, however, making race subsidiary to class in social analysis and obscuring the evidence of racial stratification. The political climate of authoritarianism that dominated Latin America for much of the 20th century further circumscribed investigation of Afro-

descendant identity. Most scholars focused their attention on the cultural and historical aspects of African identity or slavery rather than addressing contemporary inequalities along racial lines. At least one Afro-Brazilian scholar and activist, Abdias do Nascimento, was exiled in 1968 for his political efforts to bring attention to Afro-descendant marginalisation.

In the 1980s and 1990s, many Latin American states adopted a new strategy of multiculturalism in an effort to gain legitimacy after decades of authoritarian rule (Van Cott 2000, 3). The multiculturalism frame was effective in accommodating many of the claims made by indigenous peoples but afforded fewer gains to Afro-descendants. The vestiges of racial democracy and public perceptions of race and ethnicity have made it difficult for most to accept any (race-based) privileging of Afro-descendant identities. There is a two-level process of normative change. While some high-level, central government actors have adopted a more multicultural discourse and recognition of racism in recent years, at the local level, within the justice system, and among the public at large, the racial democracy myth persists. This is evidenced in the country reports of the UN Special Rapporteur on racism. In his visit to Honduras in 2005, the Special Rapporteur found:

> Several government representatives considered that Honduras was not fertile ground for racial discrimination because of the extent of interbreeding in the population. Some State officials, including some from the judicial sector, have tried to argue that the limited number, if not absence, of complaints of racial discrimination indicates that there is no racism.[235]

Similarly, in his 2005 visit to Brazil:

> The Special Rapporteur…welcomes the recognition of the existence and depth of racism by the federal authorities at the highest level, and the adoption of a number of laws and institutions to combat racism. He however notes the resistance to these policies at different levels of the society in general, and from some federal and local authorities, and the persistence of the ideology of racial democracy among the population and in certain institutions.[236]

Many are suspicious of any attempts to focus on race, with the effect that "the recognition of the idea of race and the promotion of any anti-racist action based on this

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[235] UN Doc. E/CN.4/2005/18/Add.5 (22 March 2005): p 11.
[236] UN Doc. E/CN.4/2006/16/Add.3 (28 February 2006): p 2.

idea is interpreted as racism" (Guimarães 2001, 39). A class view of society continues to dominate, with social inequalities attributed to class rather than race. The racial democracy ideal still clearly resonates to many. It has long been part of Latin America's image, lending a sense of regional identity and pride. For some the construct facilitates their personal ambitions, using *blanqueamiento* to advance in the social hierarchy. For those at the top, where power is contained almost exclusively in the hands of a white elite, it projects an image of equality; for those at the bottom, where racial mixing is more common, it reflects the sense of community many readily feel. The introduction of multiculturalism is perceived by some to create harmful divisions, by pushing people to self-identify with a particular group rather than a shared identity. In the face of affirmative action proposals, for example, many prefer class-based to race-based policies (Telles 2007), not least because the class line is more obvious than divisions based on race alone (Sansone 2004, 30). Indeed, as Guimarães (2001) summaries, "it is not surprising, then, that a considerable part of the black population feels more attracted to leftist political parties than to black solidarity movements" (39).

Into this class and race mixture comes a third category: ethnicity. Indigenous peoples have been able to sidestep many of the barriers to mobilisation raised by racial democracy because they are viewed as ethno-cultural nations rather than in racialised terms. Distinction on the basis of ethno-cultural identity is more palatable to Latin Americans than distinction linked to race. This difference and the experiences of indigenous peoples have influenced norm entrepreneurship by Afro-descendants.

Learning from Indigenous Peoples: the impact on Afro-descendant mobilisation

Indigenous mobilisation has shaped the framing of Afro-descendant identities, the rights claims they have made and the political opportunity structures available. Indigenous peoples and Afro-descendants experience similar forms of marginalisation and this has stimulated some solidarity between them. Indigenous peoples, however, have had greater advocacy success and have long dominated national and regional discourses on multicultural accommodation. This privileging of indigenous peoples is linked to both domestic and transnational discourses on indigenous identity, a discourse that has distinguished ethnicity from race, tied culture to land, and venerated pre-colonial

identities (Hooker 2005; Ng'weno 2007; Greene 2007). Afro-descendants have struggled to make gains under multiculturalism because in the main they are not perceived to have a distinct culture or to constitute a distinct collective identity. The exception proves the rule: the small margin of Afro-descendant groups with affinities to indigenous groups have been able to obtain a specialised status and collective land rights. Three aspects of the indigenous-Afro-descendant dialectic will be explored here: the constraints of national ideas of ethnicity and race; the barriers in access to land rights; and the influence of international discourses and actors.

The shift to multiculturalism occurred at the same time that domestic and international mobilisation of indigenous peoples in the region was strong. Successive governments have been socialised to the indigenous rights discourse thanks to long processes of mobilisation and campaigning, strong transnational advocacy networks and good cooperation with international institutions (Brysk 2000; Postero and Zamosc 2004; Niezen 2003; Wilmer 1993). Indigenous leaders' claims to the right to self-determination have led to recognition of collective rights for indigenous peoples in statutory or constitutional law across the region (Hooker 2005, 285; Van Cott 2000). At the international level, Latin American states have widely ratified ILO Convention 169 Concerning Indigenous and Tribal Peoples, firmly supported the UN Declaration on the Rights of Indigenous Peoples and are negotiating an OAS American Declaration on the Rights of Indigenous Peoples.

The propensity of Latin American state actors to be socialised to indigenous peoples' rights claims is helped by experiences of colonialism and nation building in the region, which at once favour indigenous peoples and undermine Afro-descendants (Wade 1997). During colonialism, indigenous peoples were privileged over Afro-descendants, the former regarded variously by Europeans as noble/ignoble savages, independent nations or conquered peoples (Keal 2003), the latter merely as slaves and property. The difference in how indigenous and Afro-descendant groups were perceived was important when ideas of nationhood were being formulated across Latin America. The indigenous populations became revered in this mythical nationalist discourse, helping to root the contemporary state both historically and spatially to the newly defined borders. Indigenous peoples' ancestral lands (and to a lesser extent culture) contributed to the legitimacy of modern Latin American states and their territorial integrity. The majority

of the population were also seen as ethnically *mestizo* ('mixed') – descendants of Spanish men and indigenous women. Indigenous cultures were thus an important part of the new *mestizaje* national identity, even while governments simultaneously pursued assimilationist policies towards indigenous communities. In contrast, Afro-descendants were largely invisible in the story of the nation (Anderson 2007, 391) although arguably were more integrated economically and socially than many indigenous peoples because of their labour.

The different ways in which indigenous and Afro-descendant identities have been included in the national imagination has impacted on their ability to make rights claims. Researchers comparatively studying indigenous and Afro-descendant identities in Latin America argue that they have been essentialised as ethnic and as racial respectively, with problematic effect in the current wave of multicultural reforms (Anderson 2007; Wade 1997; Hooker 2005; Thorne 2004; Greene 2007). As Wade summarises, in Latin America "the study of blacks is one of racism and race relations, while the study of indians [sic] is that of ethnicity and ethnic groups" (Wade 1993, 37). When viewed through a rights lens, indigenous peoples' rights have been understood broadly as the (collective) right to autonomy while Afro-descendants' rights have been understood as the (individual) right to equality. In the Latin American context, cultural rights and ethnic distinctiveness are also linked to collective rights to land (Ng'weno 2007), which feature prominently in the international indigenous rights discourse.

The differences between these sets of rights are important under multiculturalism. The success of indigenous peoples in securing group-specific gains is due in large part to their clear cultural markers and traditional forms of leadership that help define their communities as 'nations'. Afro-descendants have fewer cultural markers, weaker organisational platforms and less collective consciousness. Activists report some vestiges of traditional leadership in some communities, for example, in deference to 'elders', but the structures are not pronounced. Afro-descendants, therefore, are not regarded as ethno-cultural nations. As Hooker (2005) summarises, "Latin American states and publics have been much more amenable to…calls for group rights posed in terms of cultural difference or ethnicity (Indian-ness) rather than race or racism (blackness)" (299).

This perception is supported by evidence that Afro-descendants asserting an indigenous identity frame have been granted a specialised status based on their relationship to particular territories and/or cultural distinctiveness from the national population (and from other Afro-descendants). Individuals of mixed indigenous and Afro-descendant ancestry are termed *zambos* in Latin America and some settled as distinct communities. Groups like the Miskitu of Nicaragua and Honduras self-identify only as indigenous peoples, whilst others claim both an indigenous and an Afro-descendant identity. The Garífuna are exemplary of the latter and are the most prominent Afro-descendant group that is widely accepted to be an indigenous people. The Garífuna are descendants of escaped slaves and indigenous Carib populations, who generally still practice traditional livelihoods linked to their natural environment. They are present in Honduras (with the largest Garífuna population of around 250,000), Guatemala, Belize and Nicaragua, often living in remote coastal regions settled from the late 18th century (Thorne 2004, 21). As the Garífuna have increasingly come into conflict with governments interested to develop their coastal ancestral lands, they have responded by adopting an indigenous rights frame to challenge these encroachments (Thorne 2004; Anderson 2007). Although they cannot be considered original inhabitants of the region, some states are willing to accept them as indigenous peoples in legal terms. In Guatemala, for example, *The Agreement on Identity and Rights of Indigenous People*, signed in 1995, acknowledges that the Guatemalan indigenous peoples include the Maya, Garífuna and Xinca peoples. The Government of Honduras has recognised the Garífuna among the nine 'ethnic groups' of the multicultural state (Anderson 2007). The government reports that a "significant initiative in the matter of recognition of the rights of the country's aboriginal and Black peoples has been Honduras's ratification of ILO Convention No. 169",[237] implying that Garífuna are considered within the scope of the Convention in Honduras; Garífuna NGOs lobbied the government for these rights (Thorne 2004, 24). Nicaragua also recognises a legal equivalence for the Garífuna and indingous peoples (Hooker 2005, 286). Article 85 of Ecuador's 1998 Constitution "recognizes and guarantees the rights of black peoples or Afro-Ecuadorians the rights determined in the previous article [on indigenous peoples], in all respects that are applicable", suggesting that only those groups similar to indigenous peoples could exercise these rights in practice (Anderson 2007, 406).

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[237] UN Doc. CCPR/C/HND/2005/1 (26 April 2005): para. 321.

Collective land rights also have been conferred in cases where Afro-descendant communities can demonstrate an historical and continuous occupation of particular territories. In Colombia, the Afro-Colombians living in the Pacific Basin coastal region were afforded particular land rights under the 1991 Constitution, Provisional Article 55 and finally Law 70 adopted in 1993 (Rapoport Center July 2007). The government reportedly recognises that ILO Convention 169 applies to Afro-descendants in Curbaradó and Jiguamondó.[238] Afro-descendants in other parts of the country have been unable to claim similar rights (Ng'weno 1997). In Brazil, the government since 1996 has been processing land rights claims for some 700 *quilombos* under the direction of the Palmares Cultural Foundation, a statutory body (Davis 1999, 25; Rapoport Center September 2008). According to a government report to CERD, "Decree 4887 of November 2003 regulates the process of recognition of the *quilombos*, recognizing the principle of self-identification of the populations, who themselves determine whether they are part of a *quilombo*, in conformity with the Indigenous and Tribal Peoples Convention, 1989 (No. 169)".[239] Ecuador has also granted Afro-Ecuadorians collective rights for ancestral lands.

The effect is that Afro-descendants that have an affinity with constructs of 'indigenousness' in the region are able to make rights claims more or less identical with indigenous peoples' rights, especially with regards to collective land title. Where Afro-descendants are more culturally integrated, living in mixed communities and territorially dispersed, they are considered assimilated with no ethnic identity basis for specialised rights. This creates a hierarchy of rights claimants both within the Afro-descendant community and between Afro-descendants, indigenous peoples and other ethno-cultural groups. This hierarchy has manifested as collective rights for indigenous peoples (and a select group of Afro-descendants), generalised non-discrimination policies, and in a few cases some targeted measures for Afro-descendants, such as affirmative action.

The success of indigenous peoples' norm entrepreneurship has relied heavily on adjacency to decolonisation norms. They have framed themselves as historically

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[238] UN Doc. E/C.19/2007/3/11 (7 March 2007): p 9.
[239] UN Doc. CERD/C/431/Add.8 (16 October 2003): p 8.

sovereign colonised peoples, antecedent on the territories of modern states, whose prior right to self-determination is the basis of contemporary rights claims. While Afro-descendants may be able to claim historical antecedence to the modern state, they cannot claim to have been present in Latin America prior to colonisation. More recently, Afro-descendants have been encroaching on this colonised peoples frame in innovative ways. The final WCAR documents represented Afro-descendants as the diaspora of colonised peoples in Africa, a potential challenge to the assumption that indigenous peoples are the only colonised groups in Latin America. Some Afro-descendants are successfully making land claims by using the historical antecedence criteria (see footnote 307). As Anderson (2007) states, this raises the prospect that, in Latin America at least, "'indigenous' does not always refer to the ethno-racial category Indian" (407). Furthermore, through the WCAR, Afro-descendants were able to advance another frame with moral obligations as weighty as decolonisation, by pushing states to recognise obligations to Afro-descendants arising from slavery and the slave trade, a process intimately linked to colonialism.

Indigenous rights activists understandably fear the collapse of their own specialised status because of competition with Afro-descendants. Afro-descendants and indigenous peoples are both poor communities, vying for the same limited resources and support from domestic and international actors. Bringing Afro-descendants to the table is perceived to leave less space for indigenous claims. This tension was in evidence in Colombia during the adoption of a new constitution in 1991 (Arocha 1998; Wade 1995, 1997). The constitution was created under a multicultural frame, recognising the state's responsibility to safeguard Colombia's "ethnic and cultural diversity" (Article 7.2). Important concessions were made to indigenous peoples, including rights to land, autonomy and political participation. Afro-Colombians were granted a watered-down version of these rights, specified in Provisional Article 55 and realised under Law 70 adopted in 1993. The process was important for shaping the discourse of the Afro-Colombian movement, from one focused on anti-discrimination measures to one claiming positive cultural rights that were "reminiscent of the indigenous movement's ethnicity-based collective rights agenda" (Van Cott 2000, 47). The process was fraught with difficulties, not least because the public, indigenous peoples and many Afro-Colombians themselves were not convinced that Afro-descendants constituted a distinct ethno-cultural group (Van Cott 2000, 44 and 96). Many of the Afro-descendant elite

asserted they "want to integrate and be treated as regular Colombians – that is, they do not want to be singled out as an 'ethnic minority' at all" (Van Cott 2000, 96). Indigenous peoples' representatives on the constitution's negotiating committee, the National Constituent Assembly, reportedly emphasised "the greater scope of indigenous rights from that of 'other ethnic groups;'" (Van Cott 2000, 61). Afro-descendant organisations lobbied from the grassroots upwards, forging new forms of collective mobilisation at the national level in an attempt to compete with the indigenous lobby, which was long-organised, highly visible and supported by advice and financing from national and international actors (Arocha 1998, 72 and 82; Wade 1995, 346). In the end, the rights recognised for Afro-Colombians effectively split the population between those who were accepted as 'ethno-cultural' groups, i.e. more like indigenous peoples, and those who were not. Land rights are recognised only for a sub-set of Afro-Colombians, named in Provisional Article 55 as those in the Pacific Basin region and giving scope for the law to apply also to those in "similar conditions" (Wade 1995, 348). Law 70 (Article 2.5) designated this as those Afro-descendants "that possess their own culture, share a history and have their own tradition and customs […] that distinguishes them from other ethnic groups" (cited by Ng'weno 2007, 423). This recognition threatened indigenous communities – who often live in the same territories as Afro-descendants - by effectively challenging their privileged position vis-à-vis land title. Afro-descendants' gains overall have been less, however, despite constituting some 24 percent of the population against 2-3 percent for indigenous peoples (Ng'weno 2007, 416). Two seats in Congress are designated for Afro-Colombian representatives, as well as special representation on a variety of government committees, tougher laws on non-discrimination have been adopted, inter-cultural education is being introduced and a development plan for Afro-Colombians for the period 1998-2002 was elaborated. The success on paper, however, belies the poor implementation in practice: for example, the UN Special Rapporteur on Racism noted of the development plan that "since the necessary resources were not allocated, the plan remained largely unimplemented".[240] Access to land rights provisions has been weak in the face of conflict and development encroachments; the introduction of Afro-descendant history and culture in schools has not been widely realised (Rapoport Center July 2007). The constitutional process initiated a dramatic increase in the profile of Afro-Colombian communities and put them firmly alongside indigenous peoples in the national discourse on multicultural

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[240] UN Doc. E/CN.4/2004/18/Add.3 (24 February 2004): p 6-7.

accommodation. Translating this into tangible improvements in the lives of Afro-Colombians has proven more difficult.

Other states are adopting national institutions in which both indigenous peoples and Afro-descendants have representatives.[241] In late 2001, the Government of Peru created the National Commission of Andean, Amazon and Afro-Peruvian Peoples (CONAPA), subsequently re-established in April 2005 as the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA), a body with ministerial status.[242] Afro-descendant leaders had a hard fight to secure equal seats at the table, mobilising in protest against their exclusion from the early stages of forging the new body (Greene 2007, 447). Afro-descendants now have two representatives against four for the Andean and three for the Amazonian indigenous peoples. The indigenous representatives in the process complained that Afro-Peruvians were not a 'people' as such, but "mestizos from the coast like any other" who have only "come along for the ride" to multiculturalism (quoted by Greene 2007, 443). Despite these and other obstructions, Afro-Peruvians were aided in their efforts to secure representation by the fact that the body was established under a World Bank loan designated for indigenous peoples *and Afro-Peruvians* and by the momentum of the WCAR, which culminated in the same year as the body's inception (Greene 2007, 447).

Afro-descendants living in rural areas have had more success in working with their indigenous neighbours, united as *campesinos*, although conflicts over land in particular remain a challenge for inter-communal cooperation (Anderson 2007; Janet 2002; Ng'weno 2007; Wade 1995; Rapoport Center July 2007). Whereas poor rural communities would once have naturally gravitated towards cooperation (evidenced, for example, by NGOs such as the Confederación Nacional de Organizaciones Campesinas, Indígenas y Negras del Ecuador), indigenous leaders discovered that on the basis of their specialised status they had greater leverage and often abandoned cooperation in favour of unilateral negotiations (Anderson 2007; Ng'weno 2007). A case in point is Honduras, where the Garífuna and other Afro-descendant communities had long-standing cooperation with indigenous organisations, including under a joint organisation, the *Confederación de Pueblos Autóctonos de Honduras*, established in

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[241] See, for example, in Guatemala the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, which includes representation for the Garífuna.
[242] CONAPAA was criticised widely for its ineffectiveness and mismanagement of funds.

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1992. By the end of the 1990s, there was a split, with several indigenous leaders seeking to create an indigenous-only confederation because, as they reasoned, "the black movement has a different trajectory" and "they are not the same because they were imported from Africa while we were here before the Spanish arrived" (quoted by Anderson 2007, 400). In 2002, the *Consejo Nacional Indígena de Honduras* was created, excluding Afro-descendant NGOs. Anderson (2007) finds that the split was linked not only to "perceived differences in race, culture, geography and history" but to "differences in political ideologies and tactics of organisations" and "competition over funding and access to the state" (401).

At the international level, there does not appear to be any significant cooperation between indigenous and Afro-descendant NGOs and in general the two occupy distinct spaces (e.g. the WGIP and the WGM respectively). Attempts to forge an alliance between Afro-descendants and indigenous peoples in the regional WCAR preparatory process proved unsuccessful (Turner 2002, 32), although activists report that the processes did enable both groups to identify common problems stemming from racism. Afro-descendant leaders express solidarity with their "indigenous brothers" and recognise a shared endeavour in combating discrimination. They acknowledge that indigenous peoples have been far better organised at the international level and consequently have secured more gains; when asked if Afro-descendants have faired as well as indigenous peoples for support, one Afro-Peruvian activist replied, "No, la población indígena ha podido desarrollar una serie de cosas gracias al apoyo internacional. Si se ve la relación de apoyos otorgados a nuestros hermanos indígenas en los últimos 10 años es abismal".[243] Afro-descendant leaders have not been shy about capitalising on indigenous peoples' success by borrowing from the indigenous repertoire to request that similar structures and standards be established for Afro-descendants. The parallels are striking: the concessions made in the WCAR outcome documents are virtually the same for both groups; there is now a UN Working Group of Experts on People of African Descent similar to the WGIP; calls have been made for the UN to proclaim "an international decade for people of African descent" and a "voluntary fund for people of African descent"; both of which exist already for

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[243] Electronic communication with Oswaldo Bilbao, CEDET, 30 October 2008. Author's translation: "No, the indigenous population has been able to develop a series of things thanks to international support. If you look at the levels of support given to our indigenous brothers during the past ten years [the difference] is abysmal."

indigenous peoples;[244] the OAS has created a Special Rapporteur for Afro-descendants, with a mandate not dissimilar to the UN Special Rapporteur on the Human Rights of Indigenous People; and the 2006 Santiago Más Cinco outcome documents recommend "States consider the establishment of a Permanent Forum of Afro-descendants within the United Nations, using the same model as the existing Permanent Forum on Indigenous Populations".[245]

Whereas Afro-descendants used to have to squeeze into an 'indigenous-like' frame to make group-specific claims on the state, since the WCAR, they are better positioned to make claims as a distinct identity with their own set of standards. In the public sphere, Afro-descendant invisibility has largely been reversed and their inclusion as a specific community for policy action is more and more in evidence. The gap between attention to Afro-descendants and indigenous peoples nevertheless remains noticeable, not least because mobilisation of the former is still weaker. This is largely because Afro-descendants still struggle with identity issues. Not all Afro-descendant leaders are convinced that asserting a collective ethno-cultural identity is the most effective strategy for inclusion. The long-term prospects of the Afro-descendant *qua* Afro-descendant mobilisation project are uncertain. This challenge can be understood better with a brief examination of the nature of self-identification by Afro-descendants in Latin America.

Overcoming blanqueamiento:

The creation of a pan-Latin American Afro-descendant consciousness is hindered greatly by the nature of racial identity and self-identification in the region. Racial democracy has made racial distinctions publicly unpalatable and discrimination dissuades people from asserting an African identity. At the same time, multiculturalism has opened up opportunities for ethno-cultural groups. Afro-descendant leaders have been navigating between these two poles to forge a collective identity that is not exclusively race based but that capitalises on the ethno-cultural heritage of people of African descent and builds group esteem.

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[244] The Chincha Declaration, UN Doc. E/CN.4/2006/23 (27 February 2006): para 81.
[245] UN Doc. A/HRC.4/111 (15 January 2007): p. 16.

Racial identities in Latin America are expressed along a colour spectrum rather than in rigid categories. The majority of people of African descent would self-identify as mixed or *moreno* (meaning 'a little bit black'). A smaller portion identify as black (*negro, preto*), more often because of their strongly 'African' physical features that prevent them from identifying otherwise, rather than because they seek to make a (political) statement asserting their African heritage (Burdick 1998, 140-141). The term 'negro' is also used as a derogatory slang. Given the implicit deference to *blanqueamiento* and the lack of targeted benefits for people of African decent, the effect, as Thorne summarises, is "'Black' is not a robust category…There are few social, cultural, political or economic incentives to identify as black in Latin America" (Thorne 2001, 4).

Many people of African descent do not perceive of their disadvantage in racialised terms, choosing class-based alliances instead. Moreover, the myth and reality of *mestizaje* has dissuaded the majority of Afro-descendants from asserting a racial identity. If individuals do not see themselves as Afro-descendants they have very little motivation to join any mobilisation of Afro-descendants. Despite the well-intentioned efforts of activists to encourage individuals to assert their Afro-descendant identity, the response from many, as Burdick's study of Afro-Brazilian mobilisation revealed, is simply "The black movement is for blacks, and I am not a black" (Burdick 1998, 147). The impact on mobilisation has been profound. As one Afro-Colombian leader has summarised:

> The communities of African descent in Latin America and the Caribbean, owing to the precariousness of their identity, poor organisation and continuous search for assimilation within the pigmentocratic system imposed by the dominant Eurocentric elite, are, in general, socially immobile and silent […] with a very fragmented leadership both at the national and regional levels (Makanaky 2002, 5).

As a starting point for redressing this, Afro-descendant leaders in recent years have been focusing on census reform, with a view to reflecting more accurately the population of people of African descent and simultaneously creating a collective consciousness on that basis. They argue that the existing census and data collection practices inhibit people from selecting an identity that would denote them as being of African descent, both because of the categories of self-identification and the lack of awareness of these issues among those collecting the data. Many Latin American states

in the past simply did not collect any data reflecting race. Of those that did, *blanqueamiento* and the emphasis on racial mixture meant that people would self-identify as mixed and as 'white' as possible. Moreover, individuals did not share a consciousness of the Afro-descendant identity frame and would express a variance of self-identification terms (such as Negro Caribbeano, Garífuna) that data collectors did not recognise as denoting African descent. In Brazil in the early 1990s, Afro-descendant NGOs worked in coalition to push the national statistics office to change the census categories to focus on race instead of colour, believing that in doing so a more accurate picture of the Afro-descendant population could be achieved. They were only partly successful: the 1991 census offered five categories from which to choose in response to the question, 'What is your race or colour?', i.e *branco* (white); *preto* (black); *pardo* (mixed or brown), *amarelo* (yellow) and *Indigena* (indigenous). But race appeared to refer to 'indigenous' and only 5 percent of the population chose *preto*, while some 42 percent chose *pardo*. Afro-descendant advocates –although not entirely in agreement about the terminology – had requested that 'negro' replace both *preto* and *pardo*, in part because "as one organiser explained, "preto" connotes only color, but *negro* connotes both culture and history" (Nobles 2000, 151). By emphasising ethno-cultural aspects of black identity rather than racial aspects, activists hoped that individuals would be more inclined to self-select as Afro-descendant regardless of their skin colour. Activists are also frustrated by the lack of sensitisation to these issues among those who collect the data. For example, census takers in Colombia do not recognise the variations of identity that could be denoted as Afro-descendant and consequently do not record individuals as such; the effect as reported by one activists is that "over 3 million Afro-descendants were assassinated with a pen!"[246] There has been some important progress in census reform (discussed below) but colour categories still dominate and the pull factor for individuals to self-identify as 'white' or 'mixed' remains.

Instead of focusing on race, many Afro-descendant leaders historically have used culture and cultural pride as the stimulus for collective self-awareness. Identifying the cultural material on which to base a separate Afro ethno-cultural identity is not straightforward. This is not because those elements do not exist − indeed, they do, including contemporary language, religion and traditions - but because for the most part they are not seen as exclusive to one subset of the national community, either by wider

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[246] Interview with Carlos Minott, May 2009.

society or by Afro-descendants themselves. As Telles explains for the case of Brazil "many of the surviving and transformed Africanisms in Brazil have become part of the national culture, rather than an Afro-Brazilian ethnic culture" (Telles 1999, 83). For many Afro-descendants, their cultural identity and the national identity are synonymous. According to one survey in Brazil on descent and ethnic origin:

> Afro-Brazilians and indios were those who most often indicated that they were of Brazilian origin – to the dismay of those who had expected black Brazilians to indicate Africa as the region of descent. Only persons of Italian, Portuguese, German, Arabic or Japanese origin self-identified as being of foreign descent. (Sansone 2004, 30)

Sansone is among those who express a concern that Afro-descendant efforts to mobilise on an ethno-cultural basis, rather than fighting racial discrimination writ large, is dangerously divisive and ultimately doomed because of the realities of racial mixing in the region. He argues that "whatever definition we give of black culture…[it] is a short blanket that cannot cover all groups within the black population"; moreover, he claims "the labelling of groups and practices as "black" carries the danger of essentializing difference" (Sansone 2003, 11-12). The recent experience of indigenous peoples under multicultural reform in Latin America, however, suggests that "essentializing difference" is the best means to access resources and opportunities, be it through new rights regimes or greater attention from national or international actors. Afro-descendant leaders would be remiss to ignore that it pays to stand out from the crowd under a multiculturalism regime. Their agenda is not separatist, however, especially when compared to the discourse of indigenous peoples. Afro-descendant leaders report an interest to secure recognition of the distinct Afro-descendant cultural identity and heritage at the same time as calling for efforts by the state to include Afro-descendants as a pillar of a wider national identity. They desire at once to be, for example, Afro *and* Costa Rican, and for those two identities to be integral (e.g. Minott 2005; Makanaky 2002).

Sansone is correct that there are important differences between Afro-descendant groups, especially across borders. In many countries in Latin America the Afro-descendant community is far from homogenous, not only in terms of their rural/urban divide, regional identities, economic disparities, historical experiences but also firmly in their cultural identities. For example, in Panama there are three different groups of Afro-

Panamanians: 'Negros Coloniales' (Spanish-speaking descendants of slaves); Afro-Antilleans (historically migrant labourers from the Caribbean, usually English-speaking); and Afro-Colombians living in the Darien border region (mostly refugees from the Colombian conflict) (Thorne 2003, 321; Priestly 2004). Afro-Hispanic peoples refer to themselves as *nativos* and to the Antilliean migrants as *antillos*, the latter regarded as more 'black' and thus further down the social hierarchy than the 'moreno' *nativos* (Davis 1995, 205). These distinctions have weakened domestic mobilisation of Afro-Panamanians and it was only in 2001 that they managed to unite under a common organisational platform (Priestley 2004, 322; Thorne 2003).

Given this diversity among Afro-descendants, leaders have been challenged to establish an identity frame flexible enough to accommodate groups from throughout the region whilst still embedding them in a global African Diaspora. Indigenous peoples faced similar heterogeneity and solved the problem by forging their commonalities on the basis of experiences with states (and private development actors) and a basic set of shared rights claims. Afro-descendant leaders have tried to do the same, uniting individuals around common experiences of racial discrimination, economic/social/political marginalisation and the legacy of slavery. Also like indigenous peoples, Afro-descendant leaders have been better able to access certain rights where they could assert an ethno-cultural – as opposed to racial – identity. Leaders have tried to unite their constituents under various identity labels, from black/Black, to Afro-Latino, Afro-Brazilian/Afro-Colombian/Afro-Ecuadorian (etc), and most recently, Afro-descendant. The term Afro-descendant was widely accepted at the Santiago WCAR prepcom where it firmly entered the international lexicon. (Afro-Brazilian Sueli Carneiro, an academic and director of the NGO Geledes, reportedly introduced the term to the Afro-descendant discourse in 1996).[247] 'Afro-descendant' denotes people descended from African populations that were victims of the trans-Atlantic slave trade (Minott 2005, 33). The shift from 'black' to 'Afro' represents a racial to ethno-cultural frame shift, the 'Afro' frame underscoring the cultural and historical link with Africa. It also unites disparate groups through the common descent from slavery and its contemporary impact. This has been a watershed for transnational mobilisation because it has created a common identity and solidarity despite the diversity of communities self-identifying as of African descent. The association of the

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[247] OAS Doc. OEA/Ser.G CAJP/GT/RDI/INF. 9/08 (16 September 2008): p. 33.

identity with the trans-Atlantic slave trade helps in norm entrepreneurship by tapping into the logic of appropriateness of moral obligations for redress; this mirrors the strategy behind the indigenous actors' use of 'peoples' and its ties to decolonisation. The reference to slavery evokes the 'bodily harm' and 'legal inequality' frames that Keck and Sikkink (1998) consider most effective. Moreover, the focus on cultural identity is a symbolic rejection of the Western and colonial construct of race.

Afro-descendant leaders also have attempted to appropriate the 'peoples' frame into their discourse, whilst mostly rejecting the alternative 'minorities' frame. In the WCAR processes, activists used the term 'Afro-descendant *peoples*',[248] which was not adopted by states at Santiago or at Durban (only 'people' in the singular was accepted). At the post-WCAR La Ceiba regional seminar in 2002, convened under the auspices of the WGM, one Afro-descendant participant suggested, "to address the common difficulties and regional discrimination, all Afro-descendant people should consider themselves as "one people" and not as a "minority"".[249] Indeed, the outcome document of the seminar called upon the WGM to "study and examine whether the concept of "minorities" is appropriately adapted to the resolution of the problems faced by Afro-descendants"[250] (the study never materialised).

There are various reasons why Afro-descendant leaders are attracted to the peoples frame and not the minorities frame. The socialisation of states to the two terms is important. Latin American states have historically rejected that the concept of minorities applies in their territory: as Thornberry uncovers from the *travaux preparatoires* for Article 27 of the ICCPR, the Brazilian delegate asserted "[a] minority resulted from conflict of some length between nations, or from the transfer of a territory from the jurisdiction of one State to that of another" (quoted by Thornberry 1990, 154). They perceived minorities as a European phenomenon, one that did not fit with the *mestizaje* and racial democracy models espoused within their own societies. Thanks to decades of indigenous peoples' advocacy, Latin American governments are socialised to the 'peoples' frame and are more open to using this language in their interactions

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[248] See, for example, UN Doc. A/CONF.189/PC.2/5 (27 April 2001).

[249] Comment attributed to Mr. Melvin Brown (Respuesta Afropanameña, Panama). *Report of the Regional Seminar on Afro-descendants in the Americas*, UN. Doc E/CN.4/Sub.2/2002/40, (10 June 2002): para.10.

[250] *Report of the Regional Seminar on Afro-descendants in the Americas*, UN. Doc E/CN.4/Sub.2/2002/40, (10 June 2002): Annex 1.

with Afro-descendants. Indeed, some governments have accepted the peoples frame for Afro-descendants: for example, the Constitution of Ecuador adopted in 1988 (and 2008) makes specific reference to "los pueblos negros o afroecuatorianos", recognising collective rights for them (Johnson 2007, 57-58). In the negotiations of the OAS draft convention against racial discrimination, this position continues to evolve. The original draft made no mention of minorities *per se* and it was only due to the advocacy of the MRG that draft provisions for minorities were inserted.[251] The current draft names Afro-descendants specifically and as distinct from the category 'minorities'.[252] There are also tough negotiations continuing over whether to accord Afro-descendants collective rights the same as indigenous peoples (see footnote 300). Given Latin American state socialisation to 'peoples' and against 'minorities' there are clearly more gains in associating with the former than the later.

Afro-descendants' own perception of the concept of 'minority' is also a factor. The use of the term to denote numerical smallness diminishes the fact that Afro-descendants are such a large population in the region. The term 'minority' is seen also as less empowering than 'peoples'. A participant at the WGM La Ceiba meeting stated that Afro-descendants are "unhappy with the concept of "minorities" because classification as a minority seem[s] to weaken rather than empower".[253] The peoples frame clearly resonates for Afro-descendant leaders and represents the sense of transnational solidarity they feel (and seek to extend). The frame creates unity by emancipating local groups from minority status in their state and incorporating them into a wider coalition of identity. As one Afro-Peruvian activist summarised: "Mis 20 años de experiencia en el proceso organizativo del pueblo afroperuano me han permitido identificar que uno de nuestros grandes retos es lograr ser aceptados y reconocidos como pueblo" (Muñoz Almenerio 2007, 487).[254]

At Santiago, African Americans, African Caribbeans and Afro Latinos united under the common frame of Afro-descendant. This was a key step in the norm entrepreneurship process because it enabled groups to forge a shared normative agenda and an

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[251] Cynthia Morel, Legal Cases Officer, MRG. Communication with the author, March 2006.

[252] OAS Doc. OEA/Ser.G CAJP/GT/RDI-57/07 rev. 11 (18 February 2009): preamble.

[253] Comment attributed to Mr. Dario Solano (Fundación Afrocimarrón, Dominican Republic). UN. Doc E/CN.4/Sub.2/2002/40, (10 June 2002): para.8.

[254] "My twenty years of experience in the process of organising the Afro-Peruvian people has enabled me to identify that one of our biggest challenges is to be accepted and recognised as people" (author's translation).

organisational platform for advocacy. There is no accepted definition of Afro-descendant in international law, although there has been some interest to develop one for the purposes of better data collection. Activists have been working with Economic Commission for Latin America and the Caribbean (ECLAC) to create a common platform on the use of ethnic variables in the 2010 census processes in the region.[255] They want to establish a shared understanding of the Afro-descendant identity and its expression in various contexts so that population figures for Afro-descendants can be recorded more accurately. This is a challenging task, one that must be sensitive to localised self-identification practices with a view to uniting rather than homogenising Afro-descendant identities. Any definition might circumscribe the population: for example, in North America and Europe, voluntary migration from Africa accounts for a significant portion of the Afro population. This is less problematic for Latin Americans, where virtually all Afro-descendants have ancestry from slaves but limiting new norms only to those descended from slaves would divide the African diaspora, who share the common experience of discrimination but not the common legacy of slavery. Given that the norms have emerged in part from the "logic of appropriateness" of reparations for slavery, Afro-descendants could find their global mobilisation weakened by a context-dependant frame, much the same way indigenous peoples have been struggling to apply the 'colonisation' frame beyond the context of European settler states.

Afro-descendant leaders clearly see much to be gained from carving out a distinct identity for their communities in Latin America. Creating a strong social and political incentive to belong to the Afro-descendant 'people' continues to be a challenge for leaders. One means of overcoming this has been to seek a strong package of rights for individuals that self-identify as Afro-descendants.

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[255] This is a major initiative; the most recent meeting in Santiago, 19-21 November 2008, was attended by over 100 participants, including many of the key Afro-descendant leaders. The workshop was entitled, "Censos 2010 y la inclusión del enfoque étnico: Hacia una construcción participativa con pueblos indígenas y afrodescendientes en América Latina", and was led by the ECLAC Population Division in cooperation with several UN agencies.

Linking identity to rights: an emerging Afro-descendant rights corpus

The struggle of Afro-descendants to forge a distinct transnational identity is linked also to their interests in claiming rights. Neither their identity nor their rights claims fit easily into any existing group rights regimes. Afro-descendant communities often have pursued different rights claims even within the same state. These claims can be divided broadly into those for collective land rights, for the preservation of cultural identity and for protection against racial discrimination. Overarching all of this has been a common interest in asserting basic economic, social, civil and political rights.

Each of these groups of rights is attached to different identity frames and rights regimes (albeit with some overlap). Land rights are addressed within the indigenous peoples rights regime; cultural rights within the indigenous peoples and minority rights regimes; racism within the non-discrimination regime; and socio-economic and political participation within the general human rights regime. The different rights regimes have in essence divided the Afro-descendant community because there is no single international rights regime – and corresponding identity frame - that addresses the range of concerns they express. For example, land rights are not directly relevant to all Afro-descendant communities, at least not in the same way, with some communities making collective ancestral land claims linked to culture and others interested in (individual title to) land primarily to alleviate poverty. The emphasis on cultural rights has also been challenging, with some communities retaining vestiges of African culture and exercising distinct religious and linguistic identities, while others are assimilated into the national culture. There is a strong preference among some activists to emphasise race and 'blackness' rather than an identity frame that accepts anyone of African descent regardless of colour. Some Afro-descendants might happily self-identify as indigenous peoples, while others would reject any identity frame that distinguishes them from citizens at large.

Faced with this construction, Afro-descendant leaders have tried to shape a new Afro-descendant rights regime that incorporates collective, cultural and non-discrimination

elements under a common Afro-descendant identity frame. The project prompted leaders to construct a corpus of rights that reunites all Afro-descendants under a contiguous set of norms rather than artificially dividing them according to, *inter alia*, their indigenous affinities, their physical appearance or their advocacy priorities.

This new patchwork of rights claims is constructed from the remnants of past advocacy, the indigenous rights lexicon, divergent community interests and the WCAR discourse. Many of the current rights claims strongly resemble those of indigenous peoples. One important distinction is the assertion of collective rights (especially to land) without asserting the unqualified right to self-determination *per se*, which is so central in the indigenous rights discourse. This is perhaps because Afro-descendant leaders have witnessed the objections this point has raised with states but also because claims for self-determination do not accurately capture their own sense of identity vis-à-vis the state or wider society. The indigenous peoples' discourse is not the only source of inspiration. Some Afro-descendant leaders long ago adopted the rhetoric of 'peoplehood', influenced by Pan-Africanism and the African decolonisation processes (see, for example, Nascimento 1990). The emphasis on the cultural distinctiveness of black communities has also featured since the early days of mobilisation. Presently, there is an important emphasis on policies for combating racial discrimination, such as affirmative action and census reform, which are either absent or less prominent in indigenous advocacy. Anti-racism measures have long featured in Afro-descendant advocacy but were further entrenched by the influence of the WCAR processes.

Some authors have expressed concern about the assertion by Afro-descendants of what they term 'ethno-cultural rights' in lieu of an agenda focused on combating racial discrimination. Juliet Hooker's views are representative: she claims it is "not clear that collective rights based on a cultural difference can address race-based structural inequalities" (Hooker 2005, 308). On the flipside, efforts to combat racial discrimination face the difficult paradox summarised by Mala Htun, where "there is a tension between trying to get beyond race on the one hand and forming practical strategies to combat racism on the other" (Htun 2005, 25).

These are both legitimate concerns but they leave Afro-descendant leaders with a difficult dilemma. To begin, the realties of the domestic sphere cannot be ignored.

They have witnessed the successes of indigenous peoples in mobilising collectively on the basis of constituting distinct ethno-cultural groups. Within the context of multicultural reforms in Latin America, both states and publics have responded better to this kind of mobilisation than mobilisation based on racial identity. Many Afro-descendants do not wish to identify along racial lines, so emphasising the cultural aspects of identity rather than racial categories has proved more appealing. The realities of the international sphere are also instructive. Therein, indigenous peoples in the region have gained important concessions in the form of specially designated rights, greater access to resources from international actors and have persuaded international actors also to put pressure on states to respect the rights of indigenous peoples domestically. Indigenous peoples have been able to make these gains by mobilising as a transnational community with a common advocacy agenda. These experiences suggest that at both the domestic and international levels, greater gains can be made if Afro-descendants are united, have a common advocacy agenda and base that agenda on the assertion of a shared ethno-cultural identity.

When the WCAR processes began, Afro-descendant leaders knew this was their chance to secure group-specific concessions; they would not make gains separately as Afro-Brazilians, Garífuna or Afro-Colombians but only as *Afro-descendants*, a united transnational group on par with indigenous peoples. The collective Afro-descendant identity has proved important for leverage and as a platform from which leaders can negotiate concessions from international actors and government officials alike. Contrary to Hooker's concerns, Afro-descendant leaders have not had to trade ethno-cultural rights for non-discrimination measures but have orchestrated a merger of the two regimes under a new Afro-descendant rights regime. Contrary to Htun's paradox, Afro-descendants can combat racism without racialising their communities by using the ethno-cultural Afro-descendant identity frame as a substitute for one conceived solely as racial. When viewed from the perspective of international rights regimes and identity frames, Afro-descendants have not so much switched from "the legal rubric of race to one of ethnicity" (Ng'weno 2007, 415) as they have switched from the generic rubrics of both 'race' and 'ethnicity' to a group-specific rubric of Afro-descendant, as indigenous peoples in the region did so before them.

Afro-descendant activists now have a set of shared rights goals clearly articulated in international documents. These goals include: an end to discrimination and racism, including through affirmative action, policy and institutional change; specially targeted social and economic development programmes; recognition of land rights; improved access to education; curriculum reform to reflect Afro-descendant history and culture; census reform; improved collection of disaggregated data; and public recognition of Afro-descendant history and cultural heritage. Most of these rights have a strong collective element. They are also linked to Afro-descendant claims of entitlement to reparations for the continuous negative effects of slavery and the slave trade. Rather than seek reparations on the basis of individual (monetary) compensation (as has been the case with other reparations precedents),[256] Afro-descendants in Latin America have translated this entitlement into collective rights such as to affirmative action and equal development.

It is against this backdrop of identity formation that the mobilisation of Afro-descendants communities in Latin America has occurred. The next section will consider the historical roots of this mobilisation, before turning to an analysis of the contemporary transnational Afro-descendant movements.

Afro-descendant mobilisation: from global to local

Mobilisation by Afro-descendants in the Americas has a long history, starting from the first major slave rebellions in the 18th century, to the abolition struggles of the 19th century and more recently mobilisation around the WCAR in the 21st century. Transnational mobilisation has featured strongly throughout. The civil society of Afro-descendants has gradually strengthened in the transition to democracy but still struggles for lack of funds and ineffectual advocacy strategies. It is dominated in the international sphere by a small number of individuals and has limited connections with the grassroots level. The organisational platform is only loosely constituted and cooperation domestically and internationally has been undermined by suboptimal

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[256] Activists site examples such as reparations to Holocaust victims or for the internment of Japanese Americans and Canadians. Afro-descendant activists in the US and Canada more often frame reparations as individual financial reparations along these lines.

mobilisation across actors. This section will explore some of these issues and highlight how transnational Afro-descendant mobilisation has changed over time.

Historical roots of Afro-descendant mobilisation in Latin America:

The earliest example of Afro-descendant transnational mobilisation is the Pan-Africanism movement. It sought to unite Africans with the African Diaspora in a common endeavour for empowerment, self-determination and equality. Many of its early leaders came from the Americas, often of Caribbean origin, exuding a post-emancipation disillusionment and desire for social justice. The movement was comprised of a handful of networks, including: Jamaican Marcus Garvey's (1887-1940) Universal Negro Improvement Association/African Communities League; the National Association for the Advancement of Coloured People (NAACP), founded by Haitian-descendant W.E.B. Dubois (1868-1963) in the United States; and the *négritude* movement co-founded by Aimé Césaire (b. 1913) of Martinique in the 1930s out of French colonies, including in the Caribbean. These different strands of Pan-Africanism did not always share a common agenda. Garvey and Dubois famously clashed, the former appealing more to the working class, the latter to the intelligentsia, although both shared a strongly political view of African identity and the necessity of decolonisation (Conniff and Davis 1994, 294-296). In contrast, the *négritude* movement (*negrismo* in the Spanish-speaking Caribbean) focused less on confronting colonialism and more on celebrating the distinct literary and cultural identity of Africans globally.

Members of the Pan-African movements were engaged fully in the international sphere, principally through the series of four Pan-African Congresses held in various European cities and New York from 1919 to 1927, with a fifth organised in Manchester in 1945.[257] The meetings were attended by civil society and state actors; the first Congress held in Paris in 1919 included state delegates from the Caribbean, Africa, France, Belgium and Portugal (the US and Great Britain officially opposed the meeting) (Conniff and Davis 1994, 295). Very few South America participants attended these conferences, with their presence only made visible at the 1927 Congress in New York (Rodríguez 2000, 21).

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[257] The first Pan-African *Conference* was held in 1900 in London, organised by Trinidadian Henry Sylvester Williams. Pan-African Congresses have also been held post-1945.

The outcome recommendations of the 1919 Congress were aimed specifically at the Versailles Conference, with a view to representing the interests of colonised Africans and their calls for home rule. By 1945, the Congress featured many prominent leaders of the African independence movements, including Jomo Kenyatta and Kwame Nkrumah. Pan-Africanism therefore posed a serious challenge to state sovereignty, one that ultimately influenced the decolonisation process. The elite participants in this movement were focused on changing the map of the world. They drew inspiration from the early military victories of the Haitians and Ethiopians in overthrowing foreign domination. These actors were also important in securing space for civil society within the UN, where the NAACP figured prominently in the call for UN Charter recognition of the special UN relationship with non-governmental organisations (Article 71).

Pan-Africanism was supplanted after decolonisation by national struggles that were inward looking, including the US civil rights movement. This was in evidence in Latin America as well but the domestic dynamics differed. In contrast to those in the US or the newly independent states of Africa, Afro-descendants in Latin America had equal citizenship rights in relatively stable states. Afro-descendants were as likely to find common ground across class as race and many focused on participation in political parties and trade unionism, organisations usually dominated by whites (Conniff and Davis 1994, Ch. 14). Among the earliest examples of black social mobilisation was the Frente Negra Brasileira (FNB), founded in Brazil in 1931 as an organisation but which became a political party in 1936 (still the country's only example of a black political party). The FNB had a civil rights agenda, seeking full integration and freedom from discrimination for Afro-Brazilians (Davis 1995, 255). Under President Vargas the FNB and other political organisations were banned from 1937 and it was not until after WWII that another organisation filled its place, the Teatro Experimental do Negro (TEN) founded in the late 1940s by Abdias do Nascimento. TEN used the projection of a distinct black cultural identity as a means to raise social consciousness and promote political and civil rights, an approach repeated by other organisations. TEN organised the First National Negro Congress in May 1949 but it remained a space of the intellectual elite and was widely criticised as being disconnected from the majority of Afro-descendants living in poverty (Barcelos 1999, 159).

An important deepening of Afro-descendant consciousness occurred in the 1970s as the black intelligentsia became better aware of the American civil rights struggle (Morrison 2002, 17). A handful of new black organisations emerged in this period, including three organisations that continue to be influential today: the Moviemento Negro Unificado (MNU) created in 1978 in Brazil; CIMARRON (the National Movement for the Human Rights of the Afro-Colombian Communities in Colombia) formally consolidated in 1982 on the basis of earlier associations (Wade 1995, 342); and the Organización Fraternal Negra Hondureña (OFRANEH) established in 1977 in Honduras following a campaign to combat racial discrimination against the Garífuna Afro-descendant community (Anderson 2007, 392).

The mobilisation also became more transnational: a series of Congresses on Black Culture in the Americas were held from 1977 in Cali, Colombia;[258] in Panama City, Panama (1980); in São Paulo, Brazil (1982); and in Quito, Ecuador (1984). Speaking at the first Congress, Abdias do Nascimento hailed the event as "the first time in four centuries the African descendants of the Americas have an opportunity to meet together" (Nascimento 1995, 233). The meetings were a regional resurrection of the Pan-African Congresses but focused primarily on problems of Afro-descendants in the diaspora. There was a distinct absence of grass roots actors but the programme was committed to dialogue on a broad range of issues from religion and art to politics, socio-economic exclusion, identity and racism (Davis 1995, 363). The Congresses provided an important organisational platform for forging a regional agenda and a transnational Afro-descendant identity, at least among an informed elite. The attempts to make a more permanent structure out of the four Congresses failed due primarily to difficulties in funding (Johnson 2007, 65). Nevertheless, a transnational network was forged, incorporating intellectuals and activists from North and South America and the Caribbean, including across language divides (Davis 1995, 363; Johnson 2007, 65).

Social mobilisation in Latin America during this period was subject to the vagaries of authoritarianism. Unlike the stark racial divisions in the US, the notions of *mestizaje* and racial democracy continued to dominate in Latin America and black movements failed to generate a mass appeal among their target audience because many chose not to

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[258] The first Congress was organised by the Cultural Association of Black Peruvian Youths, the Afro-Colombian Studies Center, and the Colombian Foundation for Folklore Research. The Congress was attended by over 200 delegates (Rodriguez 2000, 22).

assert politically an African descent identity. Leaders also faced the challenge of mobilising a community where educational attainment, resources, access to information, and advocacy capacity were low, making collective organisation all the more difficult. Those participating in Afro-descendant mobilisation were primarily of the urban middle class and intelligentsia.

Some tensions within Afro-descendant civil society arose between those organisations with a more political and those with a more cultural interest. The MNU was firmly of the former type and Covin (1996) reports some of the MNU members were openly critical of the apolitical approach of many NGOs. At the same time, the MNU saw the mobilisation potential of cultural identity, both within Brazil and transnationally, asserting in their documentation "Black culture is…used as a means to promote linkages among Afro-Brazilians and even with people of African descent in other countries" (Covin 1996, 46). Pride in shared culture and the cultural contribution of Afro-descendants to Latin American identity was seen as a way of persuading people to assert their blackness publicly and politically.

Contemporary mobilisation of Afro-descendants in Latin America:

In the 1980s and 1990s, the influence of the indigenous movement and state multicultural accommodation policies opened more space for individuals to (re-)claim their Afro identity (Wade 1997; Hooker 2005; Greene 2007). The effect has been a significant increase in Afro-descendant NGOs across the region, including the presence of at least one Afro-descendant NGO in each country (Morrison 2002, 19). According to one estimate, Brazil has over 2,000 African descendent organisations and Colombia has more than 60 (Morrison 2002, 19). Many are cultural organisations but a few have established mandates for advocacy. Among the most prominent national Afro-descendant focused NGOs with a presence also in the international sphere are the MNU (est. 1978), Geledés – Black Women's Institute (1988), Criola (1992) and Fala Preta (1997) in Brazil; National Movement for the Human Rights of the Afro-Colombian Communities - CIMARRON (1982), Proceso de Comunidades Negras de Colombia (1993), and Asociación de Afrocolombianos Desplazados (AFRODES) (1999) in Colombia; Mundo Afro in Uruguay (1988); Asociación Proyecto Caribe (1995) and Asociación para el Desarrollo de la Mujer Negra Costarricense (1995) in Costa Rica; La

Fundación de Desarrollo Social y Cultural Afroecuatoriana "Azúcar" (2000) in Ecuador; Organización de Desarrollo Etnico Comunitario (ODECO) (1992) and the Organización Fraternal Negra Hondureña (OFRANEH) (1977), in Honduras; Movimiento National Afroperuano Francisco Congo (1986), Asociación Negra de Defensa y Promoción de los Derechos Humanos, (1991) and the Centro de Desarrollo Étnico (CEDET) (1999) all in Peru; and Asociación de Desarrollo y Promoción Humana de la Costa Atlántica (ADEPHCA) (1987) and El Centro de Derechos Humanos, Ciudadanos y Autonómicos (CEDEHCA) (1994) in Nicaragua.

Some regional organisational platforms exist but most have struggled to create anything more than a loose alliance. The most institutionalised is ONECA, the Central American Black Organisation that was created in 1995 consisting of 21 organisations from 7 different countries that meet annually; it has its headquarters in La Ceiba and the current President is Sidney Francis Martin.[259] AfroAmerica XXI was founded by Michael Franklin in the US in 1995 with chapters in 13 countries; recent reports suggest it has splintered after financial difficulties but independent national chapters in Colombia, Ecuador and Venezuela remain active.[260] La Alianza Estrategica de Afro-Latinamericanos (La Alianza) was established in 2000 as a loose network of organisations across Latin America and the Caribbean but was never legally constituted (Telles 2004, 68). Networks of Afro-descendant youth and Afro-descendant women include the Red de Mujeres Afrocaribeñas, Afrolatinoamericanas y de la Diáspora (est. 1992) and the Afro-descendant Youth Network of Latin America.[261] The Global Afro Latino and Caribbean Initiative (GALCI), created in October 2000, based in Hunter College, CUNY, is led by academics but has an advocacy agenda that has brought activists together across the region.[262] There is no clear leading Afro-descendant NGO on the international stage, nor any umbrella coalition INGO (e.g. along the lines of the NCDHR in India), although members of La Alianza were the most prominent during the WCAR processes. At the core of the current transnational network of Afro-descendants in Latin America is a small cadre of Afro-descendant NGO actors. Among the most visible are Epsy Campbell Barr, Romero Rodríguez, Edna Santos Roland, Celeo

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[259] http://www.oneca.org (accessed 1 June 2009).
[260] http://www.afroamerica21.org/inicio.php (accessed 1 June 2009).
[261] Some information on the activities of the youth network can be found at UN Doc. A/58/324 (27 August 2003): para 65-66.
[262] See http://www.hunter.cuny.edu/galci/about.htm (accessed 1 June 2009).

Álvarez Casildo, Juan de Dios Mosquera and Jorge Ramírez Reyna.[263] There is no defined leader among them.

Even before the WCR was on the agenda, some renewed transnational mobilisation was in evidence in the 1990s. One key meeting was organised under the direction of Rodríguez in December 1994 by Mundo Afro in Montevideo, entitled the *First Seminar on Racism and Xenophobia*. The meeting was convened two years after the 500th Anniversary of the Columbus arrival celebrations in the region, an event which had strongly mobilised indigenous peoples in protest and which also stimulated some renewed collective consciousness among Afro-descendants (Rodríguez 2000, 23). Some 130 delegates representing more than 50 Afro-descendant organisations were present (*Ibid*, 23). Among the meeting's many recommendations was the firm desire to build up a stronger regional network. Another key thread in the dialogue was the interest in increasing cooperation with international institutions. Some participants approached this with caution, in particular when speaking of international financial institutions, others understood that "partnerships with [international political and economic institutions] may provide valuable future contacts and access to funds as well as information, not to mention raising their own visibility internationally and thus nationally" (Davis 1995, 364). This awareness coincided with a change in the late-1990s when IOs in the region began to give greater attention to Afro-descendant issues. This was accelerated by the WCAR, especially its regional preparatory processes. As Afro-descendant representatives came together for regional meetings on social exclusion and the WCAR hosted by international organisations, a common agenda was crystallized further and a nascent TAN emerged. The Alianza was one of the most visible manifestations of this, formed at a 2000 regional meeting funded by Ford Foundation and co-convened by Global Rights and the Inter-American Institute of Human Rights. It aimed to help Afro-descendants feed into Durban; around 20 leaders present agreed on a loose network structure – rather than an NGO structure – that would

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[263] Epsy Campbell Barr, from Costa Rica, was coordinator of the Red de Mujeres Afrolatinoamericanas y Afrocaribeñas from 1997-2001 and was a founder of the Black Parliament of the Americas. Romero Rodríguez is a director of Mundo Afro, Uruguay, is *de facto* leader of La Alianza, and has worked as consultant on Afro-descendant issues to UNESCO and the President of Uruguay. Edna Santos Roland founded Fala Preta, served as the Rapporteur of the WCAR and is a member of the Group of Eminent Experts established to support WCAR follow-up. Celeo Álvarez Casildo is President of ONECA. Juan de Dios Mosquera is the Director of the Afro-Colombian National Movement CIMARRON and member of several advocacy networks of Afro-descendants at the national, regional and international levels. Jorge Ramírez is a member of the statutory body INDEPA, Peru and was Director of the Asociación Negra de Defensa y Promoción de los Derechos Humanos, Peru.

enable them to retain their individual organisational identities but strengthen horizontal cooperation.[264]

The Afro-descendant TAN is still loosely constituted with no formal organisational structure. In contrast to the Pan-African movement, much of the contemporary transnational mobilisation of Afro-descendants has been forged with the help of political opportunity structures created by IOs and INGOs. It is partly for this reason that fewer grassroots actors have engaged in the international sphere, which tends to be dominated by a select number of well-regarded activists. The development of the TAN has therefore been overly dependent on external political opportunities and funding, lending the impression that advocacy is more top-down than bottom-up.

Development of a strong organisational platform for Latin American Afro-descendants is difficult because the requisite components of a good TAN are scant. As discussed above, the mass mobilisation of Afro-descendants is difficult because of identity issues. This leaves NGOs to pick up the banner but the international advocacy capacity of most Afro-descendant focused NGOs is weak because of lack of funding and advocacy expertise. Often NGOs function on a voluntary basis with no full time employed staff, making it difficult to sustain activities. There is a dearth of specialized NGOs focusing, for example, only on litigation or on policy, and many conduct a range of activities to respond to community needs and available funding. Organisations with an overtly cultural focus are common and may be less inclined to cooperate with those working on advocacy. Afro-descendant activists are not politically homogenous, although nonpartisan links are being created through the Black Parliament of the Americas and national legislative caucuses of Afro-descendants as evidenced in Brazil and Colombia. There are at present no clear charismatic leaders of the type of DuBois or Garvey or any obvious intellectual radicals of the ilk of Nascimento. The epistemic community of Afro-descendants is growing; this is strongest in Brazil and Colombia but universities in the United States are also increasingly engaging in research on Latin American Afro-descendants. This is thanks to increased availability of funding to research and increased awareness and interest in Afro-descendant issues among academics and students. From this a valuable body of research is building but it still lags behind the information available on indigenous peoples in the region.

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[264] Interview with Ariel Dulitzky, April 2009.

Demographics and sub-regional interests also play a role in weakening transnational action. The experiences and size of Afro-descendant populations across the region varies greatly, impinging on the perceived need and ability to forge common platforms. Afro-Caribbeans tend to be less directly involved in regional level mobilisation because of some language barriers but also because in many Caribbean states people of African descent form a majority and do not lack access to political representation. The magnitude of the Afro-Brazilian population means they have a higher number of NGOs and also greater leverage vis-à-vis their own government, making regional alliances less imperative. Nevertheless, Afro-Brazilians have been among the key leaders in the regional mobilisation process. Cooperation with Afro-descendants in North America has been mixed. African American and African Canadian advocacy organisations tend to focus on making gains through domestic political opportunity structures rather than through hemispheric advocacy networks or international organisations. There are Afro-Latino NGOs based in the US that have been established by the diaspora but they tend to have little advocacy cooperation with African American organisations (Turner 2002, 34). Afro-descendants of Latin America are often frustrated with the lack of knowledge of their experiences among African Americans (Turner 2002, 33). Some alliances have been forged, including cooperation with Global Rights and GALCI, both of which have tried to foster a network between Latin American, Caribbean and American civil society. Cooperation with the Afro-descendant diaspora in Europe and other Northern states is even weaker. To some extent this was overcome during the WCAR processes where an African and African Descendants Caucus provided important space for development of inter-cultural understandings of Afro-descendant experiences globally (Lusane 2001; Turner 2002, 34). This was one of many exceptional achievements for Afro-descendants in the WCAR.

From Santiago to Durban: Afro-descendant mobilisation in the WCAR

The emergence in the international sphere of the Afro-descendant identity frame occurred more or less simultaneously with the elaboration of a rights regime for Afro-descendants in the WCAR processes. Before the WCAR there were no Afro-descendants *per se* nor any specific rights for them in any international standards. Afro-

descendant leaders had to create a transnational identity frame, elaborate a shared set of normative goals and persuade states to adopt those norms into the international lexicon in the short time leading up to Durban. Their success in doing all three is a testament to their extraordinary norm entrepreneurship. No other group accomplished as much through the WCAR as Afro-descendants in Latin America. This success was not easy, however, challenged not least by the diversity of self-identification and interests among people of African descent globally. This section will document the norm emergence process during the WCAR and discuss the key factors that contributed to these achievements.

Afro-descendants secured sweeping commitments first at the Santiago regional prepcom (4-7 December 2000) and then in the DDPA. They were aided in their norm entrepreneurship both by an existing socialisation to indigenous peoples issues by Latin American states and the alignment of their concerns with those of African states. The WCAR pushed Latin American states to extend to Afro-descendants certain rights and other concessions previously made for indigenous peoples in the region. The grouping of African identities under the category 'Africans and people of African descent' in the WCAR and African states' interest in reparations for the slave trade, forged a highly advantageous alliance for Afro-descendant activists.

The WCAR was an unprecedented political opportunity structure for Afro-descendants in Latin America for several reasons. State identities in Latin America were changing. Unlike the first two world conferences on racism, this third conference came at an important juncture when the region was firmly on a democratic path and the civil society of Afro-descendants was burgeoning. In the preliminary state discourse surrounding the WCAR, Latin American states were outward looking, blaming other countries for the practice of racism but refusing to acknowledge their own failings. Racial democracy and multiculturalism rhetoric were shielding the reality of inequality and discrimination. As late as 1 September 2000, Presidents in Latin America issued a declaration (the Brasilia Communiqué) in which they state concern over "the resurgence of racism and of discriminatory manifestations and expressions *in other parts of the world* and affirm their commitment to shielding South America from the propagation of this phenomenon" (emphasis added).[265] Afro-descendant organisations mobilised to

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[265] http://www.state.gov/p/wha/rls/70994.htm (accessed 10 May 2009).

turn this position and with the leadership of Brazil they succeeded. The decision by the UN to create a hemispheric regional grouping for the WCAR (merging GRULAC with Canada and the US), also altered the dynamics so the insular 'racial democracy' rhetoric of Latin America could not be trumpeted so freely. Latin American states were forced to respond under the spotlight of the WCAR. They could no longer trade on the long-standing image of tolerance when Afro-descendant civil society was vocal enough to expose this hypocrisy. To substantiate their democratic identity on the world stage, Latin American states had to recognise racism was a problem at home and respond with commitments to eradicate it.

The thematic focus of the WCAR also was a perfect match for Afro-descendant concerns. The high profile of the WCAR helped to begin to change the negative perceptions attached to the Afro-descendant identity frame for social mobilisation. Race and racism were part of the public discourse in an unprecedented way; it was no longer radical to be discussing the issues but necessitated and legitimated by the UN processes. National and regional dialogues on racism were convened in the run up to Durban, meetings that were unlikely events if not for the WCAR.

Donors such as the Ford Foundation and the Inter-American Foundation (IAF) were prepared to allocate funds to Afro-descendant organisations for advocacy purposes. INGOs were also ready to step up their cooperation with Afro-descendant organisations for influencing the WCAR outcomes. Global Rights was particularly active in this way, training key civil society actors in the run up to Santiago and providing much needed strategic guidance and information for NGOs interested in the processes (Telles 2004, 65-66).

With the external factors in their favour, Afro-descendants needed to organise themselves across borders. Some activists, like Edna Santos Roland, Sueli Carneiro and Epsy Campbell, had the recent experience of the Beijing World Conference on Women to draw from, enabling them to lead fellow activists in devising effective 'world conference' advocacy strategies. This was an important moment for Afro-descendant women, whose expertise in international advocacy earned them a prominent place in the WCAR processes. The preparatory meetings brought Afro-descendants together but their effective cooperation was complicated by their different identities, ideologies and

rights claims. It was clear that more gains could be made if they had a united purpose and common advocacy goals. Not all differences were left behind, however, and the transnational mobilisation around the WCAR exposed capacity gaps, communication barriers and divergent priorities, including on the issue of reparations.

At the early WCAR Expert seminars, 'Afro-descendant' was not a current term. In the Bellagio consultation (March 2000), "Afro-Brazilians", "Afro-Latins", and "people of colour of the Americas" were used; at the Chile Expert seminar (October 2000), "Afro-Latin Americans" was used. At Santiago (December 2000), activists finally put their localized identity frames second and united as "people of African descent". The new identity frame was important instrumentally but also symbolically. As Afro-descendant leaders are often quoted, "we came to Santiago as blacks and we left as Afro-descendants". This had the effect of highlighting the historical injustice of slavery as a factor in contemporary marginalization (by emphasizing their ancestral origins as slaves); it also denoted the African cultural element of their identities; and finally, Rodríguez says it "forced Afro-descendants of the Americas […] to look at themselves in relation to the African Diaspora in the world" (Rodríguez 2004, 15). In the Santiago outcome document the key identity categories were expressed as "indigenous peoples, people of African descent, migrants and other ethnic, racial, cultural, religious and linguistic groups or minorities". In one step, Afro-descendants distinguished themselves from other minorities and propelled themselves to sit discretely alongside indigenous peoples (notably still second in the list of groups!).

The elaboration of a normative agenda for Afro-descendants tried to accommodate a number of interests, first in the regional processes and then at the global level. The Afro-descendant WCAR caucus was split across several regions, principally Latin America, Central America and the Caribbean, North America and Europe, each with their own concerns. The common elements were the desire for states to recognise racism and to acknowledge the contemporary social, economic and political marginalisation of people of African descent as the manifestation of the historical injustices of slavery and colonialism. Beyond this there was a strong constituency of Afro-descendants, particularly from the United States and Europe, who wanted (financial) reparations for the descendants of slaves. Latin American Afro-descendants also sought reparations but rather than focusing on individual compensatory claims they

aimed at securing commitments to policies like affirmative action and investment in social and economic development. Many in Latin American were influenced by the discourse of rights claims of indigenous peoples and sought similar commitments for their communities, including on the topic of land rights.

These differences impacted on the ability of the Afro-descendant caucus at Santiago to act collectively. They split into sub-regional caucuses and, according to one report, the "lack of cross-regional and collective consciousness resulted in an absence of uniformity and consensus, which had the effect of weakening their positions" (International Human Rights Law Group 2001b, 5). There were also clashes in approach, particularly between the AfroAmerica XXI contingent, led by Michael Franklin and the Alianza contingent.[266] The caucus nevertheless managed to sketch a normative corpus for Afro-descendants in the Americas at events prior to Santiago. The regional WCAR Expert seminar was attended by several activists who gave their input into the final recommendations.[267] The NGO Forum attached to Santiago enabled Afro-descendants to articulate the Chile Declaration.[268] Both texts claim cultural and land rights for Afro-descendants, alongside measures to combat racial discrimination and its effects. The Chile Declaration also gives attention to reparations for slavery. There are close parallels between the rights claimed for indigenous peoples and those for Afro-descendants throughout the documents. For example, at the Expert seminar states are encouraged to "Adopt and apply legal measures regarding ownership of land by indigenous and Afro-Latin American peoples, including the cultural aspects of the forms of appropriation and the religious factors involved";[269] and the Chile Declaration recommends that "the Decade of African Peoples of African Descent be declared as from the year 2002".

When it came to negotiating space in the Santiago outcome documents, not all of these proposals were secured but the major normative themes were adopted. Support for reparations appears in the text despite objections from the state delegations of Canada

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[266] According some activists, the imposition of Franklin's views on the Afro-descendant caucus and his untransparent distribution of funds to other NGOs, raised concerns that eventually precipitated his exclusion from the caucus.

[267] UN Doc. A/CONF.189/PC.2/5 27 (April 2001).

[268] See http://academic.udayton.edu/race/06hrights/VictimGroups/AfricanDescendants/AfricanDescendants.htm (accessed 17 April 2007)

[269] UN Doc. A/CONF.189/PC.2/5 27 (April 2001): pg 25, para 14 (a).

and the United States. A distinct chapter on "People of African Descent" is included (only indigenous peoples and migrants also had distinct chapters). The rights recognised for Afro-descendants are parallel to those recognised for indigenous peoples in the text (with the exception of treaty rights). The Santiago *Declaration* states, *inter alia*, for Afro-descendants:

> Recognition should therefore be given to their rights to culture and their own identity; to participate freely and on equal conditions in political, social, economic and cultural life; to development in the context of their own aspirations and customs; to keep, maintain and foster their own forms of organisation, their mode of life, culture, traditions and religious expressions; to maintain and use their own languages; to the protection of their traditional knowledge and their cultural and artistic heritage; to their ancestrally inhabited land; to the use, enjoyment and conservation of the natural renewable resources of their habitat and to active participation in the design, implementation and development of educational systems and programmes, including those of a specific and characteristic nature (para 27).[270]

The Santiago *Programme of Action* also commits to an extensive array of policy commitments for Afro-descendants in the areas of health, education, employment, justice, media, land and culture (paras 103-119). No other regional prepcom documents mention Afro-descendants, save for one reference in the African regional prepcom acknowledging that the effects of slavery "are still present in the form of damage caused to the descendants of the victims by the perpetuation of prejudice against Africans in the continent and people of African descent in the Diaspora".[271]

Afro-descendants were a firm presence in the Geneva prepcoms. In the first draft of the DDPA "people of African descent" were mentioned only once; by the time of the third preparatory committee in July 2001, the draft included a distinct chapter on "Africans and People of African Descent".[272] The language is drawn primarily from the Santiago *Declaration and Programme of Action*. With the exception of outstanding issues on reparations, the paragraphs on Afro-descendants were not openly contested and the final DDPA includes special chapters for 'Africans and people of African descent' (see *Declaration* paras 32-35; *POA* paras 4-14). There are only two notable differences from the paragraphs agreed at Santiago: the Durban documents are referent also to

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[270] Canada and the United States objected to the references to land rights for Afro-descendants. UN Doc. A/CONF.189/PC.2/7 (24 April 2001): Annex IV, p. 52; Annex V, p.53.
[271] UN Doc. A/CONF.189/PC.2/8 (27 March 2001): para 11.
[272] See UN Doc. A/CONF.189/PC.3/8 (12 July 2001).

"Africans" and therefore take on a broader remit; and land rights for Afro-descendants are recognised only "where applicable" (*POA*, para 34). The NGO Forum *Declaration and Programme of Action* also elaborates distinct chapters for Afro-descendants.[273]

The major disappointment of the Afro-descendant caucus on norms at Durban was on reparations for slavery. They sought both the recognition of the slave trade as a crime against humanity and reparations for this crime. The demands for (individual) reparations were driven primarily by the African Americans. When it became clear at Santiago that the US government would not support them, they turned to Latin American and Caribbean states for help, in particular the English-speaking states of Barbados and Jamaica. Several activists cite the important role played by the delegate from Barbados, David Comissiong, who served domestically as the Commissioner on Pan-African Affairs and was personally committed to the reparations issue. His delegation helped to secure a deal with the US and Canadian delegations so that the Santiago references to reparations were included. At Durban, the call for reparations for slavery appeared early on to dovetail with the interests of the Africa Group. It soon became evident, however, that African states and Afro-descendants had different goals. The African delegations were using the reparations discourse to seek resources for African states and had less concern for securing individual compensation for the descendants of slaves on other continents. Former slave-trading nations - including the UK, the Netherlands, Spain and Portugal – were firmly against the reparations, fearing that even an apology for the slave trade might open up opportunities for lawsuits. In the end, the WCAR text acknowledges "that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity" and "a crime against humanity and should always have been so" (*Declaration*, para 13). It makes no apology *per se,* does not make slavery or the slave trade a crime *ex post facto,* and makes no mention of reparations for slavery. Afro-descendants lost out, achieving no compensation and left with impotent language for making future reparations claims.

The normative gains made at Durban through Afro-descendant advocacy are attributable both to Latin American states and to African states. The Afro-descendant caucus benefited from aligning itself with the cause of Africans writ large because this enlisted the influence of the African Group. States that opposed the draft paragraphs

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[273] See NGO *Declaration* paras 63-69 and *POA* paras 22-25; see also sections on 'Slavery and the Slave Trade' and on 'Reparations'.

relating to 'Africans and people of African descent' would have been challenging not a marginalised minority in Latin America but the population of Africa itself. This should not be understood, however, as a 'kin state' relationship *stricto sensu*; African states had no irredentist claims over Latin American territories; there are no contiguous borders; and the kin relationship is historical, not contemporary, and difficult to trace in any case to individual states. African states' championing of the plight of Afro-descendants at the WCAR bolstered the ideational claims of Africans as disadvantaged in international society and corresponding rational state interests in using that perceived disadvantage as the basis of material demands for their region. Latin American states championed the inclusion of Afro-descendants at Durban because of their own identity interests, especially the desire to project internationally and domestically their legitimacy on human rights issues. Telles (2004) explains that the virtually all-white Brazilian Foreign Service made concerted efforts to bring Afro-Brazilian civil society on to their delegation and was genuinely open to their recommendations (67-71). The delegation nominated Afro-Brazilian NGO leader Edna Santos Roland as the official Rapporteur of the WCAR. The socialisation of states in the region to the indigenous rights discourse also played well for Afro-descendants who used "adjacency" to smooth the adoption of norms pertaining to their communities. The unhelpful engagement of the Western Group, in contrast, has undoubtedly undermined the potential impact of Durban, with many delegations shying away from the outcome commitments. This is significant for norm adherence given that many states in the Western Group, in particular the United States, have large populations of African descent and will be less likely to be socialised to the norms elaborated at Durban.

Afro-descendant activists and researchers agree that the WCAR impacted positively on the mobilisation of Afro-descendants in Latin America (e.g. Greene 2007, 331; Htun 2004; Lebon 2007, 52; Safa 2005, 308; Turner 2002, 31). The WCAR gave a new generation of Afro-descendants a stronger global consciousness. They exchanged information on their experiences in caucus meetings and gained a better understanding of one another. The WCAR imbued the Afro-descendant identity with a renewed potency and pride, recruiting new individuals to the TAN. The spaces created for transnational dialogue were unprecedented and brought together a much wider range of actors than earlier transnational meetings, including governments and international

organisations. Claire Nelson of the Inter-American Development Bank (IDB) sums up the dynamic well:

> If the [Santiago] conference hadn't happened, I don't know if [Afro-descendants] would have crystallised themselves at that time in the way they have now. It was a pivotal mobilising force to give their voice legitimacy for people who have struggled in the dark for so many years, for the first time the governments said yes, they have a problem [with racism].[274]

The gains made from the WCAR, however, were not evenly distributed among the Afro-descendants caucus. The recognition of Afro-descendants and norms for their communities in the Santiago and Durban texts gave the most to Latin Americans; the weak provisions on reparations for slavery were a major defeat for Afro-descendants elsewhere. As J. Michael Turner recalls, "Afro-Latinos felt a certain pride about what was happening whereas the African Americans were absolutely despondent".[275] The WCAR expanded the transnational advocacy network but it could not consolidate it. The surge of funding to Afro-descendant civil society during the WCAR has waned and the organisational platform has not been institutionalized as a formal structure.

For Afro-descendants, Durban itself was just one phase of a much wider process of before and after activity that has significantly increased their profile and stimulated new forms of transnational social mobilisation. Their important efforts in the region translated to major gains for the global diaspora of Africans at Durban. The role of international actors – specifically IOs and INGOs - in these processes has been crucial. The next section will consider these actors before turning to an assessment of post-Durban achievements in norm entrepreneurship.

The role of international actors in norm emergence:

Until recently Afro-descendants were absent from the working programmes of most IOs in the region. Government adherence to the racial democracy approach made racially targeted interventions by external actors unlikely. Individuals within these institutions were largely ignorant of Afro-descendants' concerns, themselves drawn mostly from the ranks of the white elite. Thanks to the efforts of a small number of committed

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[274] Interview with Claire Nelson, April 2008.
[275] Interview with J. Michael Turner, April 2008.

individuals in IOs, Afro-descendants have been able to increase significantly their cooperation with these institutions. This cooperation has aided norm entrepreneurship in many ways, including by "certifying" Afro-descendants' NGOs, offering funding support, providing space for transnational mobilisation and by enabling Afro-descendants to embed their claims in international institutions and socialise states to emerging norms. Three kinds of international actors have been most integral to norm entrepreneurship by Afro-descendants: those implementing international development cooperation; those promoting regional and international human rights standards; and those working in INGOs.

International development institutions:

The first multilateral development agency in Latin America to give specific attention to Afro-descendants in its work was the Inter-American Development Bank (IDB). This came in 1996 with the publication of a review report on the situation of Afro-descendants (Cowater International Inc 1996). The work was initiated in 1992 by Claire Nelson, an Afro-descendant from Jamaica and IDB staff member, following her personal initiative to bring Afro-descendant leaders together in Washington D.C for a series of small awareness raising events. These leaders were Michael Franklin, Romero Rodríguez, Juan de Dios Mosquera and Jorge Ramírez. She also participated in the 1994 Montevideo conference organised by Mundo Afro. She later managed to secure funding for a pilot research project on Afro-descendants and poverty: the resultant 1996 study gave the IDB an important baseline for its subsequent work. Michael Franklin cooperated with an external contractor in producing the report and it focuses heavily on AfroAmerica XXI partners. Nelson reports that she struggled to generate momentum after the report was published because "the issue was so much under the table nobody wanted to talk about it".[276] As a point in evidence, she was requested to remove the word 'black' from the title of the 1996 report and replace it with the more neutral term 'minorities'. She reports it was external Afro-descendant advocates like Michael Franklin, based in Washington D.C., and Romero Rodríguez, that put pressure on the IDB to respond more vigorously.

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[276] Interview with Claire Nelson, April 2008.

In 1999, Nelson came into contact with Gay McDougall and became aware of the forthcoming WCAR. This coincided with the arrival at the IDB of a new Vice President, K. Burke Dillon. Dillon had been active in the American civil rights movement and was a highly sympathetic and influential figure in the IDB hierarchy. She began by asking questions about the IDB's impact on Afro-descendants, breaking a wall of silence. Some important initiatives followed: the establishment of an internal 'diversity group' in the IDB and the institutionalization of work on Afro-descendants under the Social Inclusion Division. The WCAR provided another external pressure to take up the issue, while the IDB's programming commitment to poverty reduction and social inclusion provided an operational justification for the work. The Social Inclusion division set up the High-Level Steering Committee on Social Inclusion and the Inter-Departmental Technical Working Group on Combating Social Exclusion. The work was guided by Mayra Buvinic and implemented by Ruthanne Deutsch. The Technical Working Group met in January 2001 to produce an internal *Action Plan for Combating Social Exclusion due to Race or Ethnic Background* (May 2001). In May 2001 another IDB report was published on Afro-descendants and social exclusion in Brazil, Colombia, Nicaragua and Peru (Oakley 2001).

In the run up to Durban, Dillon sought a major event to bring attention to the issues within the IDB. In June 2001, the IDB hosted "Towards a Shared Vision of Development: High Level Dialogue on Race, Ethnicity and Inclusion in Latin America and the Caribbean". UN High Commissioner for Human Rights, Mary Robinson, opened the event. At the WCAR itself, the IDB was an active presence, hosting several seminars with a delegation that included the IDB President Enrique Iglesias. After Durban, the IDB has brought together Afro-descendant leaders with decision-makers in the Bank and some national political actors through a series of events. A training on social development management for some 21 Afro-descendant leaders was held in July 2002, including dialogue with the IDB President (Quesada 2002). In February 2003, the IDB established a Social Inclusion Trust Fund to support initiatives of local NGOs, with Afro-descendant NGOs constituting the largest beneficiaries; Norway is the principle donor to the fund.[277] Internships for Afro-descendants have been introduced. Since

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[277] In 2003, 33 percent of the fund was dedicated to projects benefiting Afro-descendants, 13 percent to projects targeting indigenous peoples, 15 percent to disability projects and 39 percent to cross-cutting projects (IDB 2004, 6).

2005, the IDB has added a 'Work Program on Affirmative Action' to its social inclusion activities.

The IDB also has focused heavily on the issue of census reform. This work began with a pilot study on household surveys for gathering ethnically disaggregated data commissioned in June 2000.[278] Also in 2000 the World Bank began to cooperate with the IDB on this issue, co-hosting the "Todos Contamos" ("Everyone Counts") conference in November 2000 in Colombia. A follow-up meeting was held in Peru in 2002, attracting involvement from some 18 national statistics offices in the region. Importantly, both meetings also included representatives of Afro-descendants and indigenous peoples. Thorne (2003) reports that "Between the first and second "Everyone Counts" conferences, Afro-descendents succeeded in honing their focus and message, and made more concrete suggestions about how to capture Afro-descendent identity" (318). The issue of census reform and the precise data to be collected and published can be political flash points for the banks. Afro-descendant leaders claim that population estimates for people of African descent are inaccurately low, giving a misleading picture of Afro-descendant presence and constituent influence. They have been keen to work with governments to alter census forms with a view to enabling more people to self-identify (in whole or in part) as Afro-descendants. The mostly white governing elite has had little incentive to 'inflate' the Afro-descendant population, nor to expose the wide inequalities faced by groups along racial lines. Few Latin America governments collected any data by ethnicity as of 2000. The involvement of the banks appears to have influenced a change: as of 2005, only Venezuela and Panama had yet to adopt practices for gathering ethnic and racial data (Ribando 2005, 7). Carlos Minott, an Afro-descendant leader in Costa Rica, reports that persuasive pressure from banks and agencies providing funding for census activities has socialised governments to NGO requests for reform.[279] As further evidence in point, the Economic Commission for Latin America and the Caribbean (ECLAC) is currently coordinating an initiative with governments, civil society and IOs to ensure that an ethnic data variable on Afro-descendants and indigenous peoples is included in the region-wide census round in 2010.[280] With more data available, the situation of Afro-descendants is exposed, one

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[278] http://www.iadb.org/projects/Project.cfm?project=TC0006031&Language=English (accessed 29 November 2007). Project title: "Costs of Social Exclusion".
[279] Interview with Carlos Minott, November 2008.
[280] See *supra* note 255.

tool for enabling - and publicly justifying - more targeted responses from the government. Of equal importance, the inclusion of Afro-descendant identities on census forms and in public data has contributed to consciousness-raising amongst the Afro-descendant population. One of the strategies of the ECLAC work is to ensure variant local expressions of Afro-descendant identity are consolidated under the global rubric of African descent for the census data collection. The IDB and World Bank were making a political commitment by becoming engaged in and even leading reform in this area.

The World Bank (WB) has elaborated its own initiatives for Afro-descendants. Among the early internal influences was Shelton Davis, a senior advisor in the Social Development Department who also spearheaded the WB's cooperation with indigenous peoples. Davis reports that WB officials first became aware of Afro-descendant issues through community development projects in Ecuador, Colombia and Peru funded in the early 1990s. As in the IDB, the momentum was helped by interest from a high-level official: in this case it was David de Ferranti, World Bank Vice President for Latin America and the Caribbean. De Ferranti was put into contact with Afro-descendant activists via the INGO GALCI in 1999. The Co-Director of GALCI, J. Michael Turner, formerly worked for the WB and used his connections to initiate a dialogue. When the activists met with de Ferranti in Washington, D.C., Turner says "Listening to [Afro-descendants] talk about their problems and issues it was like lights going on…Ferranti was amazed!".[281] With de Ferranti's support, Davis was able to bring in Josefina Stubbs, an Afro-descendant from the Dominican, to coordinate WB work on Afro-descendants from January 2001. An internship programme for Afro-descendants was created in 2000. De Ferranti also pushed for WB involvement in a number of inter-agency meetings on Afro-descendants, such as the "Todos Contamos" series. According to Davis, at these meetings:

> We increased our contacts with a wide range of Afro-descendant organisations and became increasingly aware of their need for support to improve their capacity to lobby their governments and to participate more actively in poverty reduction and other projects financed by the World Bank and other members of the donor community. As a result of these meetings we solicited resources from a Dutch Trust Fund, DFID, and a regional Institutional Development Fund (IDF) to provide a number of small grants to Afro-descendant organisations for

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[281] Interview with J. Michael Turner, April 2008.

purposes of improving their capacity to lobby and negotiate with their governments in terms of poverty reduction and social inclusion policies and strategies, as well as to plan, implement and evaluate their self-managed community development (Davis 2003, 9).

These small grants have stimulated increased advocacy for Afro-descendants: for example, a WB grant enabled Afro-Venezuelan NGOs to organise a consultation with 23 Afro-Venezuelan community-based organisations and to establish a common organisational platform (García 2000, 34). The WB has injected funds into local development projects where Afro-descendants are key beneficiaries (usually alongside indigenous peoples), such as the PRODEPINE II project in Ecuador (allocated $34 million in 2004) and Nuestras Raíces programme in Honduras (allocated $15 million in 2004).[282] The WB has also commissioned further research on Afro-descendants, including a series of in-depth national reports between 2003 and 2005, focusing on Argentina, Colombia, Ecuador, Honduras and Peru.[283] The issue of land rights has featured strongly and the WB has worked closely with Afro-Colombians and Afro-Brazilians to demarcate lands.[284] This cooperation has not always been positive, however, and at least one Afro-descendant NGO, OFRANEH, requested an investigation by the WB Inspection Panel, concerned that the land titling project was ignoring collective land title in favour of an individual rights model, contra the preference and rights of the affected Garífuna.[285]

Cooperation between the WB and the IDB on Afro-descendant issues was further solidified through the Inter-Agency Consultation on Race in the Americas (IAC). The IAC began as a meeting in June 2000, co-convened by the IDB, WB and the Inter-American Dialogue (a US policy institute). Jeanette Sutherland was the contact point at the WB for the meeting; she had worked previously with Michael Franklin of AfroAmerica XXI. The meeting brought together Afro-descendant leaders, development experts and government representatives to discuss the issue of race and poverty among Afro-descendants in Latin America (Inter-American Foundation 2000). It was a landmark meeting, the first in what would become a series of IAC annual

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[282] See *World Bank Approves $34 Million For Indigenous And Afro-Descendent Peoples' Development In Ecuador*, Press Release No: 2004/426/LAC, 17 June 2004; *Honduras: World Bank Approves $15 Million Credit For Indigenous And Afro-Descendant Community Development Projects*, Press Release No: 2004/341/LAC, 4 May 2004.
[283] See the publication series "Más allá de los Promedios: Afrodescendientes en América Latina".
[284] Interview with Shelton Davis, April 2008.
[285] The Panel ruled in favour of the requesters. World Bank Inspection Panel, *Investigation Report – Honduras: Land Administration Project (IDA Credit 3858-HO)*, Report No. 39933-HN (12 June 2007).

meetings (2000-2007) to try and forge regional cooperation on overcoming discrimination and exclusion faced by Afro-descendants. Among the other agencies actively involved were DFID, Ford Foundation, Inter-American Foundation (a US agency), the OAS Inter-American Commission on Human Rights and the Pan-American Health Organization. Although civil society participated in some of the IAC meetings, the space was principally for individuals within the respective agencies interested to advance the work on Afro-descendants. The IAC was, in essence, an information exchange and support group; individuals could use the leverage of the IAC to push similar agendas in their own institutions. The exchange of information also helped to ensure that, given the limited resources available for work on Afro-descendants, there would not be duplication between agencies. Participation in the IAC was initially at a very high level (including Dillon and de Ferranti among others) making it influential as a result, but when senior actors left the institutions they were replaced by technical staff who were less well placed to drive forward any major initiatives. Originally funded by DFID, the activities only lasted as long as they did because of the high exchange rate of the British pound which made the resources stretch further.[286] Although there is interest among key members to resurrect the IAC, with no funding in sight and no high-level endorsement within the institutions, its future is uncertain.

Other international agencies with a development focus have engaged in some peripheral projects for Afro-descendants. UNESCO was one of the earliest IOs to focus on racial discrimination and was active not only in research on race in Latin America but also in directly supporting some Afro NGOs, such as the Center for the Investigation and Development of Black Culture in Colombia, where UNESCO financed a periodical called *Presencia Negra* (Wade 1995, 342). More recently, UNESCO used its focus on culture and education to launch a major project in 1994 on the history of the slave route that has them engaged with several Afro-descendant partners in Latin America.[287] Several post-WCAR projects have been launched under UNESCO's Integrated Strategy against Racism and Discrimination (from 2003). In Latin America, this has included co-hosting the First General Conference of the Coalition of Latin American and Caribbean Cities against Racism, Discrimination and Xenophobia, convened in Montevideo in September 2007. The Afro-Uruguayan NGO Mundo Afro was one of the steering members of the coalition. Mundo Afro has worked with UNICEF to prepare a

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[286] Interview with Judith Morrison, April 2008.
[287] See www.unesco.org/culture/slaveroute/ (accessed 2 January 2008).

major advocacy handbook for Afro-descendants, the *Manual de los Afrodescendientes de las Américas y el Caribe* (2006). ECLAC has been a partner in some IDB and WB initiatives regarding ethnicity and development in the region; in April 2008, it hosted a regional seminar on Afro-descendants. Some bilateral development agencies such as DFID, the Finnish Ministry of Foreign Affairs and the Norwegian Agency for Development Cooperation (NORAD) have been important donors to regional funds supporting Afro-descendant community development. DFID's Regional Assistance Plan 2004-2007 for Latin America makes note of Afro-descendants alongside indigenous peoples, noting that discrimination is a cause of their poverty (DFID 2004, 3). More recently the Spanish Agency for International Cooperation and Development (AECID) has launched a major initiative aimed at Afro-descendants in Colombia, Ecuador and Panama (AECID 2007). This attention is not consistent across development agencies – for example, the US Agency for International Development (USAID) has not made a priority of targeting initiatives for Afro-descendants (Ribando Seelke 2008, 15-17); one notable exception is USAID engagement with Afro-Colombians, which has been limited to modest civil society funding under the Plan Colombia but has been increased in 2009 to some $15 million, including support to affirmative action, social development and human rights projects for Afro-Colombians.[288]

Human rights institutions:

OAS human rights institutions:

The Organization of American States (OAS) has two principle human rights institutions: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Very little attention had been paid to the issue of racial discrimination within the OAS General Assembly prior to the WCAR preparations; in the 1990s only one resolution in 1994 was dedicated to the issue of "Nondiscrimination and Tolerance".[289] During this same period, the OAS was elaborating a draft American Declaration on the Rights of Indigenous Peoples (as yet to be adopted). From the late

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[288] Personal communication from Leonardo Reales, 22 April 2009.
[289] OAS Doc. OEA/Ser.G CAJP/GT/RDI-8/05 (4 October 2005): p. 2. The 1994 resolution on Nondiscrimination and Tolerance is AG/RES. 1271 (XXIV-O/94).

1990s, these institutions have become increasingly engaged on Afro-descendant issues through, *inter alia*, the drafting of a new convention against racial discrimination, the establishment of a new Special Rapporteur, court decisions and attention to Afro-descendants in country visit reports. These processes are helping to socialise states to Afro-descendant concerns and to elaborate a set of regional normative provisions for their communities.

The Commission was slow to respond to the concerns of Afro-descendants for several reasons. Many inside the Commission did not consider Afro-descendant issues a priority and there was little pressure from Afro-descendant or human rights NGOs to engage on these issues.[290] By the early 1990s, it was beginning to give attention to the rights of indigenous peoples but Afro-descendants remained invisible. For example, in a 1993 country report on Colombia a separate chapter on indigenous peoples is included but no mention is made of Afro-descendants (some constitutional provisions for "ethnic groups" are noted briefly).[291] By 1999, in a second country visit to Colombia, the report includes chapters on "the rights of indigenous peoples" and "the rights of black communities".[292] In a 1997 country report for Brazil, distinct chapters for "human rights of indigenous peoples in Brazil" and "racial discrimination" appear, the latter containing information on the situation of "black" Brazilians.[293] In the same year a country report for Ecuador provides distinct chapters for "indigenous peoples" and "Afro-Ecuadorians".[294] Finally, in a 2000 country report for Peru, there is no mention of Afro-Peruvians but a distinct chapter on "the rights of indigenous communities".[295] The Commission ceased to produce country report from 2003 but some thematic studies do mention Afro-descendants. There was little consistency on how the Commission approached these issues, ranging from complete omission, to examining them through a racial discrimination prism only, to acknowledging collective rights for Afro-descendant communities.

The 2001 WCAR helped to stimulate a change. Among the most promising work is the draft Inter-American Convention against Racism and All Forms of Discrimination and

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[290] Interview with Ariel Dulitzky, April 2009.
[291] OAS Doc. OEA/Ser.L/V/II.84   Doc. 39 rev. (14 October 1993): Chapter XI: The Rights of Indigenous People in Colombia.
[292] OAS Doc. OEA/Ser.L/V/II.102   Doc. 9 rev. 1   (26 February 1999).
[293] OAS Doc. OEA/Ser.L/V/II.97   Doc. 29 rev.1   (29 September 1997).
[294] OAS Doc. OEA/Ser.L/V/II.96   Doc. 10 rev. 1   (24 April 1997).
[295] OAS Doc. OEA/Ser.L/V/II.106   Doc. 59 rev.   (2 June 2000).

Intolerance and the Special Rapporteur on the Rights of Persons of African Descent and Racial Discrimination, created in 2005. The proposal for the convention came from the Government of Brazil in 2000 and later that year the OAS adopted a resolution to begin its preparation.[296] The same resolution urged states to support activities relating to the WCAR, suggesting that the convention proposal was part of the WCAR legacy. At the Santiago prepcom, the convention was endorsed in the outcome documents.

The draft convention is being negotiated by an inter-governmental Working Group, with Brazil and Colombia as Chair and Vice-Chair respectively. The first acting Chair and person responsible for elaborating much of the initial draft is Silvio Albuquerque, one of the few Afro-Brazilians in the Brazilian Foreign Ministry. Although his personal commitment to the work has been instrumental, he has been criticized for not making more effort to engage civil society (a common problem in OAS treaty negotiations). A handful of states have been active in the drafting process, including Argentina, Brazil, Canada, Costa Rica, Colombia, Chile, Ecuador, Mexico, Peru, Uruguay and Venezuela. The United States has opposed a new convention, considering it duplication of existing instruments, such as ICERD;[297] Canada remains engaged in the negotiations but has been vigorously trying to weaken the text since a new centre-right government came to power in early 2006. Many are concerned that the process has lost its focus, as civil society and states attempt to insert attention to too many forms of discrimination thus diluting the focus on racism.[298]

Afro-descendants from Latin America have been among the most active participants in the process but given limited time, resources and technical legal capacity they have relied heavily on the financial and advocacy support of INGOs like Global Rights. Attention to Afro-descendants figures prominently in the draft, where they are acknowledged as one of the victim groups of discrimination and religions "with African roots" are included among those in need of protection, both in the preamble.[299] The most significant development has been a relatively late-inserted paragraph that affords Afro-descendants the same collective rights as indigenous peoples. It reads:

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[296] OAS Doc. OAS AG/RES. 1712 (XXX-O/00) (5 June 2000).
[297] OAS Doc. OEA/Ser.G CP/CAJP-2271/05 add. 1 (5 May 2005). It is not yet clear what the position of the Obama administration will be on the convention.
[298] For example, the draft at February 2009 includes some 21 grounds for non-discrimination, including "stigmatized infectious-contagious condition, genetic trait, disability, [and] debilitating psychological distress". OAS Doc. OEA/Ser.G CAJP/GT/RDI-57/07 rev. 11 (18 February 2009): preamble.
[299] OAS Doc. OEA/Ser.G CAJP/GT/RDI-57/07 rev. 11 (18 February 2009): preamble.

The States Parties to this Convention recognize the collective rights of indigenous peoples and [CO: when pertinent,] of persons of African descent that are indispensable for their existence, well-being, and integral development as peoples, *inter alia*, the right to their collective action; to their social, political, and economic organisation; to their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer, make use of, and control their habitats and natural resources [CO: in accordance with the Constitutional provisions of the States Parties].[300]

Afro-descendants did not lobby for the inclusion of this paragraph – it was proposed by the Brazilian delegation in their revised second draft. It was initially controversial not because it named Afro-descendants but because it introduced the language of collective rights in the convention.[301] Several Afro-descendant activists have since embraced the paragraph but object to the 'when pertinent' language, perceiving it to be an unnecessary and discriminatory qualifier.[302] It is true that not all of the rights would be equally relevant to all Afro-descendant communities, some retaining no distinct languages or traditional legal structures, for example. Alternate proposals omit explicit reference to Afro-descendants but not to indigenous peoples, suggesting that states are more socialised to the application of these rights to the latter.[303] The paragraph risks being lost altogether because delegations argue that the paragraph prejudices ongoing negotiations on collective rights under the regional draft Declaration on the Rights of Indigenous Peoples.

The inclusion of this 'collective rights' paragraph would be a significant development in norm emergence and close a large gap on group-specific rights between indigenous peoples and Afro-descendants. Even without this paragraph, however, the adoption of the convention against racial discrimination will mark the first time Afro-descendants are named in a legally binding treaty. This alone is a significant achievement for norm emergence and will set a baseline for future norm elaboration. As of May 2009, the draft was still under negotiation and by insider accounts there is a long way to go. At least one Afro-descendant activist is critical of the process, arguing that the exercise is

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[300] None of the text has been agreed; text in brackets has been proposed for deletion or insertion. OAS Doc. OEA/Ser.G CAJP/GT/RDI-57/07 rev. 11 (18 February 2009): article 4.
[301] Personal communication with Ariel Dulitzky, 12 May 2009.
[302] OAS Doc. OEA/Ser.G CAJP/GT/RDI-61/08 (30 January 2008): p. 2, 14, 19, 45 and 49.
[303] OAS Doc. OEA/Ser.G CAJP/GT/RDI-112/09 rev.1 (19 February 2009): p. 5.

merely to delay further implementation of WCAR whilst giving the appearance of state action.[304]

The Inter-American Commission has also created a Special Rapporteur on the Rights of Persons of African Descent and Racial Discrimination. The Special Rapporteur has a mandate to support OAS Member States to respect the rights of Afro-descendants, to analyse current challenges on Afro-descendant issues, to gather and disseminate best practice and formulate recommendations, and to provide technical advice as needed. The position has been held since its creation in 2005 by Clare Roberts, an Afro-descendant from Antigua and Barbuda and President of the Inter-American Commission. The mandate for a Special Rapporteur was secured through a transnational campaign led by Global Rights. In 2003, Global Rights cooperated with Afro-descendant organisations from Brazil, Colombia and Uruguay to push the Commission to host a thematic session on Afro-descendants. They hoped to make a case for a dedicated body in the Commission to consider Afro-descendants' concerns. The Commission was sympathetic to the proposal but said there was no funding to support it. Global Rights lobbied the Government of Brazil, specifically SEPPIR, to provide start-up funding, arguing that the mandate would help socialise states to the draft convention against racial discrimination. After a second thematic session on Afro-descendants failed to secure a mandate, Global Rights met with the Brazilian mission and the Commission, where Brazil confirmed it would fund the mandate for its first year. Brazil also hosted the Special Rapporteur on his first country mission in 2005 (albeit on the condition that no formal report would be issued). His first and only formal country mission was to Colombia in May 2007 (report pending). He has been engaged actively in the draft convention process as well as participating in several regional meetings pertaining to Afro-descendants.[305] Several activists have been unenthused by his work to date, concerned that he lacks the political vigour needed to persuade states to implement their commitments to Afro-descendants. The fact that he is unable to speak either Spanish or Portuguese and is influenced by the distinct Caribbean Afro-descendant experience, undermines his capacity to reach out to Afro-descendants elsewhere. The mandate is nevertheless an important tool for norm emergence, with the potential both to elaborate norms and to socialise states to those

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[304] Interview with Gustavo Makanaky, October 2008.
[305] For details on the work of the Special Rapporteur, see OAS Doc. OEA/Ser.L/V/II.124 Doc. 5 (27 February 2006): para 81-90; OEA/Ser.L/V/II.127 Doc. 4 rev. 1 (3 March 2007): para 84-87.

norms. The impact of support from a critical state like Brazil and an international actor like Global Rights is evident: without Brazilian commitment it is unlikely the mandate would have been adopted and without the strategic leadership of Global Rights and its close relationship with the Commission, it is less likely the campaign would have been effective.[306]

The Inter-American Court of Human Rights has been an important partner for norm elaboration for Afro-descendants, particularly in the areas of land rights, culture and non-discrimination. In the *Moiwana Village v. Suriname* case in 2005 the Inter-American Court ruled in favour of the Afro-descendant N'djuka maroon community forcibly expelled from their traditional lands around the Moiwana village and unable as a consequence to practice their culture. While it was accepted that the N'djuka were not indigenous to the territory of Suriname, the important link between their cultural life and the use of lands traditionally inhabited by them since the 17th century was a central factor in the decision. The Court argued that Suriname had violated, *inter alia*, the collective land rights of the group and ordered that:

> The State shall adopt such legislative, administrative, and other measures as are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for the members' use and enjoyment of those territories.[307]

A similar decision was taken by the Court in 2007 in the case of the *Saramaka People v. Suriname* where another Afro-descendant maroon community was recognised to hold collective rights to land because of its status as a "tribal people" and its ancestral connection to the territory in question; again the Court reasoned that its jurisprudence with regard to indigenous peoples' right to property was applicable to this community.[308]

The case of *López-Álvarez v. Honduras* provided an innovative interpretation of cultural rights for Afro-descendants. Mr. López-Álvarez was a community leader among the

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[306] A former Global Rights staff member, Ariel Dulitzky, worked in the Commission during the campaign and became the first assistant to the Special Rapporteur. Members of the Global Rights executive board are also drawn from the Commissioners.
[307] Inter-American Court of Human Rights. *Case of Moiwana Village v. Suriname, Judgement of 15 June 2005*, para 233.
[308] Inter-American Court of Human Rights. *Case of the Saramaka People v. Suriname, Judgement of 28 November 2007*, para 86.

Garífuna Afro-descendants. In his case he alleged that the state had created a false narcotics charge against him as a means of intimidating him and his community during their pursuit of a legal challenge to the state regarding land rights. The Afro-descendant NGO OFRANEH assisted the applicant in bringing his case. The decision was given in favour of Mr. López-Álvarez, but of particular interest is the aspect of the case that dealt with the applicant's right to speak his mother tongue whilst in prison, a right denied him by the prison authorities where he was held. The Court ruled this was a violation of the freedom of thought and expression and an act of discrimination against Mr. López-Álvarez as a member of the Garífuna community, citing that "[l]anguage is one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture".[309] Thus, the case was a double victory – being both an effective use of an international institution to challenge the obstruction of the state when Afro-descendants tried to claim their rights and also an important source of jurisprudence for the protection of Afro-descendant identity.

The case of *Simone André Diniz v. the Republic of Brazil* was reviewed by the Inter-American Commission. The case concerned racial discrimination against the applicant in applying for a job and the failure of the justice system to adequately investigate her complaint. The Commission found that the State of Brazil had violated the applicant's right to equality before the law, the right to judicial protection and the right to a fair trial. The case exposed long-standing systematic failures in Brazil to implement its own stringent domestic laws against racial discrimination. In its recommendations, the Commission has urged the government, *inter alia*, to "Make the legislative and administrative changes needed so that the anti-racism law is effective" and to "Promote awareness campaigns against racial discrimination and racism".[310]

These decisions provide a fertile basis for strengthening domestic law and practice and expanding the jurisprudence of the American Convention on Human Rights to protect members of distinct identity groups, including Afro-descendants. Together, the Court and Commission have taken a mixed approach to Afro-descendant rights, at once championing them as a distinct community with specific rights at the same time as

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[309] Inter-American Court of Human Rights, *Case of López-Álvarez v. Honduras, Judgement of 1 February 2006.* See especially Chapter IX, paras 157-174. The excerpt is from para 171.
[310] Inter-American Commission on Human Rights, Report N° 66/06, Case 12.001 Merits, *Simone André Diniz v. Brazil* (21 October 2006): para 146.

placing Afro-descendants rights under a 'racial discrimination' rubric. They have capitalised on norm adjacency through state socialisation to indigenous peoples' rights and used the goodwill of post-WCAR commitments to combat racism.

UN human rights institutions:

In terms of forging an organisational platform and norm elaboration UN institutions have been more supportive of Afro-descendant norm entrepreneurship than OAS institutions. The OHCHR, WGM and Special Rapporteur on racism have all made efforts to engage with Afro-descendants, driven both by the personal initiative of UN experts and the momentum of the WCAR. Given the distance, financial and language issues separating Latin America from the halls of the UN in Geneva, most cooperation has come from regional and country contact. Those UN bodies pertaining to the WCAR (e.g. WGPAD) will be considered in a separate section below.

The UN Sub-Commission on Human Rights has never issued a resolution on the situation of people of African descent. Gay McDougall, former Sub-Commission member, has reasoned this was partly the fault of Sub-Commission neglect of minority issues in Latin America and the dominance of apartheid when considering racial discrimination.[311] The WGM has proved a stronger focal point for Afro-descendants, thanks in large part to the personal initiative of WGM Member José Bengoa from Chile. The WGM has hosted two regional seminars[312] for Afro-descendants and from 2003 included 'Afro-descendants' as a distinct cluster of discussion in the WGM annual sessions. The majority of Afro-descendant NGOs participating are from Latin America, in most cases funded by MRG to attend. Travel costs to Geneva are prohibitive for most NGOs and although translation is available, the working language of the WGM is English, not widely spoken by Afro-descendant leaders in Latin America. It is telling that only the Geneva-based NGO Espacio Afro-Americano consistently attended the WGM from its inception in 1995 until 2003 (thereafter switching to participation in the WGPAD). Some prominent Afro-descendant NGOs have engaged with the WGM in

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[311] Interview with Gay McDougall, April 2008.
[312] A third seminar on Afro-descendants attended by the WGM Chair, Asbjorn Eide, but was not organised by the OHCHR. This was the Conference on the Rights of Minorities of African Descent in the Americas, Montreal, 27-30 September 2002. The list of attendees suggests the focus was particularly on Afro-descendants in Canada.

Geneva, including Geledés from Brazil in 1996 and 2001, Asociación Proyecto Caribe from Costa Rica in 1998 and 2001, CEDEHCA from Nicaragua in 1998-1999, and CIMARRON in 1999-2001 and 2005. Two important bubbles of increased participation occurred in 1999 and in 2001. In 1999, several North American reparations-focused NGOs were present and the WGM engaged in a brief dialogue on "the legacies of the slave trade for the black communities throughout the Americas". These same NGOs made some interesting proposals, including that a "forum for African Americans be established at United Nations Headquarters and a new working group established in Geneva to study conditions throughout the Diaspora".[313] The second bubble in 2001 saw some 15 Latin American Afro-descendant NGOs represented.[314] Some were funded by OHCHR after Gay McDougall encouraged the WGM to hold an informal session on Afro-descendants that year, coinciding with a number of preparatory meetings for the WCAR running parallel in Geneva. At the 2001 WGM session NGOs raised issues regarding country situations, land rights and autonomy.[315] The WGM gave space for advocacy and state socialisation: for example, in 2003 an exchange was made between Brazilian NGOs and the state and in 2004 between OFRANEH and the delegate from Honduras.[316]

The WGM has had a much stronger impact on norm emergence through its regional seminars pertaining to Afro-descendants. The first seminar was held 21-24 March 2002 in La Ceiba, Honduras, an area with a predominantly Afro-Honduran population. The meeting was organised in cooperation with the local NGO ODECO. Some 47 Afro-descendant representatives from 19 countries participated in the seminar, alongside key INGOs such as Global Rights and the Inter-American Institute for Human Rights.[317] No government representatives participated. La Ceiba proved to be a space for building on the Durban outcomes, elaborating further a shared normative discourse and strengthening the organisational platform. Participants were exchanging views on how they perceived their collective identity (including the label of 'minority') and what their common priorities were post-WCAR.

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[313] UN Doc. E/CN.4/Sub.2/1999/12 (28 June 1999): para. 60.
[314] UN Doc. E/CN.4/Sub.2/2001/22 (22 June 2001): p. 4.
[315] *Ibid*, paras 40 and 72.
[316] See respectively, UN Doc E/CN.4/Sub.2/2003/19 (10 July 2003): para 8; and UN Doc. E/CN.4/Sub.2/2004/29 (8 June 2004): paras. 7 and 34.
[317] UN Doc. E/CN.4/Sub.2/2002/40   (10 June 2002).

A second seminar was held in Chincha, Peru, 2-4 November 2005 to focus on poverty reduction for Afro-descendants. Chincha also has a high population of Afro-descendants, enabling the OHCHR once again to symbolically draw attention to the area and boost attendance by local Afro-descendant leaders. The meeting brought together key Afro-descendant leaders (many of which were represented also at La Ceiba), about seven months ahead of the Santiago Más Cinco Durban follow-up meeting in Brasilia and they used this space also to strategise. In addition, several UN Experts (Special Rapporteur on Racism, Independent Expert on Minorities, José Bengoa, Joe Frans – member of the WGPAD), UN agencies (UNDP, UNICEF, World Bank), the IDB and a small number of government representatives from Bolivia, Brazil, Colombia, Guatemala and Peru (including the Minister of SEPPIR, Mathilde Ribeiro) participated. The meeting enabled an extended elaboration of norms and the possibility to embed them in an international institution with the endorsement of leading UN experts and agencies. Although the meeting was geared ostensibly towards development issues, it also played a role in further entrenching a distinct Afro-descendant collective identity, as evidenced in the *Chincha Declaration*, where participants:

> *Declare* that the rediscovery in Chincha - a historic location in the story of slavery in the Americas - of a fundamental aspect of the identity of people of African descent has enabled us not only to formulate demands but also to understand the cultural, political and spiritual richness of peoples of African descent. In this sense, the workshop has made it possible to take great strides towards the creation of a new paradigm for the promotion and protection of human rights based on the Afro-descendant identity.[318]

Given the demise of the WGM it is not clear whether this programme of work will continue. The WGM was beginning to struggle in defining its role against the WGPAD (although it should be noted that the WGM always welcomed, for example, indigenous peoples in spite of the WGIP, regarding itself as an 'umbrella' space for all ethnic, religious and linguistic minorities). The WGM served an important function in building up the Afro-descendant organisational platform and enabling them to elaborate and institutionalize their claims within a broader human rights frame through the La Ceiba and Chincha regional meetings.

Among the UN's special procedures for human rights, the work of the Special

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[318] UN Doc. E/CN.4/2006/23 (27 February 2006): para. 19.

Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stands out. The Special Rapporteur has made nine visits to Latin American states as of mid-2008: Brazil (1995 and 2005); Colombia (1996 and 2003); Honduras (2004); Guatemala (2004); Nicaragua (2004); Trinidad (2003); Guyana (2003) and the Dominican Republic (2007).[319] This is more country visits than to any other region, suggesting an interest among Latin American states to be seen as more progressive on the issue of racism. Most of the visits have come post-Durban; in Brazil and Colombia the first visits came at moments of national dialogue on democratization and multiculturalism. The Special Rapporteur's reports provide an interesting insight into the changing views in Brazil and Colombia across the period of their first and second country visits, in particular regarding the erosion of the racial democracy precept. In the 1995 Brazil visit, the Special Rapporteur reports:

> It is generally stated officially that there is no racism or racial discrimination in Brazil because the Constitution explicitly prohibits it and because miscegenation is a fundamental aspect of the Brazilian population and an essential component of the country's multiracial democracy…The appearance of ethnic and racial cohesion in Brazil conceals substantial inequalities between Whites, Indians, people of mixed parentage and Blacks, which are a legacy of earlier times.[320]

In contrast, in the 2005 country visit report:

> The Special Rapporteur…welcomes the recognition of the existence and depth of racism by the federal authorities at the highest level, and the adoption of a number of laws and institutions to combat racism.[321]

The differences suggest also the shift within the Brazilian government in terms of how it seeks to represent itself externally; in the 1996 report, the Special Rapporteur hints at the motivation of the government in inviting him, "Since Brazil is perceived by the international community as a positive example of ethnic and racial integration".[322] In 2005, the Special Rapporteur:

> [a]ppreciated the President [Lula Da Silva]' s frank recognition of the existence of racism and its influence on […] Brazilian society and the strong expression of his political will to eradicate it. The President recognized that the law is not

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[319] See http://www.ohchr.org/english/issues/racism/rapporteur/visits.htm (accessed 21 September 2008).
[320] UN Doc. E/CN.4/1996/72/Add.1 (23 January 1995): paras. 25-26.
[321] UN Doc. E/CN.4/2006/16/Add.3 (28 February 2006): p. 2.
[322] UN Doc. E/CN.4/1996/72/Add.1 (23 January 1995): para. 1.

sufficient, assessed the resistance and obstacles to any meaningful change and pointed to the challenge of deeply transforming the current mentalities.[323]

The Special Rapporteur's visits bring greater attention to the plight of Afro-descendants, privilege their NGOs vis-à-vis government through "certification" in his meetings with them, and puts government officials at all levels into a direct dialogue with an external monitoring body on racism. His country reports are important both as accountability tools but also for socialisation and persuasion of states to Afro-descendants' concerns. The shifting discourse of state actors with the Special Rapporteur is evidence of how perceptions of legitimacy, conformity and esteem have changed over time to affect normative beliefs: many senior level officials now appear more inclined to see it as appropriate to acknowledge racism than to deny it. This is not true of all states, however; in the mission to the Dominican Republic, where the Special Rapporteur and IEM found a "profound and entrenched problem of racism", the government vehemently denied that any racism exists in the state.[324] The country visits are useful also for norm elaboration because Afro-descendants have the opportunity to put their recommendations to the Special Rapporteur who typically includes them in his report. The IEM can serve a similar socialisation function, although she has only conducted two country visits in the region, to the Dominican Republic and to Guyana.

International NGOs:

A handful of prominent international NGOs have played an important role in supporting the national and transnational mobilisation of Afro-descendants in Latin America. Some have played a primarily financial role, such as the Ford Foundation and the Inter-American Foundation, while others have assisted in documentation, advocacy support and norm elaboration, in particular Global Rights (formerly the International Human Rights Law Group) and Minority Rights Group International (MRG).

MRG's work with Afro-descendants originated in a series of publications, namely *The Position of Blacks in Brazilian and Cuban Society* (1971, 1979); an edited volume, *No Longer Invisible: Afro-Latin Americans Today* (1995); a second edited volume, *Afro-*

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[323] UN Doc. E/CN.4/2006/16/Add.3 (28 February 2006): para. 10.
[324] See UN Docs. A/HRC/7/19/Add.5 (18 March 2008): p. 2; A/HRC/7/G/10 (18 March 2008): p. 22, respectively.

Central Americans: Rediscovering the African Heritage (1996); and a country report, *Afro-Brazilians: Time for Recognition* (1999). Until the WCAR, MRG never had a specific programme on Afro-descendants, just a series of discrete publications that aimed to provide information on "one of the least studied of all the world's larger minorities" (MRG 1995, viii). In the lead up to the WCAR, MRG received funding from DFID to conduct a project on Latin America as part of DFID funding to civil society under the WCAR. This enabled MRG to support local NGOs to participate in WCAR processes, to build capacity and to publish a regional report on economic exclusion of Afro-descendants in consultation with local NGOs (*Afro-Descendants, Discrimination and Economic Exclusion in Latin America* (2003)) and a national report on Afro-Paraguayans with Mundo Afro (*The Afro-Paraguayan Community of Cambacua* (2000)). This cooperation built ties between MRG and several Afro-descendant NGOs across Latin America, which were subsequently supported to attend global events organised by MRG, including a workshop in Brussels in November 2002 to interface with the EU – marking the first time an Afro-descendant NGO had had such a dialogue with European Commission representatives.[325] MRG also organised a regional training in 2006 in Central America for both Afro-descendant and indigenous peoples' NGOs on the use of UN Treaty Body mechanisms.

Global Rights specialises in human rights advocacy and legal capacity-building. It has played an important role in Latin America where its work focuses on country projects in Brazil, Colombia, Uruguay, and Nicaragua, in addition to advocacy at the regional level. From 1994-2006, the Executive Director of Global Rights was Gay McDougall, an African-American lawyer. She is currently the IEM and formerly a member of CERD and alternative member on the UN Sub-Commission on Human Rights. McDougall was deeply engaged in the WCAR processes and positioned Global Rights for a prominent place in the activities. They organised the Bellagio Consultation (an expert seminar for the WCAR) in January 2000; had extensive engagement in the Santiago prepcom;[326] convened two roundtable seminars on race and poverty in the Americas in connection with the WCAR (International Human Rights Law Group n.d.); and hosted the *Voices* public testimony series in Durban (International Human Rights

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[325] Statement made by Romero Rodríguez, Mundo Afro, Uruguay; author present.
[326] Global Rights prepared a *Report on the Regional Preparatory Conferences of the Americas*, http://www.globalrights.org/site/DocServer/chileprepcomeng.pdf?docID=198 (accessed 20 December 2007); and published an NGO guide to the WCAR (International Human Rights Law Group 2000).

Law Group 2001). Global Rights has since been a driving force in the drafting of the OAS convention against racial discrimination. They also maintain a programme of work to train Afro-descendant activists on use of the UN and Inter-American human rights mechanisms. Global Rights has convened several hearings with the Inter-American Commission on Human Rights in an effort to increase engagement of the Commission on issues concerning Afro-descendants (Global Rights 2004, 12-13). Some targeted reports have been produced, including *Brazil: Affirmative Action in Higher Education* (Global Rights 2005), emerging out of an Affirmative Action Affinity Group convened by Global Rights in 2003, which brought together academics, lawyers and NGOs in the US, Brazil and Uruguay for a joint advocacy strategy supporting information exchanges, high-level policy dialogue and litigation on affirmative action. In Nicaragua, Global Rights worked with local Afro-descendant NGO CEJUDHCAN (Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua) from 1997-2003 on land rights claims. Global Rights has nurtured a cadre of individuals working on Afro-descendant issues with greater knowledge of regional and international human rights mechanisms and domestic legal policy and practice. This is helping nascent norms to solidify through holding more governments accountable to them in practice. Given its privileged access to IOs in Washington D.C., Global Rights has taken the lead in creating political opportunities for advocacy on Afro-descendant issues.

A similar role has been played by the Inter-American Institute of Human Rights (IIDH), a regional INGO based in Costa Rica, which has supported Afro-descendant advocacy and also normative work on the OAS convention against racial discrimination.[327] For example, IIDH helped divided Afro-Panamanian groups to come together in 2005 to form a national coalition, the Consejo de la Etnia Negra, through which they managed to successfully exert pressure on the government to adopt affirmative action initiatives.[328] They have recently published a series of guides for Afro-descendant activists on identity and rights issues, funded by NORAD and SIDA.

Afro-descendant mobilisation has been aided significantly by funding organisations, in particular the Ford Foundation and the Inter-American Foundation (IAF). Both are American: Ford is funded privately and the IAF is an independent agency of the US

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[327] See http://www.iidh.ed.cr/comunidades/Diversidades/ (accessed 21 December 2007).
[328] Interview with Carlos Minott, October 2008.

government. The Ford Foundation established offices in Latin America in 1962. It gave support to academics working on race relations from the late 1970s and subsequently to civil society organisations focusing on Afro-descendants. For example, the Brazil office included two African-American program officers in the 1980s, J. Michael Turner (co-founder of GALCI) and Patricia Sellers, who not only supported local research and community development through grants but also promoted an exchange of experiences and contacts between Afro-Brazilians and African Americans (Johnson 2007, 68). Turner says he was under pressure from both the white academic community and the Brazilian Foreign Ministry to stop "wasting the Foundation's money with this Afro-Brazilian stuff I was doing".[329] He solicited the support of (future President of Brazil) Fernando Henrique Cardoso to endorse his work and Cardoso reportedly replied, "We Brazilians don't like to look at our dirty laundry. And our dirty laundry is race. You remember my thesis was looking at race in southern Brazil. […] You must continue what you are doing". From 1997 to 2000, Edward Telles, a sociologist with expertise on race relations in Brazil, was the human rights program officer for Ford in Brazil and under his influence grants to anti-racism related projects increased threefold, supporting among other things networks, affirmative action campaigns, research, and leadership training (Htun 2005, 23). Ford also gave specific grants for enabling Afro-descendants to participate in the WCAR processes, reaching into the millions of dollars (Htun 2004, 77).

The profile of some recent funding recipients[330] across the region demonstrates the Ford Foundation's active role in enabling norm entrepreneurship. In Brazil, the Institute for Racial and Environmental Advocacy has funding for "For workshops, publications and strategic litigation to deepen the debate on racial relations in Brazil, combat discrimination and promote affirmative action as a remedy". Elsewhere, Ford provided: $300,000 to the Center for Afro Study and Research in Uruguay, to support an "Afro Higher Studies Institute for next generation Afro-Latino leaders and to promote Afro-Latino rights throughout Latin America"; $100,000 to the National University of Colombia to study affirmative action policies for Afro-Colombians; $200,000 to the IIDH to "To train attorneys in international human rights law in order to strengthen the human rights of the Afro-descendent population of Latin America"; $46,000 to the Rostros y Voces Foundation for Social Development in Mexico "To build

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[329] Interview with J. Michael Turner, April 2008.
[330] See http://www.fordfound.org/grants/database (accessed 21 December 2007).

organisational capacity and intellectual capital and strengthen cultural identity in Afro-descendent Mexican communities"; and \$124,000 to ODECO for a "Leadership Training in Human Rights among Afro-descendent populations of Honduras and Guatemala". These examples give a picture of the kind of interventions Ford is willing to support, i.e. projects that build advocacy capacity of Afro-descendants and that address controversial public policy issues like affirmative action. Even in countries like Mexico where Afro-descendant mobilisation is weak, the community is on the radar of Ford, which is evidently willing to financially support projects that nurture Afro-descendant identities.

The IAF has been funding Afro-descendant initiatives in Latin America since the 1970s. Johnson (2007) reports a tumultuous early history of cooperation with Brazil, wherein the IAF was asked to the leave the country because of its decision to fund the Research Institute of Black Cultures (Instituto de Pesquisas das Culturas Negras – IPCN) in 1977 (67). The IAF did not rescind the grant but halted its engagement in Brazil from 1978-1983, whereupon it initially scaled back its support to Afro-descendants. The funding to the IPCN was important for building a solid foundation of activism in Brazil for Afro-descendants. At present, the IAF project support to Afro-descendant organisations in Latin America tends to focus on travel grants and community development projects, albeit often with an integrated networking/advocacy component:[331] a typical example comes from Brazil, where Criola, an Afro-Brazilian women's organisation, has been granted \$171,000 for a project that will support artisans to increase their market access, production and managerial capacity. The IAF, like Ford, also has supported advocacy and cultural identity projects. In Colombia, for example, the IAF has granted \$200,000 to Corporación Asesorías para el Desarrollo in order to "train 100 leaders of communities of African descent in constitutional rights, natural resource management and self-governance and [to] provide legal assistance in 14 African-descendent territories"; in Ecuador, the Fundación de Desarrollo Social y Cultural Afroecuatoriano—"Azúcar" has been given \$191,350 to "conduct activities that recover Afro-Ecuadorian history and culture and promote their value, encourage the interaction of African descendants with people of other ethnicities and improve well-being". In 2003, Mundo Afro was awarded \$200,750 to develop a regional network among of Afro-descendants in Uruguay, Brazil, Argentina and Paraguay. The IAF also supports

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[331] Details on IAF grants are taken from http://www.iaf.gov/grants/awards_year_en.asp (accessed 21 December 2007).

Mundo Afro's Instituto Superior de Formación Afro (Institute for Afro-Latino Development) along with Ford. In 2001 it sponsored the first panel on Afro-descendants in Latin America at the Latin American Studies Association conference (Ribando 2005, 15). In addition to funding, the IAF has played an active substantive role as well, important not least because it is an agency of the US Government. Judith Morrison is a key actor within the IAF driving this programme of work since joining in 1998, a commitment she gained during her previous activities with Afro-Brazilian and Afro-Colombian NGOs. The IAF was one of the founding members of the Inter-Agency Consultation on Race in the Americas (IAC). Morrison moved from the IAF to coordinate the IAC from the Inter-American Dialogue and recently returned to the IAF in Washington, D.C.. She provides an important link with norm entrepreneurs in the Afro-descendant community but recognizes that greater availability of funding for advocacy travel and too little funding for local activities is hindering important grassroots social development work by Afro-descendant NGOs.[332] The IAF is limited by its own mandate and by the priorities of its funder, the US government. For example, US disinterest in the WCAR Durban Review Conference means IAF will not support Afro-descendant engagement in this process.

Assessing the impact of international institutions:

The international actors profiled here have all been important for bringing attention to Afro-descendant concerns, for increasing their leverage with governments to raise these concerns and in supporting Afro-descendants to cooperate with each other. They have sometimes been conservative in their support of the normative discourse of Afro-descendants but their clear recognition of them as a distinct community in international society has been crucial to the norm emergence project.

The work of international development agencies on Afro-descendant issues has grown tremendously since the late 1990s. It has been advanced by the will of a small number of committed individuals within these institutions. They have been aided by the advocacy of Afro-descendant organisations and the catalyst of the WCAR preparatory events. In particular, the Santiago outcome documents have served as an authoritative

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[332] Interview with Judith Morrison, April 2008.

guide, representing in David de Ferranti's words "an important reference point for our work with borrower governments, with civil society organisations, and with partner development agencies" (de Ferranti 2001, 3). The WCAR provided an external pressure on the banks for a corporate response and raised awareness about racism in a manner that was less controversial given the impetus of the conference focus. A corpus of research on Afro-descendant exclusion in Latin America has been produced and regional meetings on these issues are more common. This has raised the profile of Afro-descendants considerably and enabled them to benefit from a modest increase in policy interventions. Among the most important policy changes has been on data collection, and the work of the banks and ECLAC on this point has tremendous potential to influence group-specific attention to Afro-descendants. The agencies also have helped indirectly to build the organisational platform of Afro-descendant by repeatedly providing spaces that bring them together for dialogue with international actors and each other. Small grants from sources like the IDB's Social Inclusion Fund have provided much needed operational support to Afro-descendant NGOs.

These efforts are still tentative, however. Not all staff are convinced that a targeted approach is appropriate and attention to Afro-descendants is generally subsumed into wider social inclusion and poverty reduction programmes. This risks that they will be overlooked again, not least because there is weak capacity among staff on how racial discrimination impacts on development prospects. Funding for targeted activities on Afro-descendants is scarce; for example, the IDB Social Inclusion Fund reportedly receives three times as many applications as it can support. The handful of individuals with responsibility on Afro-descendant issues are not at senior enough levels to generate real institutional change. Dillon and de Ferranti have left the banks and no one at high level has taken up the baton. Agencies are also restricted by what governments ask for loans to do. Given the persistent denial of racial discrimination by some government officials, they are less likely to request bank loans to redress it. Actors within the banks acknowledge that without concerted external pressure from governments or NGOs, bank practice probably will not improve. The high-pressure shame tactics used by activists like Michael Franklin working from Washington D.C. in the late 1990s were aggravating but effective in getting the attention of the banks; the current leading figures have neither a US-base nor a strong advocacy strategy. They benefited enormously from the momentum of the WCAR but as this wanes they have to

regenerate interest in other ways. Using the banks' focus on poverty and inclusion as an entry point is a good alternative but requires pressure to ensure Afro-descendants are systematically considered. Agencies are still far more socialised to indigenous peoples' concerns and they continue to garner the greater share of attention in development spheres; for example, it is still more likely to find a dedicated webpage on indigenous peoples in international development agencies' websites than on Afro-descendants, who - if mentioned – appear under general social inclusion headings, albeit as a distinct group.

Human rights institutions have been important partners for norm elaboration and state socialisation. The OAS draft convention against racial discrimination will institutionalize Afro-descendants as a distinct group in international law. The Inter-American Court has used the American Convention on Human Rights to recognize rights to non-discrimination, culture and land for Afro-descendants in its judgments, expanding the corpus of their rights and borrowing from jurisprudence on indigenous peoples. The Special Rapporteur on Afro-descendants creates a specific space within the OAS for Afro-descendants and can be a useful socialisation tool. The UN institutions have made a contribution at a critical stage in the immediate post-WCAR period in reuniting Afro-descendant leaders at a global and regional level (under the WGM) and a national level (through the country visits of the Special Rapporteur on Racism). The authority of the UN has also been important for "certification" of Afro-descendant NGOs and for enabling them to embed their claims in international human rights institutions. These efforts, however, are fragmented across actors (two divisions in OHCHR, two UN experts, two Working Groups in addition to the official WCAR follow-up mechanisms) and have not produced consolidated pressure for norm adherence. UN agencies at the domestic level in some countries are reportedly having greater impact but tend to be restricted by the government lead.[333] Given the greater political influence of the OAS human rights institutions than the UN human rights institutions in the region, their commitment to norm emergence for Afro-descendants needs to be strengthened. Activists from INGOs also report that mobilisation around the political institutions of the OAS, such as the Summit of the Americas, might yield better results but lament that Afro-descendant activists have not prioritized these fora, diverted by attention to regional WCAR follow-up.

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[333] For example, UNDP Ecuador and UNDP Brazil both have dedicated programmes of work on Afro-descendants.

INGOs in both a capacity-building and funding role have been vital to building the organisational platform of Afro-descendant NGOs in the region. The seed funding for Afro-descendant NGO activities enabled them to make a strong presence in the WCAR processes where they forged and asserted their rights claims. The capacity-building has supported Afro-descendant leaders to engage with international human rights mechanisms and continue the process of norm elaboration at the international and domestic levels. INGOs have also been important in contributing to research and awareness on the identity and situation of Afro-descendants. INGOs can be criticized, however, for sometimes taking too much of a lead role in determining the direction of norm entrepreneurship through the campaigns they have spearheaded - such as the OAS convention against racial discrimination - or their decisions to fund certain projects and NGOs. There are still major capacity and funding gaps between INGOs and their Afro-descendant NGO partners. Afro-descendant NGOs face difficulties in maintaining a presence in international fora and their weak capacity in comparison with INGOs for international advocacy means they rely heavily on support from INGOs. The efforts of INGOs to invest in Afro-descendant capacity are limited also by their own resources and the extent of donor interest.

All of these international actors have provided high-level space for Afro-descendants to forge transnational cooperation well beyond the space afforded by the WCAR processes. This space has been ad hoc, however, and reliant on the drive of individuals rather than institutional commitment. This space also has not generated a permanent organisational structure and without something like an umbrella organisation for Afro-descendants with a presence in Washington, D.C. (where the banks, the IAF, Global Rights and the OAS are headquartered) activists will be challenged to generate sufficient pressure for change or to support operational capacity building within international institutions. Without this pressure and support, IOs will be slower to internalise the norms and unable to fulfill their potential role in socializing states for norm emergence and adherence.

Given these caveats for international actors, the next section will consider other post-Durban institutions and the evidence of norm cascade in state practice.

After Durban: reviewing Afro-descendant mobilisation

The new wave of norm entrepreneurship that began with the WCAR has yielded some important results at the global and national levels. The change is most visible in the creation of new institutions to address Afro-descendents' concerns specifically and racism more generally. The operation of these institutions has nevertheless fallen short of expectations. This section will review some key developments at the domestic level, in particular in the "critical state" of Brazil, to illustrate the ongoing challenges for norm emergence. The specific institution created for Afro-descendants by the WCAR, the UN Working Group of Experts on People of African Descent, will also be critiqued to determine what its role has been for norm emergence and how Afro-descendants have used it as a political opportunity structure and socialisation agent.

UN Working Group of Experts on People of African Descent:

The DDPA requests that the UN Commission on Human Rights consider establishing "a working group or other mechanism of the United Nations to study the problems of racial discrimination faced by people of African descent living in the African Diaspora and make proposals for the elimination of racial discrimination against people of African descent" (*POA*, para 7). The Commission created the Working Group of Experts on People of African Descent (WGPAD) in April 2002 with resolution 2002/68. The WGPAD is comprised of five independent experts, meets for one 5-day session per year in Geneva and is authorised to conduct country visits upon invitation of governments.

There has been some debate regarding which people of African descent are to be covered by the WGPAD, i.e. only those in the African Diaspora, only those descended from slaves or also those in Africa. The Working Group has never agreed a precise definition nor has it actively engaged with Afro-descendant activists on this issue.

Working Group Expert Ambassador Peter Kasanda prepared a working paper on the "Identification and Definition of 'People of African Descent' and How Racial Discrimination is Manifested Against Them in Various Regions". He proposed the following definition:

> People of African descent may be defined as descendants of the African victims of the Trans-Atlantic and Mediterranean Sea slave trade. The group includes those of the sub-Saharan slave trade. Descendants of the victims of the Trans-Atlantic trade live primarily in the Diaspora of North, Central and South America and the Caribbean. […] However, for the definition to be completed, it must also include Africans and their descendants who, after their countries' independence emigrated to or went to work in Europe, Canada and the Middle East where they also experienced racial discrimination suffered by those who live in Western European countries.[334]

The definition frames Afro-descendants as the African diaspora writ large and thus dilutes the moral claims that emanate from the experiences of slavery, claims that offer leverage in the norm entrepreneurship process. The definition also diminishes the authority of the WGPAD to focus on the issue of reparations. The paper was prepared prior to the Commission on Human Rights resolution in 2003 that expanded the mandate of the WGPAD to make proposals concerning racism and the DDPA for "*Africans* and people of African descent in all parts of the world" (emphasis added).[335] The change appears to have emanated from the Group of African states and they were keen to reiterate at the 2003 session of the WGPAD that the expanded mandate be followed.[336]

The WGPAD is still far from clear in its own mandate, however, both in terms of its substantive focus and the groups it seeks to address. It is pulled between state interests and the expectations of Afro-descendants. There is always a high presence of African states in the WGPAD sessions and they sometimes use the space to raise inter-state concerns. For example, when the Zambian delegate made a statement linking racial discrimination to international trade policy, one of the WGPAD Experts replied "the mandate of the Working Group was not poverty or injustice in general, but people of African descent, that is, those victims affected by slavery and the slave trade".[337] The

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[334] UN Doc. E/CN.4/2003/WG.20/WP.3 (28 January 2003): para 6.
[335] Commission on Human Rights Resolution 2003/30 (23 April 2003): para 24.
[336] UN Doc. E/CN.4/2004/21 (19 December 2003): para 20.
[337] Statement by Mr. Martins. UN Doc. E/CN.4/2004/21 (19 December 2003): para 36 and 37.

recommendations issued by the Working Group have been restricted to measures for people of African descent, and to date have never mentioned Africans *per se*. At the same time, the WGPAD has shied away from considering the issue of reparations for the slave trade, which many Afro-descendant activists believe is legitimately within its mandate. The discussion is made more difficult by the absence of key states: the United States and Canada have never attended, nor have key former slave-trading states like the United Kingdom, Spain and Portugal, all of which have significant populations of African descent. Notably, several Latin American states are usually present, including Brazil and Colombia consistently, an important measure of increased socialisation to Afro-descendant concerns. Only Belgium has had a country visit by the WGPAD, conducted in 2005; Ecuador announced its invitation for a country visit at the DRC.[338] The WGPAD has not yet fully realised its socialisation role largely because of the absence of states at the meetings and the overtly inter-state interests of many states present.

Another persistent weakness of the WGPAD has been the lack of engagement from the civil society of Afro-descendants. NGO attendance has been poor, ranging from a low of 11 NGOs at the 3rd session to a peak of 22 NGOs at the 4th session. Many leading Afro-descendant NGOs active in the WCAR have rarely if ever attended the WGPAD.[339] From the first session the WGPAD has recommended that a Voluntary Fund be created to enable NGOs to participate in the meetings and although several states have endorsed the proposal, none has yet to make the necessary financial contributions. Some NGO activists have also expressed their concern that the expert members of the WGPAD lack the will or capacity to critically engage states and civil society in constructive examination of the issues. The WGPAD has conducted dialogue on a variety of points including housing, employment, empowerment of Afro-descendant women, the Millennium Development Goals and access to justice, which has contributed to some norm elaboration on these topics. The key issues that dominated the Afro-descendant normative agenda at Durban, however, have not been returned to. For example, in addition to reparations, concerns such as land rights have not been addressed. More promising was the 7th session of the WGPAD in 2008, where OHCHR facilitated the participation of a number of Afro-descendant experts globally as

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[338] E/CN.4/2006/19/Add.1 (9 February 2006).

[339] For example, Mundo Afro has attended only the 4th session and Edna Santos Roland (a member of the Group on Eminent Experts and Rapporteur of the WCAR) has attended twice as an invited expert.

a preparatory consultation for the DRC in 2009. In the outcome document of the session, the WGPAD "strongly recommends that the issue of reparations for people of African descent be considered at the Durban Review Conference" (para 15).[340] The WGPAD needs to be revived by the DRC, ideally through the establishment of a Voluntary Fund, if Afro-descendants are to find a useful global space for norm entrepreneurship. So far it seems that political opportunity structures at the regional level are more effective, more attractive and/or more accessible to Afro-descendants than the Geneva-based Working Group.

WCAR follow-up meetings:

Afro-descendants have participated in several WCAR implementation and follow-up meetings. Among the most important was a regional workshop convened by the Government of Uruguay in cooperation with OHCHR in May 2003, in Montevideo, on the *Adoption and Implementation of Affirmative-Action Policies for People of African Descent in Latin America and the Caribbean*. The meeting was attended by 16 state delegations, Afro-descendant NGOs and key international organisations like the IDB and World Bank.[341] The meeting adopted sweeping recommendations on such topics as affirmative action, education and culture, religion and land ownership. The outcome suggests that at the rhetorical level norms for Afro-descendants are increasingly accepted by states in Latin America. For states to even acknowledge that affirmative action measures are needed represents an important break with the 'racial democracy' past.

Latin America is the only region to hold an official inter-governmental Durban+5 review meeting (dubbed 'Santiago Más Cinco'), held in Brasilia, 26-28 July 2006;[342] it was also the first region to hold a prepcom for the DRC, convened also in Brasilia, 17-19 June 2008.[343] 19 state delegations participated in 2006 and 25 in 2008. The outcome recommendations gave activists an important opportunity to sustain the gains made at Santiago and Durban and to build upon those strategically. Some innovative proposals were adopted, including the creation of a racial equality index, a UN Permanent Forum

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[340] UN Doc. A/HRC/7/36, (13 March 2008): p 19, para. 118.
[341] UN Doc. E/CN.4/2004/17/Add.3 (8 January 2004): p. 26.
[342] UN Doc. A/HRC/4/111 (15 January 2007).
[343] UN Doc. A/CONF.211/PC.3.3 (8 July 2008).

on people of African descent, electoral reform to improve political participation, and recognition of collective land rights for Afro-descendants. Firm support is given for the OAS Special Rapporteur on Afro-descendants and the draft OAS convention against racial discrimination. The conferences reaffirmed the "multi-ethnic, multicultural" composition of the region. Interestingly, the Santiago Más Cinco conference was opened with an "African-inspired indigenous spiritual ceremony", a fascinating symbol of the shifting positions of Afro-descendants and indigenous peoples as representations of Latin American identity. The regional DRC prepcom for Africa gave significant attention to the trans-Atlantic slave trade in the outcome document and endorsed a voluntary fund for participation of, *inter alia*, people of African descent in DDPA follow-up mechanisms.[344]

Afro-descendants figured prominently at the DRC itself. The outcome document makes some references to people of African descent (one of the few groups to be named distinctly) and to slavery and the slave trade, although none to financial reparations *per se*.[345] An earlier version of the text called for the WGPAD to be "established as a United Nations permanent forum on people of African descent".[346] This was a proposal reiterated by several Afro-descendant NGOs. At a session sponsored by OHCHR, key international experts[347] came together with at least 50 Afro-descendant activists to assess progress on the DDPA. The points raised included the need to revive transcontinental cooperation of Afro-descendants and the absence of strong national action plans for the DDPA focused on Afro-descendants' inequality. The norms secured at the WCAR have been maintained in the follow-up and are more firmly institutionalised. The degree to which they have been adhered, however, varies in state practice.

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[344] UN Doc. A/CONF.211/PC.3/ (1 September 2008): preamble and paras 58, 60, 62.

[345] The DRC outcome document does note at para 63 other forms of restitution for slavery, colonialism, apartheid and genocide, and calls on states "to find appropriate ways" for "restoring the dignity of the victims".

[346] DRC, Preparatory Committee, Second Substantive Session, Geneva 6-17 October 2008; *Compilation of paragraphs proposed by delegations; Section Two: Assessment of the Effectiveness of the existing Durban follow-up mechanisms* (13 October 2008: para 41).

[347] Among the experts present were: Joe Frans, Chair of the WGPAD; Edna Santos Roland; Githu Muigai, UN Special Rapporteur on racism; Gay McDougall; and Clare Roberts.

Domestic reforms for Afro-descendants:

There have been some important changes in state policy vis-à-vis Afro-descendants since the WCAR in the domestic sphere. Four policy responses stand out: creation of new institutions focused on Afro-descendants; adoption of affirmative action policies; improved disaggregated data collection; and attention to land rights claims. While in some countries some of these policies were initiated prior to Durban under multiculturalism reforms, the WCAR commitments gave greater momentum and legitimacy to the process. The new international monitoring mechanisms established at Durban for follow-up and other human rights monitoring mechanisms (such as UN Treaty Bodies) have used the DDPA as a measuring stick to assess progress. Before turning to the evidence of a norm cascade, this section will examine the case of Brazil, which has served well as a critical state in the region for norm emergence.

The Durban conference reportedly marked the first time that the Government of Brazil admitted on the *international* stage that racism exists in Brazil.[348] Domestically, the government began in the late 1980s to make reforms in favour of Afro-descendants, establishing the Palmares Cultural Foundation in 1988 and recognising collective land title for the *quilombos* under the 1988 Constitution. A handful of institutions for Afro-descendants had existed also at the sub-national level since the late 1980s, especially in regions with a high proportion of Afro-descendants such as Rio de Janeiro and São Paulo.[349] Afro-descendant leaders had been successful in stimulating some public mobilisation around key symbolic events like the 1988 100th anniversary of the abolition of slavery in Brazil and in 1995 around the 300th anniversary of the death of Zumbi, the Afro-Brazilian Quilombo dos Palmares resistance leader (Htun 2004, 67). By the late 1990s, the WCAR provided a much-needed additional public spotlight on the calls by Afro-descendant leaders for reform.

Htun (2004) describes the cause of changes vis-à-vis Afro-descendants in Brazil as "[a] dialectic between social mobilisation and presidential initiative, framed within

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[348] See UN Doc. E/CN.4/2006/16/Add.3 (28 February 2006): p. 11 and Turner (2002, 32). In its periodic report to CERD due in 1994, Brazil does acknowledge some racial inequalities and includes a specific section on indigenous peoples but not Afro-Brazilians; UN Doc. CERD/C/263/Add.10 (13 February 1996).

[349] For example, in the state of São Paulo, a Council for Black Community Participation and Development was created in 1993 to enable Afro-descendant NGOs to advise the government on the development of public policy. E/CN.4/2006/16/Add.3. See also E/CN.4/1996/72/Add.1 p. 21.

unfolding international events" (2004, 62). The WCAR was the key international event. Brazil withdrew its initial offer to host the regional prepcom fearing that negative attention and domestic protests from the increasingly strong Afro-Brazilian movement would discredit their preferred international image as a 'racial democracy'; Telles reports that the Ministry of Foreign Affairs was in effect the last government ministry to accept that this myth was no longer tenable (Telles 2004, 67). Persuasion by Afro-descendant activists - facilitated by an unprecedented level of dialogue with the Ministry - stimulated a reconsideration of the government's international identity. In an about-face Brazil took up the baton for Afro-descendants. Global Rights reports "the Brazilian government was one of the most ardent proponents of having the [Santiago] Final Declaration and Plan of Action contain categorical language in reference to Afro-descendants" (IHRLG 2001, 11). According to Brazil's Ambassador to the UN, Gelson Fonseca Jr.:

> Durban was a positive experience for Brazil because it legitimized the debate on racism at the international level and recognized the need for remedial actions to benefit the victims of discrimination. But the most significant and immediate effect of Durban occurred at the domestic level, for it mobilised civil society and public opinion against racism, and strengthened the political will for policies to combat discrimination and led to the first experiences in affirmative action for Afro-descendants. (quoted by Htun 2004, 82-83).

The WCAR gave Afro-Brazilian advocates space to forge a common agenda where great divergence had existed among such actors (Burdick 1998, 137-138). A consultation process was held by the government in the year prior to Durban, including the first national conference on racism held in Rio in July 2001 (Htun 2005, 24). The WCAR also provided greater space in the media for attention to Afro-descendant issues, breaking a wall of silence that had existed previously (Telles 2004, 71). The Santiago and Durban commitments buttressed government justification for pursuing controversial and electorally unpopular affirmative action policies (Htun 2004, 62).

The WCAR processes occurred under the Presidency of Fernando Henrique Cardoso (1995-2002). Cardoso was a sociologist and well aware of the endemic racial inequalities in Brazil; he was the first Brazilian President to publicly acknowledge racism persisted in the country. He created in 1995 the "Interministerial Group for the

Promotion of the Black Population"[350] and under the auspices of a National Human Rights Plan in 1996, his government proposed the first ever targeted policies for racial groups in Brazil (Htun 2005, 21). The election of Lula Da Silva as President at the end of 2002 continued openness to reforms benefiting Afro-descendants. Da Silva appointed three Afro-descendants as Ministers of Culture, Environment and Social Welfare.[351] In 2003, the Special Secretariat for the Promotion of Racial Equality (SEPPIR) was created at the ministerial level. The first Minister for SEPPIR was Matilde Ribeiro, herself drawn from the ranks of Afro-descendant NGO activists (the current Minister is Edson Santos). Under Da Silva's Worker's Party more self-identifying Afro-descendants came into the Congress and in 2003 a Black Caucus was organised, providing increased pressure for initiatives to address discrimination and support Afro-descendants (Htun 2005, 23).

Affirmative action policy was introduced by the government of President Cardoso but has expanded under President Da Silva.[352] A study published in 2000 by the government Institute for Applied Economic Research (IPEA) showed that 69 percent of those living in poverty were Afro-Brazilian, demonstrating the need to look beyond class-based analyses to overcome inequality.[353] Htun reports that "by the end of 2001, 14 different bills in Congress contemplated some form of racial quotas" and that at the start of 2002, Cardoso "issued a decree that created the National Affirmative Action Program" (Htun 2005, 22). In the 2003 state periodic report to CERD, the Government of Brazil cites a number of affirmative action initiatives adopted "as a result of the internal discussion about the racial issue and the principles enshrined in the Durban Programme of Action".[354] The Ministries of Agricultural Development, Foreign Affairs and Justice, and the State Secretariat for Human Rights all have hiring quotas for Afro-descendants. In 2001, the University of Bahia first adopted a quota system, reportedly following a proposal put forward by the Brazilian delegation at the WCAR.[355] More than 15 public universities have quotas for Afro-descendants and another thirty private universities have voluntarily adopted quotas. Policies in the field of employment give

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[350] UN Doc. CERD/C/431/Add.8 (16 October 2003): para 10.
[351] These are, respectively, Gilberto Gil, Benedita da Silva and Marina Silva.
[352] Afro-Brazilian parliamentarian and activist Abdias do Nascimento was the first to introduce bills in Brazil calling for affirmative action policies from 1983 (Da Silva Martins, Alberto Medeiros, and Larkin Nascimento 2004, 793-794).
[353] UN Doc. CERD/C/431/Add.8 (16 October 2003): para 11.
[354] UN Doc. CERD/C/431/Add.8 (16 October 2003): para 19.
[355] UN Doc. E/CN.4/2006/16/Add.3: p 13.

support to business development by Afro-descendants and job training while predominantly Afro-descendant neighbourhoods are being targeted for extra social programmes (Htun 2005, 22). SEPPIR is cooperating with the Ministry of Education to train teachers on the teaching of African history in primary school, recently made a legal requirement. In March 2008, a bilateral agreement was signed with the United States for a Joint Action Plan to Promote Racial and Ethnic Equality, which aims for a two-way exchange of best practices, resources and information, emphasising education in particular.[356]

Further proposals are contained under the Statute on Racial Equality (PL 6264/2005) introduced by Afro-Brazilian Senator Paulo Paim; it was approved by the Senate in 2005 and is still under review by a special commission of the House of Representatives. The Statute would mandate quotas in all public universities, in the civil service, in private sector companies of more than 20 individuals and in the broadcast media (Htun 2005, 24). The adoption of affirmative action has not been supported universally. Some are concerned that the policy inappropriately pushes individuals to claim a racial identity, which would create inter-racial conflict where ostensibly there has been none. There has been firm mobilisation on both sides in response to the proposed law. According to one survey from July 2006, 65 percent of the Brazilian electorate is in favor and 25 percent are against the proposal to set aside 20 percent of places for 'Blacks' in university. Among those self-identifying as Black, 69 percent were in favor of quotas, 22 percent were against. Among those self-identifying as White, 62 percent are for quotas and 31 percent against. According to the same survey, the vast majority of the population favours policies based on income rather than on race alone.[357]

The Da Silva government has been highly visible on the international stage in supporting the WCAR commitments. Brazil proposed the OAS convention against racial discrimination, financially supported the OAS Special Rapporteur on Afro-Descendants and co-convened and hosted the two Durban regional follow-ups. Brazil invited the UN Special Rapporteur on Racism for a country visit in late 2005 and the OAS Special Rapporteur on Afro-descendants in the same year. Brazil has also actively participated in the Durban-created mechanisms, including the WGPAD. The acceptance

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[356] See http://www.state.gov/p/wha/rls/2008/111446.htm (accessed 20 November 2008).
[357] Survey conducted by the Datafolha research institute. Source: http://www.levantamos.org/top_story.htm (accessed 2 January 2008).

and promotion by Brazil of the Afro-descendant agenda has been a vital part of initiating a regional norm cascade vis-à-vis Afro-descendants and Brazil has served well as a 'critical state' in this regard.

There is evidence that other governments in the region have been taking greater steps to address the needs of Afro-descendants through policy commitments and institutional development. Some of the concessions occurred prior to the WCAR. This is true especially of land rights concessions for Afro-descendants. What Durban enabled was the embedding of norms on land rights for Afro-descendants into international standards, thus translating state practice in seven states in Latin America into a regional standard of achievement. For example, Ecuador has recognised new land rights for Afro-descendants since Durban.[358] The impact on data collection has also been significant. The "Todos Contamos" World Bank sponsored meetings on disaggregated data collection (first convened in 2000) were tied to an increased consciousness of the issues brought about by the WCAR preparatory process. Afro-descendants now have more possibilities to work closely with national statistics offices in devising census identification criteria, not least because international development actors are aware of these issues and aim to integrate them into technical support and loans for data collection. Affirmative action policies have been less common and as the case of Brazil suggests, they are not easily adopted into national practice. All three of these policy responses are endorsed by the WCAR and give Afro-descendant advocates a soft law backing for their rights claims in the domestic sphere. Several states, including Colombia, Honduras and Peru, have revised or created new consultative or anti-discrimination institutions since Durban. These institutions serve as authoritative mechanisms to further embed norms domestically on Afro-descendant rights. Two regional conferences of representatives of these institutions, the *Consultation of Latin American and Caribbean Organizations Dedicated to Policies for Racial Equality*, were held in November 2004 and June 2006 (Inter-American Dialogue 2006, 2). Another helpful indicator of change in the region is that in the short years since Durban, five states (Argentina, Bolivia, Brazil, Mexico, Venezuela) have made the declaration under Article 14 of ICERD to recognise the individual complaints mechanism, whereas prior

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[358] On 9 May 2006, the National Congress of Ecuador adopted the Law of Collective Rights for Afro-Ecuadorian Communities, which includes provisions for recognition of collective ancestral land rights for Afro-Ecuadorian communities.

to 2001 only four states in the region had made the declaration over a 30-year period.[359] Symbolic efforts to recognise Afro-descendant identities are also in evidence: several states, including Colombia, Costa Rica, Ecuador, Honduras, Panama, Peru, Uruguay and Venezuela, have designated national days for commemorating the culture and heritage of Afro-descendants. Finally, the OAS Summit of the Americas process (convened since 1994) reveals further textual evidence of change: although all of the Summit outcome documents have mentioned indigenous peoples, and some have mentioned "ethnic minorities", it was only in the Summit in 2005 that Afro-descendants were named as a distinct group.[360]

Assessing norm entrepreneurship on Afro-descendant rights:

Afro-descendant leaders and external actors agree that state acceptance of norms on Afro-descendant rights has progressed rapidly in the past decade thanks in large part to the political opportunities created by the WCAR. The norms first emerged in selected states through efforts of Afro-descendant NGOs to secure a space for their communities in the multiculturalism reforms. With the oncoming of the WCAR processes, Afro-descendants were in a good position to further entrench the norms in international soft law standards. The regional Durban follow-up meetings have maintained the commitments to Afro-descendants made at Santiago and elaborated further measures. States see these norms as a legitimate part of their identity in international society. This has been aided by the dramatic increase in the number of socialisation agents on Afro-descendant norms, rivalling even those for indigenous peoples at the regional level. The international soft law of the WCAR outcome documents, the WGPAD, the Durban follow-up institutions, the OAS Special Rapporteur on People of African Descent, the draft OAS convention against racial discrimination, and the social development divisions of the IDB and World Bank are prominent in an even longer list of mechanisms that continue the process of socialising states.

Determination of whether a norm cascade has occurred in Latin America is complicated by the gap between international norm institutionalization and (national) norm

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[359] These are Uruguay (1972), Ecuador (1977), Peru (1984) and Chile (1994).
http://www2.ohchr.org/english/bodies/cerd/stat4.htm. Accurate as of 14 November 2008.
[360] See Fourth Summit of the Americas, *Declaration of Mar del Plata*, (5 November 2005): paras 30 and 32.

implementation. While some state officials at the senior level have accepted much of the normative discourse on Afro-descendants, this is a multi-level process, with many less senior officials and the public at large still skeptical. Afro-descendant activists continue to express their concern that implementation of promised measures has fallen short of expectations. The expression used by activists, "candil en la calle, oscuridad en la casa",[361] sums up the dynamic well – states portray a flattering image of their practice on the international stage, while at home, obscure their failure to meet the commitments they have made. Financial support to operationalise institutional and policy reforms has generally been lacking; for example, SEPPIR is held as an extraordinary example of progress - the only Ministry on racism in Latin America - but it does not have the resources needed to fulfill its remit (Johnson 2007, 61). Political will is also tentative and can shift according to changes in government control. The progress in Brazil has relied heavily on President da Silva's intervention but the National Congress may not pass the Statute on Racial Equality in Brazil into law. Afro-Colombian leaders feel that their new government (which came to power post-WCAR) is reverting to denials of racism and undermining census reform efforts that aim to more accurately reflect the size of the Afro-descendant population. Respect for Afro-descendant land rights are still shaky and a source of real conflict with some states (Anderson 2007; Ng'weno 2007). The governments that have granted land rights to Afro-descendants appear to have been motivated in part by a desire to settle land claims in regions attractive for foreign investment, spurred on by the World Bank for one (Anderson 2007, 399). Afro-descendant leaders are not always satisfied with the national institutions created to help guarantee their rights, not least because the balance of power in decision-making in these institutions still remains in the hands of government (Greene 2007). The state retains the power to decide who is an Afro-descendant for affirmative action purposes and which Afro-descendants are entitled to special land rights. External pressure is often still needed to see a breakthrough in state commitments. For example, Afro-descendants in recent years have had some success in using the leverage of free trade and cooperation agreements being negotiated with the US, lobbying with members of the US Congressional Black Caucus (CBC) to put pressure on governments to respond to Afro-descendant concerns. The Plan Colombia counter-narcotics and development agreement has afforded to Afro-Colombians additional resources for civil society. The

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[361] "Candlelight in the street, darkness at home" (author's translation).

CBC is also using the free-trade agreement to help push for greater political representation of Afro-Colombians; this has influenced the appointment of the first Afro-Colombian as Minister (Paula Marcela Moreno, Minister for Culture), the creation of a Director of Afro-Colombian issues in the Ministry of Internal Affairs and Justice and the creation of a Commission for the Progress of Afro-Colombian People.[362] In Central America, the regional NGO ONECA fought to secure a seat on the civil society advisory group to the Central American Free Trade Agreement. These successes may have more symbolic than intrinsic value, however, particularly if those in power continue to ignore recommendations.

Several conclusions can be drawn from these conflicting outcomes for norm emergence, i.e. positive in the international sphere, poor in the domestic sphere. It is clear that Afro-descendants have been recognised as a distinct community. There is also evidence of change in the discursive position of states in favour of Afro-descendants, particularity in the international sphere. The material cost of implementing emerging norms domestically appears still too high. Although states have been able to lend the impression of action - most particularly to international audiences - with the creation of new institutions and participation in WCAR fora, inaction regarding norm adherence is common. The ideational acceptance of new norms for Afro-descendants is not universal and what is increasingly internalised by those at the most senior and diplomatic levels is not shared by all.

This raises two questions for assessing norm entrepreneurship: what accounts for the success of norm emergence at the international level?; and why have Afro-descendants been less effective at reproducing these results domestically? In answering the first question it is difficult to rely solely on rational explanations. Governments could have ignored Afro-descendants' demands: in many states, they have weak leverage materially and electorally to influence government positions. Even in the "critical state" of Brazil, where roughly half the population are Afro-descendants, there was no popular sentiment in favour of race-based policies. In other states there may have been some material motivation to settle land claims made by Afro-descendants but this could have been resolved locally without the conversion of the claims into 'universal' norms. The same can be said for including Afro-descendants in multicultural reforms domestically: the

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[362] Interview with Leonardo Reales, April 2008.

evidence suggests that in the main the concessions made *specifically* for Afro-descendants were rare and in most cases only for a subset of the Afro-descendant population.

The motivation of Latin American states in accepting group-specific norms for Afro-descendants may have more to do with the nature of the norms themselves and states' corresponding identity concerns in international society. Two factors stand out in this case regarding the "issue characteristics": "adjacency" and the intrinsic character of the norms. Afro-descendants have borrowed heavily from the indigenous peoples' rights repertoire in establishing their own group-specific claims. States were disposed to the discourse of Afro-descendant rights because of its parallels with the discourse advanced by indigenous peoples in the region. Moreover, the claims made by Afro-descendants are in general less demanding of state reform than claims made by indigenous peoples (which have in many cases challenged basic sovereignty principles). The WCAR also gave Afro-descendants the opportunity to link their contemporary claims to the historical crime of slavery. The prohibition of slavery is already considered part of *jus cogens* in international law. An important stream of debate at the WCAR sought also to establish the transatlantic slave trade as a crime against humanity, one that warranted reparations. While much of this debate had inter-state material implications, there was also a strong ideational side to the discussion. In the context of the WCAR, state actors from Latin America acknowledged the moral obligations owed to the descendants of slaves, who continued to be among the poorest people in the region. Their response to Afro-descendants' demands can therefore been seen to emerge from a "logic of appropriateness". In other words, states recognised the historic wrong to Afro-descendants and attempted to make amends by accepting normative standards that benefited Afro-descendants explicitly. The moral and normative weight of slavery was compounded by the moral and normative weight of anti-racism, another key stream of Afro-descendants' advocacy at the WCAR. State actors were faced with an overwhelming "logic of appropriateness" forged by two of the most widely accepted norms in international society. States in the region had followed a similar logic of appropriateness in accepting indigenous peoples' claims, i.e. that states had moral obligations flowing from the wrongful colonisation of indigenous peoples. In effect, the WCAR made racial discrimination and slavery adjacent to colonialism in the public discourse; state actors would have been remiss to acknowledge the latter but not the

former at Santiago.

Concurrently, the strong mobilisation of Afro-descendants around the WCAR meant that states could not portray their identity as a 'racial democracy' with so many vocal advocates to contradict them. To maintain credibility in their international identity, they had to concede that racism was a problem and demonstrate their legal and moral commitment to its eradication. Afro-descendants have been aided greatly by the persuasion and socialisation of IOs and by TAN cooperation with INGOs. Their support to Afro-descendant claims 'certified' the discourse vis-à-vis states. They have supported the transnational mobilisation of Afro-descendants, helped them to elaborate new norms, provided political opportunity structures and offered critiques of state failures to accept emerging norms.

Afro-descendants have faced greater challenges domestically in norm emergence. The WCAR pushed states to agree concessions for Afro-descendants in a very short time frame. The dialogue on what these concessions should be took place between a small cadre of Afro-descendant NGOs and government representatives, principally those working in ministries of foreign affairs. The difficulty post-WCAR is gaining wider public support and deeper governmental commitment for the agreements made at Durban and Santiago. The challenge is not just material (although this no doubt plays a role). Many state actors continue to believe that adopting measures that target people on the basis of race are in fact racist; the normative prohibition of racism is strongly felt but the logic of its manifestation and how to respond diverges significantly from the normative logic guiding state actors in the international sphere. Moreover, many of the target beneficiaries of new standards do not identify themselves as Afro-descendants, although activists report that the WCAR has increased consciousness of a collective identity. Afro-descendant activists have tried to use top-down approaches like census reform to generate cohesion but class allegiances and a belief in racial democracy still impact strongly on identity formation. The public have been reluctant to countenance Afro-descendants as a distinct ethno-cultural community on par with indigenous peoples. Indigenous peoples' representatives do not always readily accept that Afro-descendants should have an equal seat at the table. As an exception, a few Afro-descendant communities with an indigenous affinity have been able to secure some tangible gains from states, further evidence that norms on indigenous peoples rights are

more firmly embedded. The content of the WCAR outcome documents are an unknown to many in the public and in the government. New institutions have been created to implement the norms but they are restricted by the lack of norm internalisation. Afro-descendant activists and a small number of international actors therefore find themselves in a vanguard position, trying to persuade others of the need to implement domestically commitments made. The resources made available to do this during the WCAR have become increasingly difficult to access since then.

Afro-descendants are at a critical juncture in their norm entrepreneurship. The future of the Durban review mechanisms is uncertain but they will remain spatially distant in any case. If the norms are to take root in the long term, Afro-descendant leaders and their partners will need to adopt a bottom-up strategy to reinforce the largely top-down approach taken to date. They must build a wider constituency of norm adherent actors. Some critical states in the region like Brazil and Colombia have taken positive steps but changes in government can quickly halt gains because the norms are not sufficiently internalised. There is a need to build stronger national platforms to push for norm adherence, a goal that is undermined by limited funding and insufficient advocacy expertise at the local level. Many of the opportunities opened up by successful norm entrepreneurship have not been translated well to the domestic sphere: for example, the wide acceptance of Article 14 under ICERD has not yet witnessed any individual communication submissions from Afro-descendants. Afro-descendants will also need to build stronger transnational cooperation links to facilitate socialisation, particularly in states with smaller and less well-mobilised Afro-descendant organisations. The WCAR provided an invaluable boost to their advocacy but with the future of Durban follow-up processes uncertain, Afro-descendants will have to work hard to keep their issues on the agenda. The DRC reaffirmed the commitments of the WCAR and Afro-descendants were a strong presence in Geneva. The same week, at the Summit of the Americas, the outcome document made no mention of Afro-descendants despite some presence of Afro-descendant NGOs. Activists report that the national media was focused on the Summit, not the DRC. These divergent outcomes suggest that Afro-descendants need a critical review of their norm entrepreneurship strategies. The repeated calls at the DRC for a UN Permanent Forum on Afro-descendants could help to further consolidate the global organisational platform of Afro-descendants that has dissipated somewhat since Durban, providing a permanent space for socialisation, review and continued norm

elaboration. Whether such a space can tackle the obstacles to norm adherence domestically is unlikely, as the experience of the UN Permanent Forum on Indigenous Issues suggests. More possibilities rest with the ECLAC 2010 census reform, through which advocates are working to devise a region-wide strategy for gathering the hard evidence needed to get past denials of racial inequality and lay bare the identity, status and size of Afro-descendants in Latin America.

Conclusions:

Extending the view beyond the WCAR processes reveals that contemporary mobilisation of Afro-descendants has been enabled by several factors. Territorial autonomy of *palenques*, slave rebellions, Pan-Africanism and civil rights movements are among the important historical inspirations. Under the authoritarian regimes that dominated the region for much of the 20th century, political mobilisation was difficult but continued to be nurtured through national and transnational cultural links between Afro-descendants. The political opportunity structures created by the national dialogues on multiculturalism opened an important space for Afro-descendant leaders. During the same period, government action encroaching on Afro-descendant land and symbolic events like the 100th anniversary of the abolition of slavery in Brazil in 1998, helped to stir consciousness and collective action. External financial support to nascent Afro-descendant focused NGOs and advocacy support of INGOs has been vital to building NGO capacity. Regional meetings organised by international actors, including development agencies, human rights actors, parliamentarians and INGOs have given Afro-descendant leaders opportunities for building an organisational platform and elaborating a common normative agenda. Against this backdrop, the WCAR emerged and became a driving force for intensified mobilisation and greater focus on racial discrimination by state and international actors alike. The focus of the WCAR on racism meant that official adherence to the racial democracy precepts was no longer such a constraint and policies against racial discrimination could be discussed more openly. Afro-descendant activists had a new platform for dialogue with governments and IOs and these actors were more disposed to respond under the spotlight of a world conference.

Afro-descendants *qua* Afro-descendants now exist as an entity in the international sphere. The identity frame is institutionalised and their issues are on the agenda. This acts as a counter-balance to the forces of 'racial democracy' and *mestizaje* in the domestic sphere that continue to impede Afro-descendant mobilisation. Afro-descendant leaders have not let themselves be restricted by existing identity frames – such as indigenous peoples, minorities or race – but have set on a completely new path, designating a corpus of rights that is particular to Afro-descendants.

This set of normative standards has a variety of roots. The collective experience of economic, social and political marginalisation of Afro-descendants, forged by the forces of racism and poverty, have been the starting point of rights claims. State recognition of the contemporary legacies of slavery has been the moral leverage. The language of these claims has been imbued with the discourses of indigenous peoples rights and multiculturalism. Historically, the experiences of Pan-Africanism that emphasised the 'peoplehood' and distinct culture of Afro-descendants and the civil rights movement in the US focused on anti-racism measures have also impacted. These norms for Afro-descendants are part of international soft law and may in future be incorporated into legally binding standards. The first step is evidenced by the draft OAS convention against racial discrimination.

International institutions have responded, creating group-specific mechanisms much as was done previously for indigenous peoples. Afro-descendants are now routinely mentioned as distinct groups in government reports and policy documents of many international agencies. All of these initiatives, however, depend upon the will of states and a select number of internal actors to keep them in place. The WGPAD may have a chance of long-term survival but not because it necessarily meets the needs of Afro-descendants as much as it meets the interests of states. The major role played by international development agencies in favour of Afro-descendants is time-bound as development assistance in the region decreases and their influence declines. On a more positive note, there are possibilities to embed the international norms on Afro-descendants into state practice at the local level, evidenced by the increase in national Afro-descendant government institutions and municipal initiatives like the UNESCO cities against racism programme. Statistical evidence of inequalities faced by Afro-descendants is more widely available than ever before and data collection can stimulate

further self-identification. Afro-descendant NGOs are taking proactive steps to work with IOs directly and have been adept at using regional trade agreements and alliances with US political actors to put pressure on their governments for change.

Afro-descendant activists need a long-term strategy for norm internalisation. Focusing more intensely on political opportunities at the regional level may reap greater benefits: first, because UN mechanisms have lower political resonance than those of the OAS; and second, because at the global level, Afro-descendants have divergent discourses on reparations and/or different identity frames than African migrants not descended from slaves. Their organisational platform has not been institutionalised and NGOs struggle to secure funds making sustained advocacy on the international and national levels difficult. Despite some important changes to the international discursive position of states, many government officials continue to profess that racial discrimination does not exist in Latin America. It is vital for norm internalisation that activists focus on socialisation of this wider constituency of state actors. The transnational identity frame current among an elite cadre of actors is slowly trickling down but the mass of Afro-descendants intended to benefit from new standards are not engaged in the process of mobilisation and advocacy. Many Afro-descendants are reluctant to embrace self-identification or mobilisation on this basis of Afro identity; the prospective gains of *blanqueamiento* are still stronger than those offered by the few nascent programmes targeted for Afro-descendants. As national policies vis-à-vis Afro-descendants become more prominent this can stimulate greater collective awareness. Afro-descendant leaders, however, need to be sensitive to not pursue a top-down homogenising strategy. Afro-descendants even within the same state may have divergent or competing interests depending on, *inter alia*, cultural identity, land entitlement and socio-economic status. Unity during the WCAR process was vital to give a solid platform and justification for global norms but the reality of Afro-descendant life is much more heterogeneous and space should be maintained for a diversity of voices. The project of norm entrepreneurship by Afro-descendants has had great success over the past decade and although the foundations are reasonably strong, the future of norm implementation and adherence is far from certain.

CHAPTER IV. CONCLUSION: ASSESSING GROUP-SPECIFIC NORM ENTREPRENEURSHIP

Introduction:

Finnemore and Sikkink (1998) hypothesise that in the later part of the 20th century, "the speed of normative change has accelerated substantially" (909). The case studies here support this idea and show the remarkable reshaping that has occurred to the international protection regime for minorities over the past 10-15 years. Norm entrepreneurship by Afro-descendants and Dalits has followed a path very similar to that forged by indigenous peoples and Roma before them. They have sought to build a group-specific set of norms that would recognise their group, fulfil their claims and increase their leverage. Their efforts have been supported by a wide variety of international actors and a select number of critical states. The 2001 WCAR was a pivotal juncture in many ways and its legacy continues to affect the major groups that participated. This concluding chapter aims to tie together the evidence and assessment across the Afro-descendant and Dalit cases and to contrast them also with the Roma and indigenous peoples, in order to offer an overview of trends and consequences of norm entrepreneurship by minority groups. One of the important contributions of this thesis is that is offers the possibility to look beyond individual groups, to make comparisons and to provide insight into macro-level changes to minority protection. Several questions will guide the concluding analysis. What evidence is there that norm emergence has occurred? What factors have influenced the success or failure of norm emergence? What commonalities in norm entrepreneurship can be identified across the cases? How has norm emergence impacted on the groups, other minority communities and on international society? What might be the future trends of group-specific norm entrepreneurship?

The answers to these questions can help us to understand better minority-state relations in international society and the influence that even the most marginalised groups can wield when using the mechanisms of transnational social mobilisation. Unlike many

other analyses of minority groups, this thesis has not sought to take an exclusively statist perspective nor to view minority rights through a security frame. The aim was to consider the agency of minority groups directly and their own construction of new norms. The research adds something to the literature on norm entrepreneurship by considering a unique kind of transnational non-state actor, one that possesses the latent capacity for statehood. It also problematises the role of international actors in aiding this norm entrepreneurship and considers their limitations, interests and ideational commitments. On a normative level, the findings give a glimpse of how emerging norms for transnational minority groups could alter conventions of representation in international society, displacing the state as the sole voice for sub-state groups and creating post-Westphalian forms of political community. On a policy level, the findings can inform approaches to multiculturalism, inclusion and 'upstream' conflict prevention policies in the national and international spheres.

The conclusion will elaborate some policy proposals based on an assessment of the case studies, taking an explicitly normative interest in facilitating adherence to emerging norms, space for future norms to emerge, and mechanisms to strengthen existing norms of minority protection. It is hoped that the learning from these cases can be instructive for the establishment of a more effective international protection regime for minorities that is emancipatory for groups, empowers 'voices of moderation', and transforms long-standing structures of inequality.

Evidence of norm emergence:

This thesis has focused on several identifiers of norm emergence, including agenda-setting, issue recognition, changes in discursive positions of states, norm elaboration and institutionalisation and the creation of new bodies to review norm adherence. Based on these measurement criteria, the case studies show that new norms have emerged for Dalits and Afro-descendants since the late 1990s and particularly just prior and subsequent to the 2001 WCAR. These norms are constituted by more than just group-specific rights and standards and are evidenced also by recognition and mechanisms for each group at the international level.

The emergence of norms on caste-based discrimination is evident primarily in UN human rights institutions. The CERD General Recommendation XXIX on 'Descent' (2002) detailing the particular elements of discrimination on the basis of caste and analogous systems is the strongest example. There also exist reports by several UN Sub-Commissioners and the two specially appointed UN Special Rapporteurs providing detailed assessments of how work and descent-based discrimination is prohibited in international law. The "Draft Principles and Guidelines for the Effective Elimination of Caste Based Discrimination" elaborated by the Special Rapporteurs provide further prescriptions for state behaviour to combat this form of discrimination. These texts are firm evidence of institutionalisation within the UN system. The Special Rapporteurs are mechanisms created specifically to review (if not monitor) the norms while CERD, although not a new caste-focused mechanism *per se*, has a role in advising on the General Recommendation on 'Descent'. There are several other weaker examples of institutionalisation. For example, the decision by the European Commission to name caste-affected groups as specific recipients of funds under its EIDHR funding line; the resolutions by the Parliamentary Assembly of the CoE condemning caste-based discrimination; and the US Congressional criticisms of India's treatment of Dalits. In addition to this institutional acceptance of the norms, the caste TAN has elaborated a common platform of rights claims that have been embedded in international declarations of their own creation, such as the Kathmandu Declaration (2004) and the Delhi Declaration (2001). Although the discursive position of the critical state of India has not altered, several states, including Nepal and Pakistan, have more recently accepted discussion of caste within international fora on racial discrimination such as the DRC. The European Parliament, Denmark, the UK and the US are among the actors that mention caste in their bilateral statements on India.

Norms for Afro-descendants have emerged most visibly in connection with the WCAR. There are dedicated chapters on 'people of African descent' in the WCAR *Durban Declaration and Programme of Action* and the Santiago prepcom outcome documents. The two regional follow-up conferences, Santiago Más Cinco and the regional prepcom for the DRC, maintain these new norms, providing strong evidence of state socialisation and change to discursive positions. Brazil in particular as a critical state has shown its willingness to press for norms on Afro-descendants in international fora. The draft OAS convention against racial discrimination (endorsed at the Santiago prepcom) names

Afro-descendants as a distinct group. The Inter-American Court of Human Rights has made judgements that confirm juridically some of the new norms contained in the WCAR, particularly in the area of land rights and cultural identity. The UN Working Group of Experts on People of African Descent (WGPAD) is a new global mechanism for addressing Afro-descendant concerns and the OAS has created a regional monitoring mechanism, the Special Rapporteur on the Rights of Persons of African Descent and Racial Discrimination. The statements and programmes of several IOs in the region further embed these norms, particularly in international development institutions like the World Bank, the IDB, and other UN agencies. With the support of the WGM, Afro-descendants have elaborated more detailed provisions on their normative claims at regional seminars in Chincha (2005) and La Ceiba (2002) under the auspices of the UN.

What is the content of these new group-specific norms? With regard to the norms that have been accepted to date, the content is not new. In other words, states have not adopted nor IOs institutionalised, *sui generis* rights for Dalits or Afro-descendants. The same can be said for Roma and indigenous peoples. The innovation has been in the repackaging of a set of existing rights gathered from various quarters and presenting them as rights of a particular group. Group-specific rights for Afro-descendants have emphasised rights to non-discrimination, to protection of cultural identity, to land rights and to economic and social rights. They draw from the rights regimes of racial discrimination, minority protection, indigenous peoples and general human rights. Group-specific rights for Dalits emphasise the rights to non-discrimination on the basis of descent, with a particular focus on measures that prevent segregation, and general human rights protection on an equal basis. Group-specific rights for Roma include especially the rights to non-discrimination, to protection of cultural identity, and general human rights protection on an equal basis. Group-specific rights for indigenous peoples might appear *prima facie* to include some *sui generis* provisions, in particular the right to free, prior and informed consent, and to ownership of land in accordance with traditional land tenure systems, but these can also be viewed as an elaboration of common article 1 of the ICCPR and ICESCR on the right to self-determination.

The fact that the content of adopted rights is not new should not been seen as a failure; on the contrary, groups have been adept at using adjacency strategies to access rights

from various regimes and make them their own. This is evident, for example, in the case of non-discrimination. Each set of group-specific norms has non-discrimination at the core but each group argues that discrimination against them is of a unique type. Afro-descendants in the WCAR NGO Forum outcome document asserted that anti-Black racism was particular (WCAR NGO Forum *POA,* para 25). Dalits also argue that caste-based discrimination is a "distinct form of discrimination" (Delhi Declaration 2001, preamble 2) with particular elements such as 'untouchability'. Even Roma claim that anti-Gypsyism (or anti-Tziganism) is a distinct kind of discrimination (WCAR NGO Forum *Declaration*, para 175). Thus, although recycling existing norms, the groups have put their own mark on them to underscore the importance of packaging these rights as group-specific.

How do these group-specific norms compare with the existing pillars of minority rights? The cases provide some interesting insights into how the norms are interpreted and applied by different groups. On the right to exist, the cases show that existence is about much more than bodily integrity of the group, it is about a desire for a collective identity to be recognised. These groups want to exist as entities in multicultural states and as groups within international society. This desire has been instrumental to advocacy but it is also the foundation of a new form of political community, as exemplified by projects like the Afro-descendant Black Parliament of the Americas (and its predecessor the Pan-African Congresses), the supra-state representation aspired to by some Roma and the PFII. The right to exist is also affirmed in their claims to disaggregated data, a point stressed particularly by Afro-descendants.

On the right to non-discrimination, each of the groups has asserted this as a positive right, i.e. one that requires positive measures on the part of the state to be fulfilled. Affirmative action is one manifestation of this and although controversial in many states it features prominently in the groups' demands. As noted above, the groups also assert that there are group-specific manifestations of discrimination. This is clearest in the case of Dalits with practices like 'untouchability'; for others, the particularities are harder to pinpoint but nevertheless are felt by victims and raised by activists. CERD's General Recommendations (on descent and Roma and possibly in future on Afro-descendants) suggest that the committee recognises these particularities.

On the right to protection of identity, each of the groups have included ethno-cultural identity markers in their identity framing, although only Afro-descendants, Roma and indigenous peoples have incorporated cultural rights into their group-specific claims. For Dalits, cultural identity seems to be more instrumental than substantive, a tool for identity construction but not a right under threat or in need of exercising. The recognition of history and injustice has been an important part of all their rights claims. Afro-descendants, Roma and indigenous peoples have had aspects of their cultural identity spliced off and integrated into national identities without a corresponding social and political inclusion. Aspects of their culture are celebrated at the same time that they as groups are discriminated against. Thus, assertion of their rights to protection of cultural identity have been integral to public participation rights, an attempt to 'regraft' the culture onto the collective people and to ensure more than just their cultural inclusion in national identity. Protection of identity means also recognition of their contribution to society – economic, social, cultural, political – and their equal membership in that society.

On the right to participation, each of the groups has faced deep, egregious forms of political exclusion, evidenced by practices of slavery, segregation, forced assimilation and caste. The journey to full political participation has been very long and their advocacy has stressed that the journey is far from complete. Unlike indigenous peoples and some Roma, Dalit and Afro-descendant leaders typically have not used the discourse of self-determination to assert their participation claims. In this sense, their claims usually have been in line with minority rights standards on the right to participate in decision-making that affects them or the regions in which they live (see UNDM Article 2.3). Some Afro-descendant groups have sought forms of autonomy over traditional territories, which has been accepted in WCAR provisions, some national constitutions and decisions of the Inter-American Court. Colombia is the only state in Latin America that reserves seats in Congress for Afro-descendants. India and Nepal have reserved seats for Dalits at various levels of government. Several states in Eastern Europe, including Romania, Hungary, Slovakia, Kosova, Bulgaria and Czech Republic, have reserved seats for Roma in local and/or national government bodies. Political participation remains disproportionately low for all groups, however, and attention to facilitating full political participation therefore has been a key component of their advocacy. Also significant are the supra-state forms of political participation

sought. The PFII stands as an attractive model for others. Afro-descendants are persisting with their requests for a UN Permanent Forum on Afro-descendants, receiving some state support in the WCAR follow-up outcome documents. Roma have sought seats of representation at IOs – achieving some success with the ERTF-CoE relationship. Only indigenous peoples have achieved collective rights recognition to date, although the proposed paragraph in the OAS draft convention against racism could mark a diffusion of this right to Afro-descendants. States have not adopted for non-indigenous groups the language of peoples or nations that the leaders often assert, using instead the 'persons' formulation common in minority rights standards.

It is worth noting some important aspects of economic and social rights that are departures from the mainstream minority rights framework. The normative basis of their claims to economic and social rights has included the discourse of reparations. This is most obvious in the case of Afro-descendants but was also reflected in some calls by Roma, Dalits and indigenous peoples at the WCAR.[363] In the case of Afro-descendants in Latin America, states have responded not with reparations but by recognising rights to affirmative action measures. Affirmative action also is a long-standing policy for Scheduled Castes in India. Land rights have featured strongly in the requests of Afro-descendants and Dalits; Afro-descendants are the only non-indigenous group yet to secure state recognition of these rights in international fora. The latter's gains may help similar bids for national minorities to territorial rights in future, although it is important to recall that only those Afro-descendant groups with affinity to indigenous peoples have secured these land rights in practice.

In each case it must also be noted that the aspirations of activists have not yet been met by the outputs of norm emergence. They seek specific international treaties pertaining to their groups and additional monitoring mechanisms. Some Dalit activists believe that an International Convention in the Elimination of Caste-Based Discrimination is needed and persist in their recommendations for a Special Rapporteur on caste-based discrimination. Afro-descendants have requested the creation of a UN Permanent Forum for Afro-descendants, a UN Decade on People of African Descent and a UN Voluntary Fund for the WGPAD. In the OAS draft convention against racial discrimination, Afro-descendants are making a bid for collective rights on par with

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[363] NGO Forum *Declaration*, para 75 and *POA*, paras 30, 68 and 142.

indigenous peoples. Similarly, some Romani leaders have sought a European Roma Rights Charter and many would like to see an EU Directive and Commissioner specifically for Roma. The transformation of the DRIPS into a legally binding document is in the sights of indigenous leaders. These are all ambitious goals, ones not universally shared by activists nor consensually prioritised by them. Many prefer to focus attention on policy and funding commitments already targeted at their groups rather than investing time and resources in demanding legally-binding standards and/or new monitoring mechanisms. Moreover, there does not appear to be active state support for any of these proposals.

The norm emergence achievements of Dalits and Afro-descendants have not matched those of indigenous peoples and Roma. The most obvious shortfall concerns the agreement of a group-specific state negotiated international standard. In this regard, the adoption of the DRIPS in 2007 was a major victory for indigenous activists, one that privileged them above other ethno-cultural groups in the global sphere. The UN PFII is the strongest global institution for ethno-cultural groups and the UN Special Rapporteur, Expert Mechanism on the Rights of Indigenous Peoples (replacing the WGIP), UN Voluntary Fund plus the regional mechanisms for indigenous peoples in the Americas and Africa still trump any success at the global level of the other groups considered. Institutional mechanisms and resources targeted for Roma at the regional level are considerable and growing and in some ways overtake those of indigenous peoples (e.g. in terms of targeted funding).

The relative success of indigenous peoples and Roma prompts questions when evaluating the achievements of Dalits and Afro-descendants. What factors account for the difference in success between groups? How has framing, norm adjacency, organisational platforms, political opportunities and the support of IOs and states differed? What has prevented the groups from achieving their more ambitious goals of group-specific legal standards and permanent mechanisms? These points will be considered further in the next section where the processes, actors and strategies that have made this norm emergence possible will be examined.

Assessing the norm entrepreneurship processes for group-specific rights:

Dalits and Afro-descendants have followed similar pathways to norm emergence for new group-specific standards and have been challenged by similar obstacles. The process and strategies for norm emergence they have pursued are consistent with the analytical framework offered by the literature on norm entrepreneurship. Their experiences give insight into the impact of issue and actor characteristics on norm emergence by showing the particular difficulties in constructing transnational social mobilisation and new norms for marginalised groups facing racial/ethnic discrimination. The case studies also have identified many of "the material and ideological limits to such [transnational identity] construction in particular historical and political settings" (Keck and Sikkink 1998, 214-215) by looking at group experiences in a long view across distinct geographical regions. The role of international actors in norm entrepreneurship is also uncovered further by these cases. Together, the findings help to understand how weak non-state actors can forge alliances with actors across borders and in the international sphere to pursue normative change where group diversity is high and the rational motivations for state support are low.

The analysis will consider what factors made norm emergence possible and what factors hindered norm emergence. The issues of framing, norm adjacency, organisational platforms, political opportunity structures and IO and state support will be reviewed. To summarise, the key factors contributing to norm emergence have been successful transnational identity and norm framing by the groups; support of international actors to their normative claims, including material, advocacy and ideational support; the availability and accessibility of political opportunity structures, particularly as space for persuasion and socialisation of states to emerging norms; and support from critical states. Some of these factors, particularly state acceptance, have been sufficient but not necessary for norm emergence. The key obstacles to norm emergence have been a low level of awareness of and commitment to minority rights issues among policy-makers; low capacity of and space for groups to engage in sustained mobilisation strategies domestically and transnationally; the marginalisation and low level of self-identification of the group members domestically; and the influence of state rational and ideational interests that create low motivations for state acceptance of emerging norms.

Framing:

Each of the groups has undergone a process of re-framing their identities to create a new transnational identity frame that is empowering, uniting and instrumental for accessing existing norms and political opportunity structures. All have faced challenges in doing so. Among these are: the wide diversity in national/local identities; different historical contexts; different languages; domestic constraints that limit the acceptance of certain identity frames; competition among groups to privilege their identity; and the impact of discrimination in impeding the willingness of individuals to self-identify with the group.

Group diversity is a challenge for any transnational mobilisation; mass-based transnational social movements are difficult to create and sustain because of differences between national contexts (Tarrow 2005). In all of the cases, the groups considered are marginalised and discriminated against and have broadly similar experiences historically of subjugation and exclusion. Within each group, however, the context across countries varies significantly on issues such as population size, language, and relations with the state, that undermine the forging of common platforms. Afro-descendants, for example, range from a small numerical minority in most states to a majority in others, and have three predominant languages (Spanish, Portuguese, English) alongside numerous ancestral languages. While sharing a legacy of slavery, they have varied levels of economic status and political representation, particularly across the four dominant regions of North America, the Caribbean and Central and South America. Although the majority of caste-affected groups are Hindu (or of Hindu-descent), the incorporation of Buraku people from Japan and African caste-analogous communities has challenged the advocates to delineate common structures and experiences that are relevant across groups. Similarly, Roma are historically settled minorities in some countries, migrating communities in others and newly arrived immigrants in still others, while indigenous peoples exhibit tremendous diversity among communities who identify as such.

Groups within the broader transnational frame have sought often to assert their particular identity or ideological approach. Afro-descendants have been able to overcome many cultural differences to forge a shared identity linked to the experience of slavery. Even during the height of collective action during the WCAR, however,

there were divisions over advocacy approaches and the policy implications of the reparations discourse, the latter particularly marked between divergent views of North and South Americans. It is perhaps telling that only the sub-region of Central America has been able to forge a lasting organisational platform of Afro-descendants (i.e. ONECA). The caste-affected groups have vastly differing cultures, embedded in distinct cultural and religious structures across continents, but have managed to create a common objective in the international sphere with framing. The solution has been found in forging a shared understanding of caste-based discrimination beyond the experience of Dalits and the Hindu caste system and embedding the Dalit experience in a more global phenomenon of discrimination based on work and descent. This frame has been an important enabler of the norm institutionalization process. It is noteworthy, however, that both the Buraku people and the Osu wanted to be named distinctly in the Durban NGO Forum outcome documents. Similarly, at the national level, Dalits have struggled to create unity across religious, regional, ideological and political lines. They have yet to solidify a domestic coalition for sustained mass mobilisation. These kinds of divisions have manifest among Roma and indigenous peoples as well. This has been striking in the case of Roma: the Romani identity frame has been rejected by Sinti and Travellers and a host of other groups at the same time that 'ethnic Roma' have sought to exclude groups that did not share their Romani culture. For the Roma, the competition among sub-groups for attention and participation opportunities has made the identity frame consensus fragile, with the effect that disputes over in and out groups and privileged identities within the Romani frame has distracted attention from collective advocacy. The 'communicative interaction' process (Passy (1999) citing Habermas (1987)) to achieve the Romani frame has created divisions within the transnational alliance. The indigenous peoples frame has witnessed divisions, particularly between those in so-called 'European settler states' like in the Americas or New Zealand and Australia and those in Asia and Africa who typically take a less rigid approach to the 'peoples' frame and concepts such a 'colonisation'.

These differences have prompted leaders to focus more on common *experiences* of discrimination and marginalisation and the effects thereof to unite constituents. Each of the groups share experiences of discrimination that are deeply entrenched historically and structurally. They are travelling gypsies, outcastes, natives and slaves for centuries and even millennia past. These identities have translated into social hierarchies that

remain strong today, hierarchies that place indigenous, Romani, Dalit and Afro-descendant identities at the bottom. Where leaders seek to use the common experience of discrimination to unite individuals, it is conversely discrimination that impinges the prospects for mass mobilisation. Individuals are embedded in these social hierarchies and find it difficult to emancipate themselves from the core myths that perpetuate the inequality. The social, political and economic advantages of being indigenous, Romani, Dalit or Afro-descendant are low and the incentive to either climb the social ladder or accept the status quo is high. Roma commonly deny their status as 'gypsies' and try to meld into the society at large; Afro-descendants typically claim to be 'mixed' rather than African descent; most Dalits either disassociate themselves from Dalit communities by improving their economic status or changing their religion, or defer to religious doctrine and accept their identity without seeking to radicalise it for mobilisation purposes. Indigenous peoples have had more success in transforming negative perceptions of their identity into positive ones but still struggle in the face of many societies that see indigenous customs as backward.

There appears to be a common strategy across all four groups for countering this effect of discrimination by using culture to build esteem for the identity and to reinforce the logic of group-specific claims. Culture has been instrumental to challenging discrimination both by helping to constitute a more attractive identity frame and by setting the groups apart as distinct communities. Each group has attempted to imbue their identity with a newfound pride using culture as the medium to this end. Indigenous peoples have had fewer challenges in this regard given their individually rich ethno-cultural identities, which have been united loosely under similar practices of land use and spirituality. In the other groups, leaders have forged "imagined communities" across borders utilising many of the symbols of nationalism. According to one predominant theory by Anthony Smith (2000), modern nations are derived from *ethnies*, defined by him as "a named human population with common myths of ancestry, shared historical memories, one or more elements of shared culture, a link with a homeland, and a measure of solidarity, at least among the elites" (65). *Ethnie* ingredients are featured in the identity frames of each group considered here. Afro-descendants have both the mythical homelands of their African ancestors and the composite *cimarron* identities; they have *cimarron* territories defended against European intrusion by heroes like Zumbi of Brazil; traditional religions; music, dance and food co-opted into

contemporary national identities; and the legacies of the slave trade. Transnational mobilisation has concentrated on these unifying cultural and historical elements, evident in the earliest efforts of the Pan-African Congress and *négritude* movements, in the Congresses on Black Culture in the Americas and in the contemporary mobilisation around the WCAR. Dalits (of India) have resurrected their pre-Arayan invasion *ethnies* and territories; venerated the founding father Ambedkar and his precursors; and forged a Dalit cultural movement that has established Dalit literature and created Dalit heroes. Ambedkar was keen to construct Dalits as a common people, asserting that their subjugation was not divined but the product of invader oppression of indigenous communities. The Roma have their great transcontinental migration; the 'Gadjos'; their impact on music; a mythical homeland; a Romanes language, a flag and a national day. Many Romani leaders have used the language of nationalism in defence of their communities. Leaders in each of the groups have created an 'us' and a 'them' in their myths of origin to construct a collective identity at the same time as trying to seek integration of 'us' and 'them' in contemporary society, including in their demands a greater recognition of the groups' historical and contemporary cultural identity.

The names chosen by leaders are evidence in point. Each name has created for the groups a collective identity akin to a self-determining nation or people. The term Dalit means 'broken people', denoting their status as a community rather than an aggregate of individuals. 'Afro-descendants' implies a common ancestry and place of origin and leaders often use the label in conjunction with 'people'. This is the strategy pursued by indigenous peoples before them with a clear eye on claiming the right of all people to self-determination. Similarly, the term Roma holds stronger ethno-cultural connotations than 'Gypsy', helping to buttress the claim that Roma are a stateless *nation* in Europe. As a mobilisation unit, being a 'people' or 'nation' of any kind confers a high status in international society, serving as the baseline for statehood. 'People' and 'nation' are also indefinite terms, making them malleable for entrepreneurial framers.

The inclusion of *ethnie* markers can be understood principally as a project of esteem-building rather than a nationalism project *per se* (although the latter is more in evidence for some Romani and indigenous leaders). Studies in psychology show the importance of group esteem in helping to insulate group members from the impact of discrimination and the correlation between perceived public racial discrimination and low self-esteem

(e.g. Garcia and Sanchez 2009; Porter and Washington 1993; Kimura 2007).[364] By transforming the social value of identities conventionally downgraded by discrimination, leaders can improve the self-esteem of group members and decrease the impact of racial discrimination by altering public perceptions of the group identity. If individuals feel that their group identity is valuable, then discriminatory treatment by external actors will have a weaker impact on their self-esteem. The stronger the group self-esteem, the less potent is discrimination against them. The efforts at forging strong group-identity frames thus provide an important boost to efforts to prevent discrimination by law.

There are many who would regard these efforts to construct group-specific claims as 'essentialising difference' and consider the outcome as negative; when viewed through the prism of esteem-building, however, the framing of identities around cultural – and not just non-discrimination – markers, is a vital component of the norm entrepreneurship process, which can have a positive impact on eliminating discrimination. It transforms power relations by making the identity once subject to denigration and discrimination into one that is a source of pride and strength. This increases the likelihood of self-identification with the identity (because it can improve self-esteem) and can contribute to stronger forms of social mobilisation. If leaders only used non-discrimination frames, they would be relying inordinately on external actors to change their behaviour (i.e. discrimination) without empowering their own members to alter the impact of that behaviour on themselves (i.e. through building esteem). This helps also to bypass the paradox of using identities discriminated against as weapons to fight discrimination; the identities are not reified *as is*, they are transformed and then reified in a more positive 'ethno-cultural' frame.

By forging distinct communities, the groups have set the foundations for distinct group claims. The cultural strand to their identity frame has buttressed their claims to specific rights beyond the general provisions of non-discrimination, by underscoring their unique experiences and collective identity. The construction of the identity frame is

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[364] Some research finds variations of these points according to class and education: for example, those in low educational attainment categories have been found to exhibit a lower positive correlation between strong racial identity and high self-esteem than those with higher educational attainment (e.g. Kimura 2007, 18).

integral to the rights claims made and the interest to establish new normative categories for their groups.

Adjacency:

The strategy of adjacency in norm emergence is identified by Finnemore and Sikkink (1998): in order to increase the likelihood of acceptance, "activists work hard to frame their issues in ways that make persuasive connections between existing norms and emergent norms" (908) and the "standards of appropriateness defined by prior norms" (897). This approach is visible in the case studies. Dalits have based their claims on 'descent' in ICERD to elaborate a prohibition of caste-based discrimination in international law. Through framing, they did not have to create a new norm in international law but had rather to expand the understanding of an existing norm. Afro-descendant activists have taken a slightly different tack. They have expressed their claims in terms similar to those accepted previously by states for indigenous peoples. The emphasis on descent from slaves has situated their claims in the arena of norms and obligations stemming from the abolition of slavery and the slave trade. Romani leaders have used the framing of the Roma as a (stateless) ethno-cultural nation to seek existing rights granted to national minorities in international and domestic law. In a similar manner to Dalits, they did not create a new norm but instead have extended that norm beyond dominant (state) interpretations to include non-territorial ethno-cultural groups. Indigenous peoples also have extended dominant interpretations of the right of peoples to self-determination. Effective framing has made Dalit claims adjacent to norms against racism, Afro-descendant claims adjacent to norms for (indigenous) peoples and against slavery, Romani claims adjacent to norms for nations and national minorities and indigenous claims adjacent to norms of decolonisation. The norms they have made adjacent to their claims are among the most deeply embedded in international society.

Adjacency for norm emergence was challenged by the accepted "logic of appropriateness" held by states and exhibited in dominant discourses vis-à-vis existing norms. Afro-descendants had to contend with 'racial democracy' and its blanket assumptions about racial miscegenation and inter-communal harmony. They benefited from efforts by indigenous peoples to break this myth and emphasise diversity but

because indigenous peoples took the lead they also framed the discourse around ethno-cultural identity rather than race, leaving less space for Afro-descendants' claims. This made framing their identities purely along racial lines more difficult amidst an emerging discourse on multi*cultural*ism. This can account in part for the interest of activists to extend their claims beyond non-discrimination and to highlight also the cultural aspects of their identity. Dalits faced the dominance of post-colonial ideas of racism and its structure in international society. India continues to reject the framing of Dalit claims within 'descent' under ICERD because it cannot accept that racism is tolerated or practiced by a decolonised state. The logic of appropriateness proposed by Dalits is contra India's self-perception as a leader of anti-racism on the international stage. Roma have challenged the "logic of appropriateness" on the rights of nations and national minorities by 'deterritorialising' the norm and constructing a transnational nation that – in its most ambitious form - seeks specialised status in international fora. Indigenous peoples have deconstructed conventional ideas of colonialism and manifestations of the right to self-determination, brokering a new understanding of internal measures of self-determination that would be less threatening to territorial integrity of states. The way that each of these norms emerged previously in international society was under different conditions and advanced according to different state interests, namely decolonisation, nation-building and threats of irredentism. Activists have therefore had to challenge and transform accepted logics of appropriateness (specifically, logics that have underpinned state legitimacy) in order to secure norm emergence. The difficulties they have faced in the norm entrepreneurship process suggest that these logics have not been altered fully at all levels of governance.

This is partly because opportunities to socialise states to a reformed 'logic of appropriateness' have been few. Indigenous peoples were aided in their efforts at socialising states particularly by the UN Working Group on the draft declaration on the rights of indigenous peoples. Over 17 years (1995-2007) this process took place, culminating in the adoption of the Declaration; as noted in Chapter 1, this was not without states setting firm limitations to the scope of self-determination, evidence that the 'logic' put forth by indigenous activists is still not resolutely accepted (see footnote 53). Nevertheless, this direct interaction over questions of normative interpretation has proven valuable to shifting the logic of appropriateness on indigenous rights. Roma have had various international fora – in the OSCE, CoE and EU institutions – to

socialise states but their discourse has been more on issues of policy than on norms. Afro-descendants primarily have used the WCAR fora and outcome documents to socialise states and negotiate new normative innovations. This process is still evolving at the OAS draft convention against racial discrimination negotiations but Afro-descendants are not the sole focus, unlike the DRIPS negotiation, thus limiting the intensity for socialisation. Dalits have had the least such opportunities for socialisation, lacking also any regional mechanisms, which can account in part for the slow changes in the recalcitrant position of India and in other affected states.

Keck and Sikkink (1998) find that claims framed as issues of legal inequality of opportunity (as opposed to outcome) or bodily harm against a vulnerable individual/group will be more effective for transnational advocacy than other approaches. They add that success is increased where "causes can be assigned to the deliberate (intentional) actions of identifiable individuals…[rather than] problems whose causes are irredeemably structural" (27). The evidence from these cases both support and challenge their conclusions. Suggestions of vulnerability and bodily harm have featured in the representation of the groups' concerns: for example, experiences of extreme poverty, cultural erosion and/or violent attacks have been current in the advocacy work of the groups. Two critical distinctions from Keck and Sikkink's claims, however, are needed. First, there is no *legal* inequality of opportunity at play in the cases, only *de facto* inequality. This is because the right to non-discrimination is embedded in virtually every domestic legal system. Examples of legal inequality of opportunity are difficult to find these days, with legal discrimination tending to be restricted to laws that limit the rights of non-citizens, sexual minorities and, in some cases, women. The activists have had to rely more on "accountability politics" (Keck and Sikkink 1998, 24), i.e. demonstrating the gap between legal obligations and state practice. Alongside this they have extrapolated from Keck and Sikkink's criteria to use frames that demonstrate how contemporary experiences are resultant from *historical* legal inequality. They have tapped into the obligations *erga omnes* of states on issues like genocide, apartheid and slavery, and made their claims emergent from these obligations. For example, advocates have used the phrase "hidden apartheid" to describe the situation of Dalits in India and argue that the Vedic-sanctioned caste-structure of inequality persists. In Latin America, advocates emphasise that contemporary experiences of marginalisation and discrimination are the direct result of

historical experiences of slavery. Roma invoke their persecution during the Holocaust and the practices of Romani slavery that persisted late into the 19th century (Barany 2002, 109; Marushiakova and Popov 2001, 41-45). Indigenous peoples have focused primarily on colonialism as a form of legal inequality of peoples. Secondly, the advocacy of each group has focused on *structural* causes of marginalisation, rather than on "the actions of identifiable individuals". They have made society writ large and governments responsible for structures of social (or 'racial') inequality. In line with Keck and Sikkink's argument, addressing structural causes has proved challenging for these norm entrepreneurs. Discussion of contemporary forms of discrimination, however, has been difficult also because of threats to the esteem of *individual* (state) actors.   Individuals are responsible for acts of discrimination, even as they are embedded in structures of inequality that perpetuate this discrimination. To address this, activists often are framing the sources of contemporary injustice in the roots of past events, enabling current actors to accept responsibility for correcting the manifestations of injustice (including discrimination) without incurring as much individual shame for these actions. This is tricky, however, and each of the groups has faced challenges in confronting structural inequalities that largely are socially accepted even though racism *per se* is individually and socially repudiated.

Neither Dalits nor Afro-descendants have been keen to frame their identities as minorities or to make their claims adjacent to norms for minorities. They have rejected, in whole or in part, the terminology of 'minority' for self-identification or mobilisation. They nevertheless have used international mechanisms for the protection of minorities in their advocacy at some point. The reasons cited by activists for not utilising the minority frame are both instrumental and normative. Dalits have been unable to claim minority status in the domestic sphere where, in India for example, the term applies only to religious minorities. The concept of minority is not widely used in Latin American states where it has been viewed as a European construction ill-fitted to the Latin American experience. Some or all of the sub-groups within each transnational identity could claim *prima facie* to be ethnic, religious or linguistic minorities in accordance with the international understanding of these terms. When advocating in the international sphere some leaders will tacitly accept these frames to access relevant fora and partners; this has been strongly in evidence in the case of the WGM, which has not only been attended by members of both groups but which also has supported regional or

national dialogues, most actively for Afro-descendants in Latin America. There is an obvious trend in splintering away from these general minority-focused institutions, however, to group-specific mechanisms: the UN has created a specific Working Group on People of African Descent; Dalits have created a series of distinct Special Rapporteurs focusing on 'work and descent-based discrimination'; the OSCE Contact Point on Roma and Sinti has largely taken over from the HCNM for work on Roma; and indigenous peoples have helped create several group-specific institutions at the global and regional levels. Like Afro-descendants and Dalits, Romani and indigenous peoples' leaders have also moved away from the 'minority' identity. For some Roma, the minority frame is attractive and state-accepted but for others, the frame has proved less accessible because the groups are not considered as national minorities or to hold distinct ethno-cultural identities. Moreover, for some leaders, accepting anything less than recognition as a transnational nation is defeatist. Indigenous activists have proven to be much more rigorous in their disassociation from the minorities frame: many indigenous rights activists from the Americas, Nordic states, Australia and New Zealand in particular would not attend the WGM believing their presence in such a forum would undermine their identity claims. Given the plethora of mechanisms established for their advocacy, indigenous activists have had sufficient political opportunity structures to afford to be choosy, a freedom that other groups have not enjoyed until recently. Like indigenous peoples, however, many of the activists interviewed for this thesis said the frame of 'minority' was disempowering and that it did not fit with their perception of their group. They preferred terms like 'people' or 'nation'.

States appear mostly to *avoid* the minority label for these groups. This may be due to the domestic constraints noted above regarding the social construction of the term or because of state interests to dissuade collective identity mobilisation and/or rights claims that come from minority status in international society. In contrast, actors external to the groups based in IOs or INGOs appear to be more inclined to categorise them *de facto* as minorities. Compared to the state position, this recognition seems progressive but it could also be argued that the caution of IOs and NGOs to accept frames like 'people' or 'nation' and to work instead under the frame of minority is restricting norm entrepreneurship of these groups in a way that maintains the state-centric status quo. In other words, IOs and many INGOs are conservative in their acceptance of the more 'radical' identity frames that some norm entrepreneurs are

utilising, opting instead to stick within the confines of the minority protection regime and its largely state-friendly boundaries. In some respects, the acceptance of group-specific frames and norms is a way out of this conundrum for states and external actors: if the groups are considered as *sui generis* rather than as types of peoples, nations or minorities, this enables specific and restricted boundaries to be set around their normative entitlements, as opposed to the fuzzier boundaries of rights for peoples or nations.

Organisational platforms:

Transnational mobilisation is aided greatly by the creation of organisational platforms. These platforms provide an institutional focal point for information exchange, strategising, capacity-building and discourse elaboration.

There is strong evidence of forms of social mobilisation by Dalits and Afro-descendants in the domestic sphere dating back to the early 20th century but increasing significantly in the 1990s. Despite the presence of several NGOs, there have been few national platform NGOs established. Although the number of NGOs active in the international sphere has been limited, each group has created INGOs and/or networks to function as transnational organisational platforms. Caste-affected groups have the IDSN and the ADRM and Afro-descendants have network structures (rather than INGOs) including the Alianza, Afro-America XXI and the Red de Mujeres (Women's Network). In the case of Afro-descendants, these networks are preceded by the Pan-African Congress and the Congresses on Black Culture in the Americas; at present, the Black Parliament of the Americas appears to be gaining strength. There are also some sub-regional networks, such as ONECA, comprising the states of Central America. National Dalit organisations have transnational ties with several Dalit Solidarity Networks. Roma and indigenous peoples similarly have a long history of transnational links that were consolidated in the early 1970s with the creation of the IRU and the World Council of Indigenous Peoples; since then, the Roma have established, for example, the RNC and ERTF and indigenous peoples have numerous other INGOs (see Table 1.2). None of the groups has formed a permanent caucus along the lines of that created by indigenous peoples on the global stage, which has proven useful for negotiating common platforms.

The only examples of caucuses for Dalits, Roma and Afro-descendants were those created during the WCAR processes, which have not been maintained. Each of the transnational organisational platforms is headed by a member of the group; the IDSN is managed by a council that includes Dalit organisations. The degree of institutionalisation varies widely: the indigenous INGOs, the ERTF and IDSN are the most institutionalised in terms of permanent staff, funding, regular outputs and a physical base. The other INGOs/networks have a nominal website or no website, no permanent physical base nor any full time designated staff. The consolidation of these organisational platforms - both domestically and internationally - has been hindered by several factors.

The first is lack of sustained funding to enable part-time activists to become full-time professional advocates with a reliable institutional base. Funding has waxed and waned for minority NGOs. At an NGO conference in Europe in late 2008 pertaining to the FCNM, the outcome NGO Declaration notes that "involvement of civil society and minority rights organisations in the promotion of the [FCNM]…is in practice curtailed by the lack of funding available for this type of work. Particularly within the European Union area, it is virtually impossible to secure funding for minority rights advocacy".[365] Low technical capacity for completing increasingly complex funding applications for donors has been an issue, along with the structures of funding provision that tend to privilege larger, permanent NGOs over smaller looser organisations. More critical in this case is that the substantive focus of minority *advocacy* is a subject that many donors omit from their funding priorities. This is to be distinguished from funding to social development projects that directly or indirectly benefit minorities (although the latter is more common). Bilateral and multilateral donors often regard the rights of ethnic, religious and linguistic minorities as politically sensitive issues and are cautious about being seen to fund organisations (or target projects to communities) that states might perceive to be politically destabilising. Minority organisational platforms (like the IRU) with aspirations to represent groups at the supra-state level will be challenged to get funding for work that is perhaps seen as too similar to that of a political party or that produces no tangible social development outcome. These organisational platforms

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[365] *Assessing the Impact 10 years on: NGO declaration on the Framework Convention for the Protection of National Minorities; On the occasion of the Conference Enhancing the Impact of the Framework Convention: Past Experience, Present Achievements and Future Challenges*, Strasbourg, 9-10 October 2008: para. 34. The Declaration was signed by 86 NGOs.

are not in a strong position to canvas money from the individuals they seek to represent because of the self-identification and mobilisation issues noted above and also the fact that those they represent are among the poorest. It may not be a coincidence that much of the funding to the organisational platforms for Dalits, Afro-descendants and Roma, has come from private foundations like Ford, OSI and faith-based charities. Funding has also been channelled via IOs, exemplified by Norway's funding to the IDB's Social Inclusion Fund or the European Commission's funding streams focused on minorities, caste issues and discrimination.[366] Where bilateral donors have provided resources to minorities it has often come under less conspicuous banners, such as 'social inclusion' exemplified by DFID funding to combat caste-based discrimination in Nepal, although recent initiatives like that of AECID in Latin America for Afro-descendants are more overtly targeted.

Indigenous peoples have not faced the same degree of funding problems for their international advocacy work. The UN Voluntary Fund for Indigenous Populations has had some US$ 4.1 million in voluntary contributions from states and other actors over the period 1992-2007.[367] More striking are the figures of funding allocated under the European Commission's EIDHR funding line: over the period 2000-2006, nearly three times as much funding was allocated under the theme of 'rights of indigenous peoples' as was allocated under the theme 'rights of persons belonging to minorities and ethnic groups' (see Table 1.3). Notably, funding to Dalits and Afro-descendant advocacy was allocated predominantly under the 'Fight Against Racism, Xenophobia and Discrimination' theme. A cursory look at the funding allocated for 'minorities and ethnic groups' reveals that of the 48 projects at least eight are for groups that self-identify also as indigenous peoples (e.g. Batwa, pastoralists). Only 13 of the projects in this theme are designed to benefit one specific group (others benefit more than two groups or, more commonly, are regionally focused); of these, eight are targeted at Roma, two at Afro-descendants, two for minority groups in Turkey and one for the Uigurs in China. The latter projects in Turkey and China focus on promoting minority culture and education respectively. Further research on these trends is needed but these initial findings suggest that the EU is less likely to fund organisations that represent the interests of *particular* minority groups, more likely to fund organisations that represent

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[366] On the European Commission, see the *European Initiative for Democracy and Human Rights (EIDHR) Strategy Paper 2007-2010*, p. 8-11.
[367] See http://www2.ohchr.org/english/about/funds/indigenous/ (accessed 6 March 2009).

indigenous peoples and in the case of national minorities, restricts its funding to culture and education rather than advocacy work. Overall, this makes building organisational platforms for norm entrepreneurship on group-specific rights more difficult.

Table 1.3 European Initiative for Democracy and Human Rights (EIDHR) Funding by Theme, 2000-2006[368]

Theme	Funding in Euros	Number of EIDHR Projects
Rights of Persons Belonging to Minorities and Ethnic Groups	8.7 million	48
Rights of Indigenous Peoples	24.2 million	74
Fight Against Racism, Xenophobia and Discrimination	28.6 million	95

The organisational platforms also have been weakened by lack of consensus on goals and frames between key leaders. The absence of a strong central leadership figure(s) to unify has made the elaboration of common advocacy plans difficult in the face of competing personalities and priorities. For example, the Alianza managed effective cooperation during the WCAR but its ties have been much looser since then. Dalit or caste-NGOs are strong in India, Nepal and Japan but report very little horizontal cooperation outside the collaborations facilitated by the IDSN and more recently in the ADRM.

Along with the obstacles to mobilisation of discrimination and self-identification, the groups also lack firm mobilising structures to draw from in building organisational platforms. Dalits sometimes cooperate through trade union ties or faith groups, for example, but this only encompasses a portion of the population and is more fragmenting than unifying. Afro-descendant mobilisation historically has emerged through an urban intelligentsia limited in reach. With the exception of selected Romani and Afro-descendant communities, none of the groups have traditional decision-making structures that are still a feature of many indigenous communities. Although these structures have given more legitimacy to the claims of indigenous peoples' sovereignty, they are mostly localised and have not been directly useful for building transnational mobilisation. This absence of mobilisation structures to engage a more mass-based interest has contributed

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[368] For figures, see *EIDHR 2000-2006 Compendium of Funding by Theme* and *EIDHR Statistics 2000-2006*, http://ec.europa.eu/europeaid/where/worldwide/eidhr/index_en.htm (accessed 6 March 2009).

to the fact that international advocacy is elite-driven in all four cases and poorly linked to the grassroots level.

The lack of sustained political opportunity structures and limited funding for international advocacy also have inhibited organisational platform development. Afro-descendants have found some space in regional IOs and with the support of the WGM but this has been sporadic, unpredictable and highly dependant on external funding. Dalits have no designated space in international fora beyond that which they have created for themselves in the form of international conferences. There is no permanent institutional space on the scale of the ERTF or PFII as yet for Dalits and Afro-descendants, although calls for a Permanent Forum on Afro-descendants demonstrate an interest in this direction.

The participation of non-minority organisations in these group-specific transnational advocacy networks (TANs) is another important feature of transnational mobilisation. In each group there are a set of INGOs helping to shape the international advocacy strategy. For Dalits, the role of HRW, IMADR and the Lutheran World Federation stand out; for Afro-descendants, Global Rights, the Ford Foundation and the Inter-American Foundation are most significant; for Roma, organisations like the ERRC and OSI are important; and for indigenous peoples, INGOs like IWGIA, Cultural Survival and Survival are long-time supporters. Across these groups, Anti-Slavery International and MRG have been useful partners. These organisations have made contributions to the consolidation of the TAN through certification of the issues and individual advocates, provision of funding to attend international fora, publicising concerns of the groups, sharing information, creating advocacy strategies, and organising space in the international sphere for dialogue between the groups, states and IOs. INGO support has been crucial for norm emergence, not least in the way these actors have helped to shape the normative discourse by embedding it firmly in the international human rights regime. The support of INGOs can change, however, according to internal organisational priorities: for example, the impact of HRW engagement depended largely on the initiative of Smita Narula and HRW action on Dalits has declined since her departure from the organisation.

Political Opportunity Structures:

Like indigenous peoples and Roma before them, Dalits and Afro-descendants have witnessed an increase in the political opportunity structures accessible by them and targeted for them. These opportunities have given the groups space for norm entrepreneurship, enabling TANs to consolidate, rights claims to be elaborated and states to be socialised to emerging norms. The international political opportunity structures that have proved most amenable to advocacy by these groups are those focused on human rights and, to a lesser extent, those focused on development. The agency of Dalits, Roma and Afro-descendants in creating these political opportunities has varied. Most have been established by states or by IOs and although often fashioned in the name of the groups they have not necessarily been formulated (solely or principally) to advance their interests. The groups have had to transform political opportunities to meet their own goals. In each case, the successful use of these structures has depended on cooperation with sympathetic insiders that have assisted norm entrepreneurship. A key opportunity structure, the 2001 WCAR, will be considered separately.

Keck and Sikkink's (1998) theory of transnational social mobilisation argues that the international sphere is used when domestic political opportunities are blocked or in "insider-outside coalitions" (Sikkink 2004) where international political opportunities complement those available domestically. The domestic blockage can result from poor state-civil society relations, state objections to the norm emergence and inability to secure domestic political allies. In the case of minority groups, the openness of political opportunities needs to be evaluated on social, political and structural levels. Structurally, the groups constitute a numerical minority and so can lack the critical mass to use political mechanisms without alliances with other groups. Forging alliances in the international sphere can be easier than creating domestic political alliances because there are fewer actors in TANs with whom to negotiate plans and the groups do not need to rely on mass mobilisation to have a political impact in the halls of international institutions. Socially, discrimination and marginalisation impedes the ability of groups to gain sympathy for their cause from the wider population and even from within the community itself where self-identification may be low. Remedies for discrimination are

difficult to secure without external pressure for transformation because societies are bound by internalised caste and race-prejudices that are difficult to transcend.

Political channels have not been entirely closed for these groups, as evidenced by some representation in government, but they have not been effective. In the case of Dalits, the failure of political leaders to implement more forcefully the laws protecting Dalits has prompted activists to enlist pressure from outside. Dalits have been unable to create effective political alliances domestically to advance their own interests, either within parties or across party lines. With so many regional, ideological and hierarchical divisions, they have not been able to coalesce to generate greater leverage and accountability from parties. At best they constitute only 16 percent of the population in India, for example, which is enough to be courted politically but not enough to be decisive. For Afro-descendants, political freedoms in general were blocked until the 1990s. They have witnessed small increases in political representation in recent years. Engaging in domestic politics is difficult for any group lacking financial resources and political capital, something that marginalised minorities have even less of than others. Because their mobilisation has tended to be elite and not mass-based, they have lacked the 'human' leverage to trade political allegiance for changes in domestic policy, at least not beyond the rhetorical level.

Whereas in the domestic sphere, actors from these groups faced discrimination, marginalisation and elite disregard for their concerns, political opportunities in the international sphere have had open doors and conferred upon activists a new level of respect and authority. The structures of inequality in national politics are replaced by a more level playing field internationally, where activists can engage with high-level government and IO officials with ease not characteristic of their domestic experiences.

The cases show that political opportunity structures can be effective for norm emergence even in the face of state opposition; many structures, like CERD, the Sub-Commission, the Special Rapporteurs, and the regional human rights courts are outside the bounds of strict state control and have conferred tangible support. Other structures do depend on state support, evidenced, for example, by India's ability to block the adoption of the recommendations of the Special Rapporteurs on work and descent. The initiative of individual actors within IOs has been important to transforming institutions

into political opportunities; this is clear in the IDB and World Bank examples. The groups also have created their own political opportunity structures, such as the Black Parliament of the Americas or the Dalit Kathmandu conference in 2004.

The UN is the only political opportunity structure that is common across all four groups, particularly the UN human rights institutions. These institutions are relatively open to civil society and by framing their concerns broadly as human rights issues, activists found a receptive audience. The UN Sub-Commission on Human Rights was the first place that Romani and Dalit activists engaged with the UN, from the late 1970s and early 1980s respectively. Individual Sub-Commissioners took an active interest in their issues and supported the drafting of group-specific resolutions or reports, particularly in the case of Dalits. Afro-descendants had less interaction with the Sub-Commission directly but did make some good use of the WGM, especially through the political opportunities created by the WGM at the regional level with seminars targeted for Afro-descendants. The keen interest of WGM member José Bengoa was instrumental in this regard. The WGM has not served Dalits and Roma as well as Afro-descendants, constituting a space for delivery of interventions but not useful for norm emergence. In contrast to the WGIP, the WGM lacked a Voluntary Fund so attendance could not be sustained; its efforts to focus more on Romani issues were always trumped by better funded regional initiatives in Europe; and work on Dalit issues was taken up by WGM Chair Asbjørn Eide in the context of the Sub-Commission instead. The WGIP has served faithfully indigenous norm entrepreneurs since 1982 and the Special Rapporteur also has undertaken innovative country and thematic discussions.

CERD has been a significant political opportunity structure in each case as well. The decisions to convene thematic sessions by CERD on Roma and on 'descent' were major victories in the norm emergence process; these were preceded by a General Recommendation on the rights of indigenous peoples in 1997. There is now interest from new CERD member Pastor Elías Murillo Martínez, an Afro-Colombian lawyer and activist, to hold a similar thematic session focused on Afro-descendants.[369] CERD has been able to support norm emergence with little interference from states, albeit striving for state endorsement of its recommendations. CERD review of periodic state

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[369] Interview with Carlos Quesada, April 2008. Mr. Murillo Martínez has also issued a proposal for a UN Decade on Afro-descendants from January 2010 (personal communication with Patrick Thornberry, June 2009).

reports also has proved a useful political opportunity for activists, particularly Roma and Dalits, who have submitted alternative reports for consideration. CERD also has been proactive in socialising states to emerging norms in its Concluding Observations thus helping to forge domestic political opportunities for groups.

The Special Rapporteur on racism deserves mention as a third useful political opportunity structure. Country visits have provided space for actors to mobilise in the domestic sphere. The main holder of the Rapporteurship over the period examined here is Doudou Diène. He has proved amenable to wide interpretations of his mandate by taking up Dalit and caste issues, been rigorous in his exploration of Afro-descendant issues during his many country visits to Latin America, and Roma have been a constant feature of his reports from European states (and Colombia[370]).

Smith (2004a) finds that INGOs are increasingly working with regional IOs; this is reflected also for those groups where regional institutions with a human rights focus exist. The Dalits had limited regional opportunities, not least because SAARC does not have institutions focused on human rights. Caste-affected groups created their own regional political opportunities, organising international meetings, for example, in New Delhi (2001), Vancouver (2002) and Kathmandu (2004), where civil society and IOs could come together. The absence of states from the region at these meetings, however, weakened the utility of the structures for state socialisation. The outputs of these meetings have contributed to norm emergence, particularly because they are elaborated principally by the communities affected, but they lack the certification that embedding the declarations in an IO would confer. Dalits have also used political opportunities in other regions with the support of Dalit Solidarity Networks. Three targets stand out: the US and UK bilateral relations with India and the interface between the EU and India. They did have some success in securing congressional and parliamentary moral criticisms of India in a classic 'boomerang' model of advocacy but none of these actors has used material leverage against India.

Afro-descendants have had more opportunities through regional human rights institutions and IOs but these have come mostly just prior to or since the WCAR. The OAS has created a new Special Rapporteur on People of African Descent and has an

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[370] UN Doc. E/CN.4/2004/18/Add.3 (24 February 2004): see paras 6, 38, 39.

inter-state Working Group to negotiate the draft convention against racial discrimination. The support of Global Rights was critical to securing both of these opportunities, not only for the resources they brought for sustained advocacy but also the contacts and advocacy expertise. The Inter-American Court has served as a political opportunity structure for national NGOs by making some decisions that interpret the American Convention on Human Rights in innovative ways to support Afro-descendants' normative claims to land rights and protection of their cultural identity. Also of importance to Afro-descendants have been the political opportunities afforded by international development agencies. The efforts by concerned individuals within the World Bank and IDB to give attention to Afro-descendants marked a significant change in the profile of Afro-descendants among all regional IOs. This opening was hard fought, an effort led by internal actors and accelerated by the WCAR. Once the space was created for regional dialogues on the issues, Afro-descendant activists were better able to strengthen their organisational platforms. Their cooperation with important IOs helped to certify their norm entrepreneurship, not least because state actors were often present in the political opportunities created by IOs.

Roma and indigenous peoples have had several political opportunity structures both at the regional and global level. From the CoE, to the OSCE, EU, CERD and initiatives like the Decade of Roma Inclusion, Roma have been privileged by layers of institutional engagement. Attention to indigenous peoples began in global opportunity structures and has expanded to regional mechanisms in the OAS, African Union and Arctic Council. As political opportunity structures, many of these are institutionally weak mechanisms and have not necessarily met the aspirations of activists. For example, the PFII reports only to ECOSOC and has a limited mandate of engagement with the UN system. The ERTF has a much lower status than the desired permanent membership in the CoE. The more recent efforts of key Romani leaders to secure an EU Directive or Strategy on Roma have so far been unsuccessful, not least because the material implications for states and the European Commission are high. Many of the political opportunity structures that exist in IOs specifically for these groups are constructed by states and therefore do not meet fully the needs and interests of the groups they profess to benefit. In spite of these limitations, groups manage to utilise the space offered to advance their norm entrepreneurship goals.

World Conference Against Racism:

This thesis has given particular attention to the impact of the WCAR as a political opportunity structure. Activists anticipated the WCAR would be a political opportunity structure on par with the 1995 Beijing World Conference on Women, offering to the 'victims' of racism, racial discrimination, xenophobia and related intolerance an increased policy and programme response similar to that made for women. The fraught negotiations leading up to and at Durban, combined with the dramatic turn of world events just after the WCAR conclusion, meant the conference fell short of expectations. The controversies of the WCAR have obscured the positive impact that the processes had on norm entrepreneurship for some groups. The parallel fora to the WCAR gave space for elaborating common normative platforms; in lobbying for inclusion into the WCAR outcome documents the groups were socialising states to the new norms, even if not all were accepted universally. Three key outcomes will be discussed here, namely new transnational mobilisation, new recognition, and new norms and mechanisms.

Transnational social mobilisation: The processes surrounding Durban provided ready political opportunities for establishing transnational social mobilisation. All groups benefited from the increased availability of financing to civil society earmarked for WCAR related activities, which facilitated travel, consultations and communication. The myriad of parallel process at the national, regional and global level offered an unprecedented number of political opportunities structures in which to formulate and advance their claims. Their cooperation was institutionalised in new networks and the thematic caucuses created for the WCAR process. In the case of Dalits and caste-affected groups, the WCAR helped accelerate a horizontal and vertical expansion of advocacy networks. What had previously been primarily domestic advocacy with limited cooperation with INGOs (such as HRW and IMADR) became a firmly entrenched TAN with a strong organisational platform. Dalits of South Asia strategically aligned with other caste-affected groups and the Dalit diaspora located primarily in the Western states to increase their leverage for advocacy. A new global identity frame was created through this transnational mobilisation. The WCAR offered Latin American Afro-descendants the chance to emerge as a dynamic component of transnational Afro-descendant mobilisation. Meetings in preparation for Santiago

stimulated the Alianza. The WCAR also gave space for Afro-descendants from the Americas to work with those in Europe and to have new contact with African actors. The Roma population in Latin America had been isolated and virtually invisible on the international stage prior to the WCAR regional prepcom. They created a new regional platform of NGOs out of this process and brought to the mainly European Roma caucus a new and challenging perspective. Their presence in the Roma caucus underscored the transcontinental reach of the identity and justified Romani bids for representation at the global – rather than European – level.

The WCAR also gave space for mobilisation across groups in an unprecedented way. The political opportunities offered by the previous two world conferences against racism were far less, not least because NGOs from affected groups were fewer in that period. The thematic caucuses representing Afro-descendants, Dalits/caste-affected groups and Roma worked alongside each other in the NGO Forum, sometimes participating in joint events.

Recognition: Each of the groups sought recognition of a particular identity frame by the WCAR. Neither caste-affected groups nor Afro-descendants were explicitly recognised within the lexicon of international human rights standards before the WCAR processes. 'Afro-descendant' and 'caste-based discrimination' became institutionalised frames under which individuals and sub-communities could unite. This distinct recognition was a symbolic validation of their collective identities and a 'certification' of the identity as a basis for mobilisation within international fora. Although only Afro-descendants were successful in securing formal recognition within the DDPA, caste-affected groups secured recognition *in all but* the outcome documents, their identity incorporated, for example, into the NGO Forum documents, as one of the largest caucus groups and within the media reports on the conference. Roma were named specifically in the WCAR outcome documents, thus asserting their identity on the global level, although the desired 'stateless nation' recognition was not achieved. In Latin America, states recognized Roma and Sinti as a distinct community for the first time in the Santiago outcome document. Indigenous peoples wanted states to use the *peoples* formulation in the DDPA but fell short of the unqualified recognition due to states' normative concerns.

Expanding norms and mechanisms: All four groups included among their WCAR objectives the expansion of a normative framework on rights for their group. Each elaborated group-specific 'declarations' outlining their own perspective on rights claims to be endorsed by states at Durban. The WCAR processes gave the groups a sufficient time frame and high level of interaction through which to socialise states to their proposals.

Afro-descendants were the most successful in using the WCAR for norm emergence. The Santiago prepcom (and Durban) outcome documents remain central to Afro-descendant advocacy. In addition to recognition, the key innovation was to accept certain rights for Afro-descendants that had previously only been associated with indigenous peoples in international law. These included rights to "protection of their traditional knowledge"; to "the use, enjoyment and conservation of the natural renewable resources of their habitat"; and "where applicable to their ancestrally inhabited land" (*Durban Declaration,* para 34). The creation of a Working Group of Experts on People of African Descent provided a more permanent political opportunity structure in which to elaborate on these and other norms for Afro-descendants. The OAS draft convention on racial discrimination, endorsed in Santiago, could be the first international treaty to recognise rights specifically for Afro-descendants.

Norms for caste-affected groups were not recognised in the WCAR outcome documents despite the strident efforts of the Dalits and Caste caucus. Nevertheless, the space provided by the WCAR for negotiating the draft text brought firm attention to the issue and highlighted India's obstinacy. New states were socialised to the case, including those without caste-affected populations, and the media took a keen interest in the controversy and the advocacy of Dalits. The parallel non-governmental events provided a space to create solidarity for their concerns, to elaborate their demands and to embed their recommendations in the NGO Forum outcome documents. The exclusion of caste-based discrimination in the WCAR had some impact on the creation of subsequent political opportunities for norm emergence, like the CERD thematic session on 'descent' and the Sub-Commission Special Rapporteurs.

Roma were not as successful in convincing states of their 'nation' status but they did maintain the normative gains made elsewhere, including distinct recognition in the text, and elevated them to a global institution. They also strengthened their claims for representation within the UN by demonstrating their presence outside of Europe. The influence of the indigenous peoples' discourse on the Roma of Latin America was particularly striking and had the immediate effect at Durban of imbuing the normative claims of Roma with stronger language on collective rights, which appeared in the NGO Forum outcome documents. Indigenous peoples had hoped the DDPA would buttress their claims as peoples and more firmly entrench their right to self-determination. This was not the outcome but the DDPA reiterated many of the norms already recognised for indigenous peoples, albeit inserting weaker formulations on land rights issues.

As a political opportunity structure, the WCAR altered the power of states vis-à-vis the marginalised groups. It was important for opening up space domestically to discuss issues that are usually ignored in public discourse. The change was especially profound in the case of Afro-descendants and Dalits: the WCAR gave civil society the leverage they needed to push states into a dialogue. For Roma in Latin America it also gave them a chance to seek their distinct recognition. The WCAR shows that even where state interests are firmly entrenched, they are no longer able to silence their opponents thanks to the political opportunities and allies available to marginalised groups within the international sphere. Within the narrow confines of negotiating a text at Durban, India could make trade-offs to meets its objectives; outside the conference centre, they were unable to avoid their critics. Caste-based discrimination accrued a dramatic increase in international attention because of the WCAR. Similarly, Brazil and other Latina American states had hoped to avoid scrutiny of their policies on 'racial democracy' but with the strong spotlight of Durban, they were pushed to acknowledge their failings.

Post-Durban: the norm entrepreneurship continues

The extraordinary nature of the WCAR as a political opportunity structure can be appreciated better when contrasted with the weak opportunities offered by the global WCAR follow-up mechanisms. The utility of these mechanisms has depended principally on state support, funding for civil society and the agency of the experts that

sit in the mechanisms. The dramatic turn of world events on 11 September 2001 just after the conclusion of the WCAR and the negative feeling that was generated by some of the conference outcomes, has pulled international attention away from combating racism towards combating the 'war on terror'.

State support has been poor, particularly from Northern states that had a rough ride through Durban and have avoided re-opening any debates shakily concluded there. Indeed, this latter point was a precondition for Northern states to even participate in the 2009 Durban Review Conference (DRC). Political capital on racism issues in the international sphere has been redirected to attacking or defending Western state policies vis-à-vis Muslim minorities and immigrant groups.

The global WCAR follow-up mechanisms have not been well funded by states and no voluntary fund has been created to support civil society participation. Key organisations like the Ford Foundation and the Inter-American Foundation that invested heavily in civil society participation in the WCAR have withdrawn funding to support the WCAR follow-up mechanisms after the controversies that ensued at Durban. The experts or states sitting in the three global mechanisms, namely the Inter-Governmental Working Group, the Group of Independent Eminent Experts and the WGPAD, have not been as ambitious as civil society would have liked. With the exception of Edna Santos Roland in the Group of Experts, who has been actively pursuing a proposed Racial Equality Index, the discussions within the mechanisms have generated little interest from affected groups and NGO engagement has been low.

Dalits have concentrated their resources in other human rights institutions given that 'work and descent' was never agreed at Durban and consequently is not given recognition in the follow-up mechanisms. Indigenous peoples have been lukewarm on the DDPA and Durban follow-up; the outcomes of the World Summit on Sustainable Development in 2002 were much stronger in contrast. Efforts are focused on group-specific mechanisms instead. Roma also have stronger relevant mechanisms at the regional level in Europe and with the exception of the ERRC have not participated in any of the WCAR follow-up mechanisms. In contrast, Roma in Latin America have benefited from the many regional Durban follow-up initiatives. Latin American states, under the lead of Brazil, have been the most proactive in creating such initiatives: this

was the only region to host a Durban + 5 meeting and the first to hold a regional prepcom for the DRC. In both events, Roma maintained their presence and recognition in the outcome documents, as have indigenous peoples of the region. Afro-descendants have benefited from these and other regional level meetings that have stemmed from the WCAR. They have given less attention to the global WCAR mechanisms, including the WGPAD. Lack of funding for travel, poor outreach by the WGPAD and the apparent cautiousness of the experts in these mechanisms are key points that have discouraged participation.

The DRC in April 2009 was a good measure of how important the WCAR was to each group as a political opportunity structure. Afro-descendants and Dalits were a strong presence and Roma and indigenous peoples were virtually absent. The difference suggests that the WCAR offered much more to groups that lacked other political opportunity structures before Durban and that it remains a symbolically valuable mobilisation space for them. The outcomes of the DRC show some evidence of the impact of state socialisation to Dalit and Afro-descendant norms since 2001. Although India remained obstinate, several other states referred to caste-based discrimination in their interventions, including Nepal, Bangladesh, Pakistan, Mauritius and Slovenia. During the prepcoms, the interventions of the EU Member States referenced the CERD General Recommendation XXIX to support discussion of caste in the DRC and the accreditation of caste-focused NGOs. The DRC text makes some references to people of African descent (one of the few groups named) and an earlier version of the text called for the WGPAD to be "established as a United Nations permanent forum on people of African descent".[371]

Overall, the long-term value of the WCAR for norm entrepreneurship has been strongest in the case of Afro-descendants, where the leadership of Brazil as a critical state has kept political interest in the fora high and where Afro-descendant activists continue to use the Santiago outcome documents as a tool for advocacy and policy development. This top-down and bottom-up pressure, combined with investment of resources from regional IOs and INGOs, has kept the WCAR current in the region. Afro-descendant activists have been able to capitalise on the renewed government

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[371] DRC, Preparatory Committee, Second Substantive Session, Geneva 6-17 October 2008; *Compilation of paragraphs proposed by delegations; Section Two: Assessment of the Effectiveness of the existing Durban follow-up mechanisms* (13 October 2008: para 41).

interest post-DRC to stimulate new discussion on national action plans against racism.[372]

Support of international actors:

International actors have played a vital role in norm emergence. IOs have served as political opportunity structures for securing issue recognition, agenda-setting and socialisation of states. They have institutionalised emerging norms and housed new mechanisms to monitor these norms. INGOs have participated in TANs and built capacity for norm entrepreneurship. Both IOs and INGOs have 'certified' the norm entrepreneurs and norm emergence process to help increase leverage against states. Agents within these organisations have assisted with norm elaboration. Perceptions of their expertise, moral influence and political legitimacy have buttressed minority TANs that sometimes can be regarded as weaker on these points.

In Latin America, the engagement of regional organisations, like the OAS and the IDB and regional events, like the seminars of the OHCHR, has further coalesced the regional transnational mobilisation of Afro-descendants. For caste-affected groups, the UN has proved a useful focal point for the construction of global cooperation. This is also the case for indigenous peoples, although regional IO fora like the Arctic Council and African Union have also emerged as useful spaces. Romani activists have benefited greatly from the myriad of European institutions that have created opportunities for their mobilisation, evidenced most strongly by the CoE's role in establishing the ERTF.

There are a handful of international actors whose agency has proven important to norm entrepreneurship of two or more of the groups. Gay McDougall, the current IEM, has been instrumental in her roles on the UN Sub-Commission, CERD, as Executive Director of Global Rights, as a key actor during the WCAR and currently as IEM. Her impact has been particularly strong in the case of Afro-descendants but she has been supportive of Dalit rights by choosing to highlight this issue at the WCAR Bellagio Consultation, and was a member of CERD during the Roma thematic session. Minority Rights Group International was possibly the first INGO to take up the issue of caste in

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[372] Personal communication from Carlos Minott, May 2009.

the early 1980s, also serving as an active member of the IDSN; it has been a leader in documenting the experiences of Afro-descendants in Latin America since its first related publication in 1971; and has long been active with Romani organisations in CEE and indigenous groups in Africa and Asia, on publications, advocacy and training. The Ford Foundation has offered its funds to further strategic aims that support emerging advocacy: Ford seed funding to HRW in India supported the creation of a national platform for advocacy on Dalit rights; and Ford officers in Brazil targeted their resources to nurture Afro-Brazilian activists and intelligentsia. Ford funded advocacy activities for all four groups during the WCAR, including providing a major grant to ERRC that enabled some 40 Romani advocates to attend Durban.

Like Ford, other donors have crossed the line of passive donor to become active promoters of normative change. The Inter-American Foundation sponsored a major programme of work on Afro-descendant issues that helped to build the transnational network and continues to direct its funds toward projects that build Afro-descendant capacity for advocacy. DanChurchAid and Cordaid are among the donors that have offered resources for international advocacy and the work of the IDSN. Similarly, the OSI has spearheaded major initiatives in support of Roma, like the Decade of Roma Inclusion and the Roma Education Fund, at the same time as providing scholarships for Romani professionals, grants to smaller NGOs and resources to support monitoring of EU accession criteria relevant to Roma.

Tarrow (2005) identifies the role of IOs in 'certification' of non-state actors (194). This helps to legitimise actors' claims and increases access to further political opportunities. IOs often have been more open to dialogue with the groups studied here than states have been. IOs, however, have to proceed with some caution in deciding with which organisations to engage. Afro-descendants, Dalits, Roma and indigenous peoples have tended not to use violence in their advocacy and have used very little direct action; none of the groups has threatened directly the territorial integrity of states. IOs nevertheless appear open to engagement with minority activists whose approaches are more aggressive than conciliatory and do not shy away from inviting such actors to participate in events. This could be part of a strategy by sympathetic insiders to generate external pressure that motivates internal attention to the issues. They need some sparks to get less sympathetic colleagues to take notice and action. At the same

time, IOs need the 'certification' of minority groups for programme initiatives and there is clearly a need for activists that can communicate useful policy proposals to IOs, taking a constructive rather than only critical approach. This is evidenced in the Romani case, where ERIO reportedly is gaining the trust of EU institutions by providing the strategic policy advice that other bodies, like the ERTF, has been unable to offer. Without sustained pressure from a group-TAN, however, it is easier for IOs to cherry-pick individual actors as consultants rather than undertaking a broader shift towards sustained cooperation with a group; for example, Romero Rodríguez of Mundo Afro has been advisor to UNICEF and UNESCO in Latin America on some projects, an approach that is precipitated in part by the absence of a strong, institutionalised organisational platform of Afro-descendants.

The evidence from the case studies suggests that IO support for norm emergence has depended more on individual agency than on institutional commitment. Institutional commitment has been difficult to secure and engagement by IOs has fluctuated according to interest by internal actors, particularly those at a high-level. IOs also have struggled to concretise efforts at inter-agency coordination on issues, evidenced in the Afro-descendant case by the moribund Inter-Agency Consultation on Race in the Americas. In contrast, inter-agency cooperation on indigenous peoples issues has been more successful, demonstrated by a vigorous Inter-Agency Support Group on Indigenous Peoples Issues (IASG) (comprised of 31 IO members)[373] and the interface between agencies facilitated by the PFII. Roma, Dalits and Afro-descendants are still a relatively low priority for many IOs actors, who would prefer to mainstream these concerns into overall programmes of cooperation on poverty reduction and social inclusion. This is the trend visible in the IDB for Afro-descendants, and in the European Commission's hesitation on the proposed European Framework Strategy on Roma Inclusion. The processes of IO cooperation differ slightly with indigenous peoples. Indigenous peoples' norm entrepreneurship emerged out of conflict with IOs, particularly those engaged on development, and included campaigning efforts that sought to highlight the harm caused by agencies like the World Bank. Thus, IOs were trying to defend their actions and in the process, adopting policies and programmes targeted for indigenous peoples in an effort to assuage activists. Afro-descendants, Dalits and Roma have not targeted IOs in the same manner; their claims for special

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[373] http://www.un.org/esa/socdev/unpfii/en/iasg.html (accessed 9 March 2009).

attention come at a time when agencies are saturated by requirements to target special groups – such as women, children, the aged, persons with disabilities and persons with HIV/AIDS. Indigenous peoples were first in line but the political will for targeted approaches possibly has been weakened for subsequent groups.

IOs and INGOs have different motivations but similar constraints in supporting norm entrepreneurship by minorities. Both have to consider state interests in deciding whether to cooperate with minorities: IOs because they are created by states and INGOs because they are usually funded by states. Cooperating only with organisations that use non-violence and have no secessionist aspirations are relevant also for INGOs. INGOs gain much in cooperating with minority groups in TANs, such as access to donor funds, access to information at the local level, greater legitimacy for country-level work and the use of minority NGOs as implementing partners for local-level projects. Just as INGOs help to certify minority claims, working with minority groups certifies the legitimacy of INGOs and helps them to realise their objectives.

The cooperation with INGOs has not been without controversy, however. The INGOs have been seen as outsiders either by minority leaders within the TAN or by external critics. Dalits have faced criticism for working with 'Western' or 'Christian' organisations; Afro-descendants have not always welcomed the influence of American NGOs in Latin American affairs; Romani leaders have regarded many INGOs as 'Gadjo' institutions; and many indigenous leaders have long rejected anything other than self-representation. NGOs from the North and South have differed in their ideological views as well, with Southern actors more likely to be focused on anti-globalisation and leftist views and Northern actors pursuing liberal agendas concerning legal rights. The structures of funding have meant that Northern INGOs often filter the distribution of funds to smaller, Southern-based minority NGOs. The lower level of funds minority NGOs receive makes it more difficult for them to consolidate institutionally. By controlling funding allocations, Northern INGOs can (unduly) influence the predominance of certain actors, their project activities and the voice and advocacy approach they bring.

So far the benefits of transnational cooperation with INGOs have outweighed the negatives. INGOs understand the *modus operandi* of IOs and diplomacy in

international society and have helped to broker the norm emergence process. They have provided much needed seed funding, advocacy support and information. As the organisational platforms of Dalits and Afro-descendants strengthen, the relationship with INGOs can change. This is evident in the indigenous case, where strong indigenous INGOs have relied far less on other INGOs to support their international advocacy. INGOs tend now to support more nascent mobilisation by smaller and institutionally weaker indigenous actors. Strong indigenous INGOs have altered the interface with states, making direct negotiations instead of via INGOs and positioning themselves as quasi-political representatives rather than just activists.

Donors may need to reconsider their relationship with burgeoning minority INGOs, offering longer-term financial support to institutions that demonstrably represent minority-group interests without shying away because these are more 'political'. IOs that seek policy input from minority groups have to be prepared to invest in institutional development, operational costs and policy-capacity building as well as responding in good faith to the policy recommendations minority NGOs offer. It will always be challenging to establish adequate accountability and representation of groups via INGO structures. There are two examples of promising practice: ERIO and IDSN. ERIO aims for a staff that is majority Roma, is institutionally an INGO (unlike the ERTF, which is more a political structure) and has a close relationship with the Commission that appears to be mutually beneficial. It serves as a conduit for information exchange between Romani organisations and the EU institutions. ERIO is dominated, however, by a single figure, Ivan Ivanov, who could have undue policy influence with less accountability. The IDSN is possibly a better model in this regard: its structure consists of a council of core national Dalit platform NGOs or solidarity networks, with INGOs as associate members, and its decision-making is led by the council directly.

Support of states:

The support of a small number of states has influenced strongly the norm emergence process in the two case studies. Afro-descendants have gained visible state support for group-specific norms; in contrast, Dalits and caste-affected groups have gained sympathy for their cause but few states have been willing to expend their political capital in support of norm entrepreneurship. This difference helps to uncover some of

the factors that help or hinder socialisation of states to emerging norms. State motivation for endorsing norm emergence can be understood from both ideational and rational perspectives. The studies also suggest that state support varies at different levels of analysis, not least because the costs and benefits of norm endorsement inside and outside the state differ. This analysis is based on perceptions of state interests by actors in IOs and minority TANs and by the discourse of states in international fora, and to a lesser extent, by their actions domestically. The present thesis has not been conducted with interviews of state actors, thus limiting any firm conclusions, but some points are offered here that could be tested with future process-tracing research.

The most important state for advancing group-specific norms on Afro-descendants has been Brazil. Brazil is a quintessential 'critical state', a regional hegemon and the state with numerically the largest population of Afro-descendants. Brazil was a firm supporter of Afro-descendants' claims during the WCAR, in regional follow-ups, in politically and financially supporting the creation of the OAS Special Rapporteur on Afro-descendants and in taking a lead position in the elaboration of the draft OAS convention against racial discrimination. No other state in Latin America has challenged Brazil's direction or efforts for norm emergence. India similarly has been a quintessential 'critical state', positioned as a regional hegemon with the largest numerical population of Dalits. Unlike Brazil, India has been obstructive towards norm emergence in the international sphere, blocking any state support for provisions in the WCAR on caste-based discrimination and undermining efforts by UN experts to review the situation of caste-affected groups. Until very recently, other states with caste-affected populations had not contradicted India's stance in international fora (even whilst taking more open approaches at the domestic level, as evidenced by Nepal). Some change was witnessed at the DRC, where Pakistan, Nepal and Bangladesh noted in their high-level interventions the need to consider caste-based discrimination in international fora.

There is very little evidence of states from outside each region trying to socialise states to the emerging norms. Guatemala, Switzerland and Barbados gave some support to the Dalits and Caste Caucus during the WCAR, and both the US and UK have made some declarations condemning India's obstinacy on caste but these efforts have not been sustained nor accompanied by material sanctions. The US has not pressurised Latin

American states to adhere to emerging norms for Afro-descendants save through the unilateral actions of the US Congressional Black Caucus in some individual states like Colombia. Support to norm emergence on Dalit and Afro-descendant rights has not been a foreign policy priority but more attributable to the agency of individual state actors, either in delegations to UN fora or in legislative branches domestically. Latin American states like Brazil and Colombia that have been open to Romani rights have not intervened in European regional affairs to push for better norm adherence. Groups of states conventionally strong on human rights socialisation in international society each have their own internal problems of racial discrimination, making them ill-placed to put pressure for normative change on racism in other states. To do so risks reciprocal pressure that can harm their own identity and legitimacy interests. Post-colonial states have more readily used accusations of racism against the North in the (false) belief that their own societies were not internally racist. The groups studied here have questioned the validity of these claims. In addition, both Brazil and India are regional hegemons and criticising their actions offers little material or strategic gain for states outside the respective regions. African states have championed the WCAR and DRC processes and reparations for the transatlantic slave trade but their efforts seem focused more on their own benefit than that of the African diaspora. One exception has been efforts of bilateral donors like DFID, NORAD, and AECID to fund targeted initiatives for Afro-descendants and Dalits through development programming.

Material interests of affected states have been a factor in Dalit and Afro-descendant cases. Four material interests are most relevant: security, territorial integrity, voting power and economic gains/losses. For Brazil, supporting norms for 'Africans and people of African descent' in the WCAR Brazil strengthened its South-South relations with African states and created good will that can be useful for promoting its economic and strategic interests in the region. Domestically, greater attention to Afro-descendant concerns increased the legitimacy of both outgoing and incoming governments by generating support from Afro-Brazilian voters. India's Dalits are 16 percent of the population and while the Dalit vote is courted by most political parties, it has conventionally been splintered and therefore not decisive as a whole. Positions of political and economic power in India are dominated by high-caste groups; it is not in their material interests to redistribute wealth to tackle low-caste poverty or to dismantle the *de facto* privileges they accrue from the caste hierarchy. Notably, the conventional

material concerns pertaining to minority groups, i.e. security and territorial integrity, have not been consistent factors in these norm emergence processes. Afro-descendants have posed no security threat in the contemporary period but some land claims have threatened state authority over certain territories valuable for resources or tourism. Security has been a factor for Dalits because Naxalite/Maoist militants in India and Nepal have a high number of Dalit members. The effects have differed: in Nepal, this has presented more openings for caste-focused advocates in post-conflict democratic reforms but activists in India report it has had little direct impact on their advocacy.

Rational motivations alone cannot explain fully the actions of states in these cases. The fact remains that Afro-descendants and Dalits mostly are poor and marginalised groups with weak political and economic power. They constitute less than 20 percent of the population in most states and often have been co-opted by political parties that have failed to fulfil their promises. None of the groups has a kin state that might prompt government concessions as a means of preventing irredentism. This same holds true for indigenous peoples and Roma. To understand the success and failure in norm emergence it is necessary to consider also ideational motivations for state actions.

Finnemore and Sikkink (1998) identify legitimacy, conformity and esteem as three key ideational factors influencing the propensity of states to be socialised to emerging norms. Legitimacy and conformity appear to be strong factors in these cases, although they cannot be divorced completely from material interests. In Latin America, the treatment of Afro-descendants helps portray state commitment to norms on multiculturalism and democratic governance that have characterised the post-authoritarian regimes. The Santiago about-face by Brazil in endorsing group-specific norms for Afro-descendants (and Roma) signalled a new criterion for legitimacy of states in the region and many have been quick to conform to the Brazilian model. The fact that Afro-descendant civil society is weaker in most states, however, means they have not gone as far as Brazil to implement the norms. The material costs of doing so domestically are high. India has rejected norm emergence on caste-based discrimination for fear that its projected international image as a modern, egalitarian and democratic state will be compromised by its failures to secure equality for Dalits. Other states with Dalits have often conformed to India's narrative that caste is not race. India maintains that its standards for the elimination of caste-based discrimination are extremely high,

thus asserting the government's legitimacy domestically and internationally. It is also important to note that the position of the state in international society affects socialisation possibilities. Brazil and India as regional hegemons can socialise other states to emerging norms of legitimacy.

Manipulating the esteem of state actors is more challenging in these cases. Domestically, the status of Dalits and Afro-descendants is still very low and their marginalisation is not regarded by the majority of the population as a failure of the government nor a threat to its legitimacy. Each state has perpetuated (or not contradicted) myths that safeguard the esteem of state actors in considering these groups, such as racial democracy and the constitutional outlawing of 'untouchability'. For this reason, the groups have to rely heavily on norms in international society to influence state behaviour. The challenge is made more complicated because state identities are threatened by emerging group-specific norms. The idealised status of Afro-descendants and Dalits is integral to the founding principles and self-perception of many states: Afro-descendants challenge the myth of racial harmony that Latin American leaders have long portrayed as a unique achievement of the region; Dalits challenge India's post-colonial aspirations for a just, non-hierarchical democracy of citizens.

Advocates have been able to manipulate esteem by emphasising their positions of extreme marginalisation. They are among the poorest of the poor and state actors seek to address poverty as a result of (ideational) international development commitments and (material) interests in domestic growth. Furthermore, the groups are fortunate (ironically) that they suffer from violations of some of the most firmly embedded norms in international society (e.g. genocide, slavery, apartheid, racial discrimination). Groups can use these norms to influence state perceptions of esteem, legitimacy and conformity. The "logic of appropriateness" in adhering to these norms is not questioned by states. What advocates have been challenged to do is to persuade state actors to admit to their *failure* to adhere to these norms. This has been difficult because many state actors might believe they compromise state legitimacy in the international sphere by so doing as well as damage their own esteem by accepting culpability for these crimes.

Of particular interest is the norm against racial discrimination. The controversies that ensued at each of the world conferences against racism show that states have been slow to reconceptualise the purpose of this norm in international society. Those in post-colonial states have long argued that racism is a construct of colonialism, implying that racism does not exist in decolonised countries. Similarly, post-communist states see racism as anathema to communism and thus not a legacy they perpetuate. Post-colonial and post-communist states therefore have struggled to accept that racism is an internal problem for them. Groups that seek state support to eradicate discrimination have faced blanket denials that racism exists. Two things have helped groups to challenge these assumptions: the WCAR and transnational mobilisation. The 2001 WCAR created a political opportunity structure in which dialogue on 'contemporary forms' of racism could take place, pushing many states to make ideational concessions over the course of the preparatory processes. Groups had space, time and resources for socialisation and persuasion similar to that long-held by indigenous peoples in the international sphere. Transnational mobilisation has helped to diffuse attention from individual states, attention that might frame individual states as pariahs in international society. By supporting norm emergence for a transnational group, no single state is isolated in its responsibility for racial (or caste) discrimination. This helps to decrease the threats to esteem, identity and legitimacy in international fora.

State support, however, must be disaggregated according to levels of analysis. The material costs of accepting norm emergence in the international sphere often are less than the costs of doing so at the national level. States can make rhetorical commitments to emerging norms without having to provide immediately the resources and legal reforms needed to enact the new norms domestically. For example, states have adopted international soft law commitments for Afro-descendants and Roma but where they have faced proposals for legally-binding obligations, they have been less forthcoming. India's objections to the 'work and descent' standards are linked partly to the fact that accepting 'descent' as a relevant norm means accepting that ICERD applies. This trend is evidenced also in the case of Roma, where not all states accept application of the FCNM to Roma, and for indigenous peoples by the low number of ratifications of ILO Convention 169 and state reservations to the DRIPS. Another interesting example of the differential costs by level is Nepal: although domestic adherence to emerging norms for Dalits is most likely motivated by a post-conflict inclusion project reflecting Maoist

demands, championing these same norms at the international level would harm relations with India.

The ideational motivations also seem to differ: the case studies reveal a major gap between the discourse on group-specific rights at the international level and that used by local government actors. While those in the Foreign Ministry are conveying commitments to the eradication of discrimination, those at home are less likely to accept that discrimination is a problem. It may be that esteem is assessed differently in the domestic and international spheres, such that locally, actors incur higher costs to their esteem in acknowledging racial discrimination than do actors in international society.

The case studies show that state support is a sufficient but not a necessary condition for norm emergence. International actors have assisted norm emergence even with the opposition of states, particularly with respect to issue recognition, agenda-setting, norm elaboration and institutionalisation and even in creating norm monitoring bodies. What is clear is that socialisation of states to emerging norms can be impacted greatly by states, particularly by critical states. At the norm adherence stage, this socialisation becomes of central importance. The enthusiasm of IOs for norm emergence, therefore, gives a false impression of how far states have really been socialised to these new norms. The relative ease with which norm entrepreneurs have been able to secure norm emergence without the active help of states belies the much greater challenges ahead of securing those norms in practice.

Rational factors shape state interests in norm emergence for group-specific norms but state perceptions of legitimacy, conformity and esteem are also relevant. To be successful, groups have had to challenge the accepted "logic of appropriateness" on deeply embedded norms. The engagement by some states from outside each region shows that even though there were few material interests in supporting norm emergence for these groups, ideational motivations stimulated action by some state actors. An important point for the future of norm adherence is that state socialisation varies according to the level of analysis. None of the groups discussed here have achieved full norm adherence domestically. The material costs of norm adherence domestically are high and knowledge of local state actors of emerging norms on group-specific rights seems to be very low. There is a need to work with local actors to socialise them to

norms and to create accountability mechanisms so the norms are enforced and implemented. Checkel's (2005) work suggests that different strategies of persuasion can be more or less effective; in the case of discrimination, for example, persuasion 'in camera' might be more successful if costs to individual esteem are reduced. Discrimination – or denials thereof - is not easily overcome but institutions can make actors more legally, socially, and politically accountable for perpetuating discrimination and in the long-term, transform their "logic of appropriateness" in norm recognition.

The impact of norm emergence for group-specific rights:

The new group-specific norms emerging for indigenous peoples, Afro-descendants, Roma and Dalits have increased the complexity of the international protection regime for minorities with both positive and negative effects. The once singular global regime incorporating all ethnic, national, religious and linguistic minority groups under provisions like Article 27 of the ICCPR has now fragmented into several distinct branches, each delineated by a set of group-specific norms and mechanisms. While few would dispute that overcoming centuries of marginalisation, discrimination and cultural erosion is a just cause, it is possible that the proliferation of group-specific standards may not be the best means to this end. These trends could harm the interests of other (minority) groups, essentialise differences and alter the order of international society.

Norm emergence has had three key impacts: first, it has empowered the groups in question; second, it has altered the landscape of international society; and third, it might prompt other communities to seek additional group-specific norms. These points have normative and practical implications both for the composition of international society and for policy vis-à-vis minority groups. Specifically, the emerging norms: might necessitate further support to groups and states for the purpose of norm adherence; will require further consideration of accountability of activists to group members locally; and finally, could necessitate the elaboration of criteria for assessing whether additional group-specific norms are needed and/or legitimate.

Empowering minority groups:

The fragmentation of the minority protection regime has transformed in several ways the power structures in which minority communities are embedded. The opportunity to elaborate group-specific norms has been emancipatory for the communities subject to these new norms. The process has increased their participation, liberated them from the power constraints of the 'minority' term, and deconstructed the Eurocentric conventions of minority protection.

Unlike earlier minority protection regimes, the norms emerging for Dalits, Roma, Afro-descendants and indigenous peoples have been shaped in large part by members of the groups themselves rather than principally by the interests of states. The elaboration of these group-specific norms has been an exercise in self-determination. The norms have not been driven by kin state interests or by conventional security concerns but rather by a dialectic between these groups, states and international actors. From this dialectic, a discourse on new group-specific norms has emerged. The level of participation by these groups in the discourse has been unprecedented, facilitated by, *inter alia*, TANs, political opportunity structures and the certification of their demands by international actors. Groups that have been invisible and marginalised domestically are now the focus of international attention and their recognition offers valuable symbolic gains and leverage for altering their status at the national level. Within the international sphere, pursuit of norm emergence has increased interest in the concerns of these groups, increased their participation in decision-making that affects them, and increased resources allocated to their communities. These gains at the international level have not translated directly into domestic change, however: for example, new institutions created domestically to address group-specific concerns have lacked adequate funds and groups still struggle to secure better political participation domestically.

The groups no longer have to call themselves minorities. With the exception of some Roma in Europe, for who the label minority is instrumentally useful, the other groups are not constrained by the minority label, which they have found to be disempowering, inappropriate or logically inconsistent with their self-perception. They can make rights claims without having to use the minority frame. This alters the inter-subjective understanding of the place of these groups in domestic and international society; far

from being nameless minorities within states, they are asserting their specific identities, their 'people-ness' and their transnational community.

The model of minority rights that emerged from the UN system was tied too closely to European historical experiences and assumptions of state-minority relations. The UN minority protection regime was effectively a European ethic that was extended to serve as a universal ethic. As Kymlicka (2007) argues, the regime has had the potential to cause harm in other regions and for other groups because it assumes that the preconditions that have helped minority protection to function in Europe exist elsewhere when they might not. The new group-specific regimes are better adapted to regional experiences, other identities and the unique state-minority relations that these groups have endured. Prejudice by states in other regions against 'Western' minority rights (Kymlicka 2007, 258) is decreased by the indigenisation of the group-specific norms, making them more useful for local advocacy. For example, Latin American states do not have a tradition of using the 'minority' concept but Afro-descendants have benefited from aligning their claims adjacent to indigenous peoples' rights to which states in the region have been socialised. Dalits and other caste-affected groups in Asia and Africa are shaping norms for combating a phenomenon that is not paralleled historically in Europe.

Activists will need more support, however, if they are to be empowered to achieve norm adherence. This is a key paradox of norm entrepreneurship evident across the cases: norm entrepreneurs often are stronger in the international sphere to achieve norm emergence then they are in the domestic sphere to secure norm adherence. This is because state ideational and rational motivations differ at these two levels and because the ability of groups to mobilise transnationally with the assistance of international actors has been more successful than their ability to mobilise domestically where IO activity is less, interests of group members diverge and the impact of discrimination and exclusion is more constraining.

Norm adherence at the domestic level requires strong advocacy skills on the part of groups and understanding of the emerging norms on the part of state actors. This means investing in long-term sustainable capacity building of all relevant actors. Civil society for each group requires funding to build and maintain organisational platforms and

targeted support on advocacy skills training. Projects that build group esteem, both internally and externally, will have multiple benefits. States, particularly at the local level, need training on standards, policy support from IOs and NGOs and opportunities to work directly with the groups in question. From this dialectic, actors can take steps toward norm internalisation.

The international sphere will likely remain important for "insider-outsider coalitions" and so the preservation of space in the international sphere for socialisation and persuasion to continue is vital. This space provides political opportunities for the 'voices of moderation' within groups. It is important to emphasise that group empowerment came from normative change rather than violent conflict. All of the groups considered here have had brushes with violence in the past – both against them and by them; there is no reason to assume that they might not take up arms in future, particularly where evidence suggests that international interest in their affairs can be increased dramatically as a result (Kymlicka 2008, 20). The utility of political opportunity structures and support to peaceful organisational platforms is particularly striking when compared to the transnational mobilisation of radical Islamists and its devastating effects. International society needs to consider carefully how it can strengthen space for norm entrepreneurship that uses peaceful methods to generate norm adherence.

Changing the landscape of international society:

The creation of group-specific regimes has increased pluralism in international society and challenged the hegemony of the state as the legitimate and unitary representative institution of peoples therein. This challenge falls somewhere between the communitarian and cosmopolitan assumptions about the locus of the right to self-determination, the former believing this rests with the community, the latter with the individual. The groups are questioning communitarian assertions that the state is the realisation of self-determination of the people by claiming (implicitly or explicitly) that the right to self-determination of their group members has been denied by the state. At the same time, cosmopolitan assumptions are unhelpful because these groups feel that collective identity has meaning and purpose for them, including across borders; they proclaim a transnational identity but one that is *exclusive* and not universal. The right to

self-determination that these groups assert is located in a different unit of analysis than the state or the individual.

Their efforts show how new forms of political community are active in the international sphere. General minority rights have served as a caveat to constitutive norms in international society, like national self-determination and sovereignty, by acknowledging sub-state diversity and imposing limits on state behaviour towards these groups. These rights were always contained in the domestic sphere, however, and by most accounts were elaborated more for the purpose of protecting state sovereignty and territorial integrity than nurturing cultural diversity. The new transnational group-specific norms do something different: they make a post-Westphalian challenge to the idea of community in international society and the notion that the state is the basic unit of analysis and basic right-holding entity. As transnational right-holding groups, they have the potential to represent their communities in the international sphere independently of any one state, transcending regions and even continents. Unlike other groups with group-specific rights, e.g. women, children and persons with disabilities, these groups possess the basic building blocs of *political* community, such as shared ethnicity, religion and language, that have constituted our understanding of nations in international society. The strategies of building group esteem through incorporation of *ethnie* markers in their identity frames further underscore this. Moreover, they all have some interest in land: indigenous peoples have traditional territories, as do several Afro-descendant groups; Romani groups are either historically settled with weak land rights or nomadic with culturally –specific land rights; and Dalits, also with small and weak land holdings, have made some overtures regarding historical treaties regarding land. The latent capacity for statehood, however tenuous, makes these groups a very different kind of non-state actor in international society.

Privileging states in international society as representatives (and defenders) of communities may be conventional and orderly but there is no agreement among political theorists as to whether this is the most just system of representation. Even communitarians accept a 'thin' universal ethic that trumps state sovereignty in cases where egregious harms are being made against (usually minority) sub-state groups (Linklater 1998, 60). Andrew Linklater (1998) explores some of these possibilities in *The Transformation of Political Community* where he posits, *inter alia*, the arguments

for new forms of political community that are more inclusive than states. He believes there is:

> a strong argument for granting the members of minority groups the right of appeal beyond sovereign states to global legal institutions which give expression to the normative ideal of an international society of peoples. Far from being antithetical, communitarianism and cosmopolitanism provide complementary insights into the possibility of new forms of community and citizenship in the post-Westphalian era. They reveal that more complex associations of universality and difference can be developed by breaking the nexus between sovereignty, territoriality, nationality and citizenship and by promoting wider communities of discourse. (60)

In many ways, the groups considered here are fulfilling Linklater's possibilities. Dalits, Roma, Afro-descendants and indigenous peoples are not tied to each other by citizenship, nationality, territoriality or sovereignty; they are united by a shared experience of exclusion by the state. They may feel more affinity with members of their group than with the state and their fellow citizens who ignore, degrade, discriminate or patronise. The state has not been emancipatory for them, contra communitarian assumptions, and individual human rights have not sufficiently served their interests. They bring us one step closer to the "normative ideal of an international society of peoples" by seeking new forms of representation at the international level and have opened up "wider communities of discourse" on minority rights.

These prospects of supra-state representation demand further scrutiny, however. While this representation can offer opportunities for a dialectic between excluded and included groups (Linklater 1998, 10), it also raises questions of accountability for the discourse that results. The presence of minorities in the international sphere, in particular when in community with other members of their transnational group, gives more opportunity for shaping a new discourse with states than was possible in the domestic sphere where such discourse was blocked or insincere. The case studies show clearly that political opportunity structures at the international level have opened up new forms of interaction with states. How this discourse might be institutionalised over time remains a fascinating question. The permanent seat sought by Roma in the UN and CoE opens up possibilities of supra-state elected institutions for transnational minority groups. The PFII was a step in this direction but has fallen short of expectations, realised as an interface with UN agencies rather than a distinct UN representation for indigenous

peoples on par with states. Afro-descendants have not yet clarified how they see the proposed UN Permanent Forum on Afro-descendants functioning. The PFII and ERTF have demonstrated that despite the obvious logistical challenges, it is possible to have a quasi-electoral system of supra-state representation. What is less clear is the accountability of these actors to the constituent groups they portend to represent and to the wider societies on which their discourse and decisions might impact. Some critics of minority rights already are concerned that the standards give IOs and other states too much authority to intervene in the domestic affairs of the state. State freedom is reduced by group-specific norms in key areas like national building, equality of opportunity, and territorial control. Group-specific supra-state institutions could impose conditions on state practice that affect non-minority groups, with limited avenues for appeal. Transnational ties of groups and loyalty to supra-state institutions may weaken loyalty to the state. Even the members of the beneficiary group might question some of the policy proposals emerging from the obscure international sphere.

For the time being, most group members and activists do not seek radical changes to the construction of international society. Their priority is to invest in the state to make it more equitable and representative, seeking to be valued citizens, for their diversity to be respected and for hierarchies to be abolished. They want their right to self-determination to be embedded in the state provided it is done so on the basis of equality and the acceptance of diversity. Their pursuit of group-specific norms in international society is in many ways a mirror of emerging multiculturalism domestically and may support it. As the pluralism of minority groups and their distinct representation becomes more accepted in international society, this can socialise states to ideas, rights and institutions of pluralism domestically. The most likely future scenario is that IOs and states will continue to support group-specific supra-state institutions for advisory purposes. They will be valuable symbolically and for socialisation but have no power to coerce state action, much as is the case for domestic statutory 'minority councils'. Whether they become a temporary 'special measure' or permanent structures of international society is uncertain. If groups come to rely too heavily on these supra-state institutions to promote their interests the risk is that incentives to engage in politics domestically will remain low. This could lead to further disenfranchisement of already marginalised groups. A constructive policy approach would strive to increase the accountability of supra-state advisory groups at the same time as creating support and

incentives for minorities to engage in politics locally. The supra-state institutions would then serve as useful tools for "insider-outsider coalitions". This bottom-up, top-down pressure can in turn makes states more accountable to norm adherence.

Stimulating more group-specific norms:

The directional trend towards group-specific norms raises two essential questions: how do we determine which claims for group-specific norms are reasonable?; and what impact do these group-specific norms have on other minority groups not able or interested to follow this path?

The fragmentation of the minority protection regime reflects a general trend of horizontal fragmentation of rights by group. Vertical fragmentation of rights has long been a feature of human society, with special privileges accorded by hierarchical status. The modern period literally turned this idea on its side, creating differentiation of rights for different groups but basing this on a principle of horizontal equality. There are now group-specific rights for, *inter alia*, women, children, persons with disabilities, migrant workers and emerging rights for LGBTs. These rights are not seen to privilege these groups *above* others but rather as rights that respond to the particular needs of these groups, their legitimate entitlements and the barriers they face to equality.

Any concerns that might be raised about fragmentation of the minority protection regime must first acknowledge the weaknesses of the regime, among them that it fails to deal adequately with differences across groups. This was a major focus of Will Kymlicka's recent book, *Multicultural Odysseys* (2007), where he focuses on the difficulties presented by the global spread of liberal multiculturalism. Among his concerns is the distortion that has resulted from the separation of the indigenous peoples rights regime from general minority rights protection. He does not question the legitimacy of indigenous rights *per se* but rather the negative impact of this fragmentation on the rights of national minorities. He believes that national 'homeland' minorities (i.e. historically settled minorities with a distinct territorial concentration) have lost out in the minority/indigenous rights split. Norms for indigenous peoples have emerged that by his analysis should be afforded equally to national minorities, in particular rights to autonomy and self-determination. It is a good example of how

group-specific norm emergence can unintentionally harm the legitimate interests of other minority groups.

In response, he posits the need for a "framework of multi-targeted minority rights" (*Ibid,* 301) but argues that "to date, targeted norms have emerged in an ad hoc fashion…[that] is unlikely to be stable" (*Ibid,* 301). He points out:

> we need to think more systematically about the role of targeted minority rights…there is no established procedure or criteria for evaluating proposals to establish new targeted categories, and no general theory of how and when targeted categories are needed to supplement generic minority rights (*Ibid,* 300).

With the increasing complexity of rights regimes, Kymlicka's interest to establish a "procedure or criteria" for determining the justness of new group-specific rights is pressing. Most commentators accept that having a distinct indigenous peoples rights regime is just but their assessment has been based on the particular case of indigenous peoples without proposing universal criteria. It is beyond the scope of this thesis to consider what these normative criteria should be. The case studies suggest, however, that the success of norm emergence has depended heavily on instrumental factors such as transnational mobilisation and identifying a critical mass of affected states. All of the groups considered here exist across continents, not just borders. They also are concentrated regionally, whereby most states within the region have populations of the groups in question. The population sizes are also large: Roma are Europe's largest minority at roughly 9-11 million; Afro-descendants in Latin America number some 150 million; Dalits are 240 million, in addition to another 10 million of caste-affected groups globally; and the UN estimates that indigenous people number over 370 million. In order to allocate the time and resources to group-specific norms and mechanisms, there is an evident cost-return calculation. Neither IOs nor states are likely to countenance investing in norm emergence for groups that exist in one or two states. Moreover, group-specific norms are institutionalised in regional or global structures in which agreement for new norms must be sought across a majority, if not all, states. This is difficult to secure and smaller groups seeking protection might achieve stronger norms and mechanisms by negotiating domestically where there are fewer actors to persuade.

The problem for these non-transnational minority groups is that to achieve norm emergence domestically they may still need the leverage provided by international actors and "insider-outsider coalitions". For this reason, maintaining the generalised minority rights protection regime with its standards and monitoring mechanisms is valuable for sub-state groups. The proliferation of group-specific norms, however, may be weakening these core institutions. The mechanisms specifically targeted for Roma, caste-groups, Afro-descendants and indigenous peoples have grown significantly. These mechanisms have required new resources. At the same time, there is evidence that the general minority protection mechanisms are receding: repeated calls to create a Voluntary Fund for minorities have been ignored and the 5-day WGM has been replaced with a 3-day Forum on Minorities that has no permanent experts (save for the attendant IEM) and can only consider one theme per year. Whereas minorities previously could raise grievances within the WGM and the WGM could explore a range of thematic issues, the new structure severely curtails both these options. Meanwhile, Roma can access a myriad of political opportunities at the regional level; Afro-descendants have their own WGPAD and a regional Special Rapporteur; indigenous peoples have, among other things, the PFII, Expert Mechanism and Special Rapporteur; and Dalits, although lagging behind the others, did have two Special Rapporteurs until recently and the ongoing support of CERD.

With decreasing space for generalised minority issues some groups have tried to reframe their identities to access the rights and political opportunities of the group-specific regimes. This has been most evident in groups claiming to be indigenous peoples (Kymlicka 2007; Lennox 2006) and the efforts of immigrant minorities seeking protection under the FCNM.[374] The effect is that the concept of 'indigenous peoples' and 'national minorities' is distorted and the rights regime weakened by application of the norms to communities that do not fit into the category legitimately. As these other group-specific regimes grow, a similar distortion may occur. Already there is evidence that this is creating tension: for example, the attempts by Travellers to claim access to norms and institutions for Roma have inflamed relations between the groups in some cases.

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[374] Personal communication with Alan Phillips (Chair of the FCNM Advisory Committee), June 2009. Phillips reports that the Advisory Committee will sometimes consider article 6 of the FCNM vis-à-vis recent immigrant groups and where states accept the application of the FCNM to such groups.

Tension also can arise between groups at the international, and particularly, domestic level. As Dalits, Roma, Afro-descendants and indigenous peoples gain attention, resources, standards, mechanisms, and policy interventions targeted only for them, other groups within a region or state may perceive the support to be disproportionate and exclusionary. Marginalised ethnic, religious and linguistic groups that do not fall into these broad group-specific categories may be increasingly ignored and see their inequality grow as resources are diverted to these transnational groups. This can create inter-communal tension and possibly conflict. With few outlets within international organisations to raise their concerns, marginalised minorities may have to resort to more antagonistic means to make their objections heard.

It is important to recall that the failures of the protection regime fall to states, not minority groups. If we focus too much on the harm caused by the fragmentation of the minority protection regime we risk blaming the victims and not the violators. Groups that have sought their own regimes have done so because their positions of extreme marginalisation and inequality have not been addressed by the state. Group-specific norm entrepreneurship is partly a response to poor implementation of existing norms. To suggest that group-specific standards should be limited necessitates first a call for states to adhere to existing norms of protection. Rights are always a means to an end; new rights are not necessarily the most efficient means to the end but without strong material power domestically, transnational social mobilisation and norm entrepreneurship has provided one means for groups to press for change. So long as states continue not to meet their obligations to minority groups, we might expect minorities to continue their norm entrepreneurship projects.

The future of minority group-specific norm entrepreneurship:

Given that indigenous peoples, Afro-descendants, Dalits and Roma have been successful at group-specific norm emergence, it is worth considering how their achievements to date might evolve in the future, and how their experience might stimulate other norm entrepreneurs. There are also several ways in which their efforts could be understood better with further research.

The case studies show that the groups have been more successful at securing soft law standards and monitoring mechanisms than they have been at achieving legally binding provisions. Only indigenous peoples have a legally binding treaty in the form of ILO Convention 169 and this has been ratified by only 20 states. The desire of Dalit leaders for a convention on caste-based discrimination, the Roma for a European Roma Rights Charter and Afro-descendants for articles specifically for them in the OAS convention on racism, may be a long way to fulfilment. Strategically, the groups might be better off using existing soft law and monitoring mechanisms to socialise states to the emerging norms towards a gradual norm cascade, at which point the adoption and ratification of a legally binding treaty could be much easier to secure. In this effort they can rely on the continued support of international actors like CERD and the Special Rapporteurs.

Beyond the experiences of the four groups considered here, we might see increased interest from other groups to follow a similar path towards group-specific norm entrepreneurship. Pastoralists, for example, have been tentatively mobilising across borders and regions.[375] At present, they make their claims primarily under indigenous peoples' standards but the particular needs of nomadic, animal-husbandry communities might be served better by group-specific standards that can address, for example, transborder route issues and economic development interests. Other minority groups could potentially construct frames that unite transnationally otherwise disparate identities. National 'homeland' minorities or linguistic minorities might be able to find common ground and embark on norm entrepreneurship. The fact that we have not witnessed this kind of transnational social mobilisation at the global level to date suggests that either the will or capacity to pursue it is low. At the more radical end of the spectrum, the possibility of an international alliance of *all* marginalised minority groups stands. The idea is not new: Dalit activists have uncovered evidence of correspondence from Ambedkar to W.E.B. Dubois discussing the similarities between "Untouchables in India and of the position of the Blacks in America" and their shared interest in petitioning the new UN to take better account of their concerns in drafting the UDHR (Thorat and Umakant 2004, xxix). The efforts by the NAACP and the American Jewish League to secure representation of NGOs in the UN could be interpreted as an attempt to create space for such an international alliance to build.

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[375] See the first Global Pastoralist Gathering held in Ethiopia in 2005. Some 120 pastoralist leaders from 23 countries attended the meeting, along with governmental and IO actors (Scott-Villiers 2005).

Since the WCAR, some minority groups have used opportunity structures like the World Social Forum to build transnational and trans-group solidarity; for example, Dalits arranged during the first World Social Forum to visit to landless Afro-Brazilians.[376] The Unrepresented Nations and Peoples Organisation, founded in 1991, comes closest institutionally to this idea but despite some interesting initiatives, such as a conference on 'Opening the World Order to De facto States' in May 2008, it has failed to make much impact.[377] In general, the challenges of transnational mobilisation and group-specific norm entrepreneurship are great, resources to do it are scarce and political opportunities are not widespread, decreasing the likelihood that many more groups will follow this path.

Alternatively, states may find it is in their interests to create more group-specific norms. This possibility is increasingly evident in the case of Muslim minorities, who are being championed by the OIC (for example, in the context of the DRC ((Lennox 2009)). It is also evident in Europe, where states with large immigrant minorities are resisting efforts to extend the FCNM's provisions to such groups (e.g. Turks in Germany). It is in state interests to restrict the definition of national minorities as narrowly as possible to avoid rights claims of 'aspirant' immigrant minorities.[378] This restriction has the adverse effect of leaving many groups without minority rights protection. Any new conventions can only be ratified voluntarily by states; the states with the highest population of the affected group may conversely have the lowest incentive to ratify a legally-binding convention that would restrict state practice. The OIC, for example, is behind a proposed optional protocol to ICERD that would focus on religious defamation (Lennox 2009); while they may succeed in adopting an optional protocol, non-Muslim states could have weak incentive to become party to it. Kymlicka (2007) notes that an attempt by Liechtenstein to table a Draft Convention on Self-Determination through Self-Administration in 1994 (in effect, a global, stronger FCNM) failed (208).

The trend towards and consolidation of group-specific norms seems more likely to occur at the regional level. The example of the Roma illustrates this well − European Roma have had tremendous success with European institutions and Roma in Latin America did best at the Santiago prepcom. Transnational mobilisation is more easily

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[376] Interview with Umakant, November 2008.

[377] For information on the UNPO activities see www.unpo.org (accessed 14 March 2009).

[378] I am grateful to Anna-Mária Bíro for this point.

constructed across similar cultural and political space. It requires fewer resources to socialise a smaller number of states to emerging norms. States with a shared history and similar identities can ease the complications of trying to achieve global consensus over commitments. The case studies suggest that success can be achieved even by a small number of elite activists where they have good support from INGOs and IOs, particularly IOs that can institutionalise emerging norms. Much will depend upon the political opportunity structures available to groups at the regional level and whether they are able to establish organisational platforms that can sustain advocacy efforts. On the former point, the political opportunities generated by the WCAR and UN human rights institutions, which have been vital to group-specific norm entrepreneurship, will not be matched easily at the regional level. On the latter point, evidence shows that donors are reluctant to fund group-specific advocacy so the prospects of building or strengthening organisational platforms are limited.

The most significant barriers to future norm entrepreneurship, however, are at the domestic level. The paradox of minority norm entrepreneurship is that groups often are stronger in the international sphere to negotiate norm emergence than they are in the domestic sphere to secure norm adherence. Norm emergence costs are usually lower for states than norm adherence. Forms of discrimination and social hierarchies prevalent domestically are less potent in the international sphere, increasing groups' power. The mechanisms for transnational social mobilisation have been easier for groups to use than the mechanisms of social mobilisation domestically. The international sphere has fewer players to reach consensus on strategies. IOs often have made it easy for groups to input into policy recommendations. This has created less propitious conditions for norm adherence because norm emergence has accelerated beyond the rate of norm socialisation, aided in large part by forward-thinking IO interventions. At the domestic level, Afro-descendant, Dalit, indigenous and Romani leaders have struggled to make their respective identity frames more empowering for group members at the grassroots level. Discrimination still results in social disadvantage for many individuals who self-identify as members of these groups. Without state intervention to integrate fully these identities into a pluralist, multi-cultural construction of the nation, civil society leaders will find an uphill struggle to mobilise people regardless of the machinations in the international sphere. The implementation of the emerging norms falls primarily to states. At present, there is very little pressure on states to fulfill these responsibilities:

domestic mobilisation of Afro-descendants, Dalits, Roma and (with some exceptions) indigenous peoples is still relatively weak; the possibility for country-level monitoring of group-specific and general minority mechanisms is low; and IOs have not exhibited institution-wide commitment to emerging norms, limiting the likelihood they will push for these norms across their engagement with states. Stakeholders will need to shift their attention to establishing the domestic conditions for norm adherence rather than sticking to the slightly easier path of norm emergence processes.

There are several areas of future research that could illuminate this norm adherence path. Further study is needed on the conditions that have helped or hindered norm adherence domestically. A comparison of each group across several states in a single region would uncover some of the variables that have influenced this adherence. In this research, it is necessary to consider what are the potential risks of non-compliance for states. Ostensibly, the risks at present are low but research might uncover some variables that would show the high costs of non-compliance and benefits of adherence, which in turn could be useful for developing better advocacy strategies. Finnemore and Sikkink (1998) contend that domestic factors of mobilisation matter less as norms are more embedded in international society (902); whether this is equally the case for group-specific norms for ethno-cultural groups – i.e. groups that have a particular relationship with the state – would be useful to uncover. Any research on norm adherence must be disaggregated by level of analysis. The preliminary evidence from the case studies suggests that barriers to norm compliance vary at international, national and local levels of governance. This needs to be examined in order to create more effective policy responses that can overcome the factors, particularly at the local level, that will impede norm internalisation. The analysis here has tentatively explored some of the reasons why norm adherence will be challenging, including the nature of non-discrimination as a norm, lack of awareness of emerging norms by local/national actors and weak capacity of local NGOs to advocate for norm adherence. Consideration of the impact of norms on other groups should feature in any of this research. Concerns that the proliferation of group-specific norms unnecessarily divides societies could be critically assessed with, *inter alia*, survey research and data on the changes in the distribution of resource and policy provisions across groups.

The role of IOs could also be examined in greater detail. There is very little analysis of the influence on state behaviour of IO support to emerging minority norms.[379] Different IOs have differing capacity to create threats and opportunities for state compliance. There is also very little transparency on how IOs are supporting norm adherence through their myriad of programme and project interventions. Some IOs can pinpoint how much funding they have earmarked for some groups, particularly indigenous peoples and Roma, but funding alone is not a measure of impact on normative behaviour. Individual project evaluations are insufficient to assess the (compounded) influence of different forms of intervention, be they sector-specific, group-specific, quiet diplomacy, civil society grants or budgetary support.

There has also been weak analysis of the implementation of the *Durban Declaration and Programme of Action* specifically. State reports submitted to the OHCHR as part of the DRC process have mostly been thin on detail. The WGPAD has invited a handful of papers to review some progress on the provisions for Afro-descendants[380] but these have not been well-funded research projects and have failed to look in-depth at processes at the national level. Many activists cite the value of the WCAR for their norm entrepreneurship. This thesis has tried to examine those perceptions and to determine how the WCAR - among other factors – has been a tool for norm emergence. More effort is needed to determine what impact the WCAR has had outside the international sphere, in the daily lives of Dalits and Afro-descendants at home.

Durban was a singular moment, a hopeful event despite its controversies, and a high note in a series of world conferences that have given little to the victims of racism. It has not had the same normative impact of world conferences in Vienna, Rio or Beijing but its achievements, as demonstrated here, are not insignificant, particularly for those groups who have used it to mobilise and to strengthen a longer-term project of norm entrepreneurship. Afro-descendants wanted their governments to address the contemporary impact of the historical injustice of slavery and to acknowledge the value of Afro-descendant heritage. Dalits wanted their governments to implement domestic standards created to overcome the injustices of the caste-based discrimination. Roma wanted their governments to respect the cultural heritage of Roma, to combat anti-

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[379] Some exceptions include studies on the impact of the World Bank policies on indigenous peoples and on EU accession policies on minorities.
[380] See UN Doc. A/HRC/7/36, (13 March 2008).

Gypsism and to protect them as a distinct type of non-territorial nation. Indigenous peoples wanted to be accepted equally and fully as peoples. After the WCAR, Roma and indigenous peoples no longer stand out as the lone groups that have been able to establish group-specific norms and mechanisms in international society. Durban marked the consolidation of the caste-based transnational mobilisation frame and gave Latin American Afro-descendants a chance to forge a strong regional identity and normative base. These groups also stood out from other victim groups at Durban, managing through sustained advocacy, international cooperation and strategic alliances to secure extensive provisions in the outcome documents of the regional prepcoms, NGO Forum and the WCAR itself. Through these actions and their norm entrepreneurship since, they are injecting a new pluralism into normative understandings of inter-communal relations, helping to transform conventional dichotomies like state/nation and majority/minority. They have created "wider communities of discourse", which are shaping new ideational assumptions about group identities, state obligations, and the role of IOs vis-à-vis sub-state communities.

The very fact that so many of the world's most marginalised people could travel so far to Durban, make their voice heard so wide and compel states to admit so many of their failures shows how far we have come in the protection of minorities but is a reminder that there is still a long way to go to achieve equality and justice for all.

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