

# DALITS AND NORM ENTREPRENEURSHIP ON CASTE-BASED DISCRIMINATION

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## 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 paper will show how caste-affected groups and their allies have secured international recognition of their concerns and institutionalized new norms for state behaviour by using a sound “adjacency” (Finnemore and Sikkink 1998) strategy for norm emergence and building a strong transnational advocacy network (TAN) to facilitate this work. Their efforts at norm entrepreneurship have been met with opposition particularly 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 the UN Committee on the Elimination of Racial Discrimination (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.

The main focus in this paper 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” (Finnemore and Sikkink 1998) 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 the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). This paper will consider some of the internal and external factors that have shaped India’s opposition to norm entrepreneurship.

The concept of ‘norm entrepreneurship’ is used in International Relations (IR) literature 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. The main emphasis here will

be on norm emergence. This paper will use this concept as an analytical framework, drawing especially from the work of Finnemore and Sikkink (1998); Keck and Sikkink (1998) and Sikkink (2004) and their focus on transnational mobilisation of non-state actors with ‘principled-interests’. These non-state norm entrepreneurs rely on three key tools: framing, organisational platforms and political opportunity structures. Frames can help norm entrepreneurs to “transform other actors’ understandings of their identities and interests” (Keck and Sikkink 1998, 17). Frames can give access to a wide range of actors, institutions and processes that are otherwise termed political opportunity structures. Where political opportunities are blocked or ineffective in the domestic sphere, actors will sometimes seek out more open political opportunities at the international level. Even where domestic opportunities are open, activists may still use simultaneously international political opportunities in an “insider-outsider coalition” (Sikkink 2004, 165) between domestic and international actors for strategic purposes. 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). A transnational advocacy network (TAN) is one example of an organisational platform, 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).

Norm entrepreneurs seek to secure new norms through processes of socialisation and persuasion of states. This includes strategies of “adjacency”, i.e. linking emergent norms to existing norms in international society, and tapping into the “logic of appropriateness” held by state actors (*Ibid*). Constructivist IR theorists argue that state actors are motivated to accept new norms for both rational and ideational logics. Rational logics stem from material interests, such as power, security or economics. Ideational logics stem from interests of states to be viewed as *legitimate*, to be *conforming* to the club of desirable states and, at the level of the individual, to be *esteemed* (i.e. acting according to norms that make actors feel good or be thought well of by others). Norm entrepreneurs achieve success first by getting their issues on the international agenda, then by changing the discursive positions of (some) states, and by getting norms “institutionalised” (Finnemore and Sikkink 1998, 900), for example, in the form of legal standards, policy recommendations or documents endorsed by International Organisations (IOs). This is followed by changes in policy and institutions and finally by reaching norm internalisation, where state actors adhere to norms without any pressure needed from civil society (Keck and Sikkink 1998; Finnemore and Sikkink 1998). Researchers argue this is not a linear process and norms can advance and recede.

### **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 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. 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 Dr. Ambedkar. Dr. 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 is a web of organisations at the national and international level joined in “insider-outsider coalitions” (Sikkink 2005) 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, such as UN institutions. The hub of the international caste TAN is the International Dalit Solidarity Network (IDSN), established in March 2000 as a focal point for transnational advocacy on caste-based discrimination. It brings together national Dalit and caste platforms and NGOs (e.g. the National Campaign on Dalit Human Rights (NCDHR); Dalit NGO Federation - Nepal (DNF); Buraku Liberation League), Dalit Solidarity Networks (e.g. DSN-UK) and key INGOs (e.g. IMADR, Lutheran World Federation, Human Rights Watch). The caste TAN is aided greatly by international donors, which serve both as targets and enablers of norm entrepreneurship. For example, governmental and inter-governmental donors (e.g. EU, DFID and DANIDA) 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.

### **Bringing ‘caste-based discrimination’ to the international sphere:**

With the exception of appeals to the British authorities during decolonization and Dr. Ambedkar’s overtures to the new UN (Thorat and Umakant 2004, xxix), 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 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). These included the Federation of Ambedkarites and Buddhist Council established in the UK in 1970 and the Ambedkar Mission of Canada, located in Toronto (Louise 2003, 224). 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).

The first UN space in which the Dalit identity was asserted by civil society was the UN Sub-Commission on Human Rights. VISION 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). 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’ organised by Minority Rights Group

(MRG) and held in New York in 1983; the Ambedkar Mission and VISION were among the participants.<sup>1</sup> In 1991, Yogesh Varhade of the ACJP attended the UN Working Group on Indigenous Peoples (WGIP). It is not clear if the members of the WGIP readily accepted the Dalits as an 'indigenous people'.<sup>2</sup> Two more domestic Dalit NGOs were present at the 1993 session of the WGIP (Dalit Youth Movement, Dalit Solidarity Programme).<sup>3</sup> 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 UN Working Group on Minorities (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.<sup>4</sup> The DLET and the ACJP participated in the 1993 World Conference on Human Rights in Vienna.<sup>5</sup>

In the mid-1990s, several Dalit NGOs and INGOs tried to secure a UN investigation into caste, with a particular focus on India. For example, in 1996, the DLET, ACJP and the World Council of Churches<sup>6</sup> submitted communications regarding the situation of Dalits in India to the UN Special Rapporteur on contemporary forms of racism urging him to conduct a country visit.<sup>7</sup> The Special Rapporteur of this period, Mr. Gélé-Ahanhanzo, did manage some preliminary examination of the issue but made no concrete assertions as to whether 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.<sup>8</sup> 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 to raise the issue of discrimination on the basis of caste.<sup>9</sup> 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<sup>10</sup> but the dialogue positioned CERD as an early ally of advocates on caste and ICERD as a relevant international standard.

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<sup>1</sup> The major output of the meeting was the publication of a book; see Joshi, 1986.

<sup>2</sup> <http://www.ambedkar.net/ACJP%20%20UN/Forms/AllItems.aspx> (accessed 31 July 2007).

<sup>3</sup> E/CN.4/Sub.2/1993/29 (23 August 1993).

<sup>4</sup> 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.

<sup>5</sup> A/CONF.157/MC/1 (24 June 1993).

<sup>6</sup> 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).

<sup>7</sup> E/CN.4/1997/71 (16 January 1997): para 127.

<sup>8</sup> E/CN.4/1999/15 (15 January 1999): para 100.

<sup>9</sup> See Therese Boyle, "Fighting India's caste system from a photo lab on Spadina", *Toronto Star*, 31 October 1996, p. A1; and <http://www.hrhc.net/sahrdc/about.htm> (accessed 28 June 2009).

<sup>10</sup> CERD/C/304/Add.13, (September 17, 1996).

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.<sup>11</sup> 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”.<sup>12</sup> 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 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.<sup>13</sup> 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*, organised by the Voice of Dalits International.<sup>14</sup> 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

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<sup>11</sup> E/CN.4/Sub.2/1997/18 (10 July 1997); E/CN.4/Sub.2/1998/18 (6 July 1998).

<sup>12</sup> E/CN.4/Sub.2/1998/SR.19 (20 August 1998): para 36.

<sup>13</sup> [http://www.ambedkar.org/Worldwide\\_Dalits/first\\_world\\_dalit\\_convention.htm](http://www.ambedkar.org/Worldwide_Dalits/first_world_dalit_convention.htm) (accessed 15 August 2007).

<sup>14</sup> [http://www.ambedkar.org/Worldwide\\_Dalits/IDHRConference.htm](http://www.ambedkar.org/Worldwide_Dalits/IDHRConference.htm) (accessed 15 August 2007).

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 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 50<sup>th</sup> 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” (Sikkink 2005) 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-convenor of the NCDHR and Atsuko Tanaka of IMADR were also present at the discussion. 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.<sup>15</sup>

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.<sup>16</sup> This set the caste-TAN down a norm emergence

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<sup>15</sup> 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.

<sup>16</sup> Interview with Peter Prove, May 2008.

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. 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). 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 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.<sup>17</sup> 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 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 (i.e. the *Durban Declaration* and *Programme of Action* (DDPA)) 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

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<sup>17</sup> Interview with Rikke Nörhlin, June 2008 and with Peter Prove, May 2008.



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”.<sup>18</sup> 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.<sup>19</sup> 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<sup>20</sup>, Addis Ababa<sup>21</sup> and Bangkok<sup>22</sup> 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 the UN Office of the High Commissioner on Human Rights (OHCHR) inputs for the initial draft of the DDPA; he managed 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.<sup>23</sup> 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”.<sup>24</sup> 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.

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, from rallies to hunger strikes. Those in solidarity with Dalits wore head and

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<sup>18</sup> UN Doc WCR/IC.2001/Misc.3, p. 37.

<sup>19</sup> See <http://wcar.alrc.net/mainfile2.php/Statements/7/> (accessed 5 April 2007).

<sup>20</sup> UN Doc. A/CONF.189/PC.1/9 (12 March 2000), para 29.

<sup>21</sup> UN Doc. A/CONF.189/PC.2/4 (14 March 2001): para 41 (d).

<sup>22</sup> UN Doc. A/CONF.189/PC.2/3 (26 April 2001), paras 55, 145; Conclusions paras 17, 20 (ii), 21.

<sup>23</sup> UN Doc. A/CONF.189/PC.1/10 (8 March 2000): para 50.

<sup>24</sup> *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).

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. 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 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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> Finally, Guatemala took up the baton at the third prepcom in August 2001, requesting in the

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<sup>25</sup> Interview with Paul Divakar, November 2008.

<sup>26</sup> See <http://www.dalits.org/nhrstatementwcar.htm#statement>

<sup>27</sup> 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).

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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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”.<sup>31</sup> 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 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

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<sup>28</sup> Interview with Peter Prove, May 2008.

<sup>29</sup> Atsuko Tanaka, *World Conference Against Racism: Success or Failure?*

<http://www.imadr.org/old/geneva/wcar2001.assessment.html> (accessed 28 March 2007)

<sup>30</sup> <http://www.hri.ca/racism/dailyupdates/Gmfinal.shtml> (accessed 18 April 2007).

<sup>31</sup> 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).

more visible. 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.

#### *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 21<sup>st</sup> Century*, held in January 2002, which issued the Bhopal Declaration of detailed recommendations to the Indian government and the private sector. 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".<sup>32</sup> 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

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<sup>32</sup> See <http://nepaldalitinfo.net/2007/03/31/218/> (accessed 5 May 2009).

direction and more attractive to India, diffusing unilateral scrutiny given the presence of Dalits in most SAARC member states.

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. The IDSN has worked with the European Parliament to secure a number of statements and resolutions in favour of Dalits in India.<sup>33</sup> The US Congress has also issued several statements encouraging the government of India to do more for Dalits.<sup>34</sup> The UK Parliament has had debates on the issue of caste-based discrimination, with a focus on India.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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. 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.<sup>38</sup>

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

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<sup>33</sup> See, for example, the European Parliament resolutions on the human rights situation of Dalits in India of 19 December 2006 and 1 February 2007.

<sup>34</sup> See, for example, the resolution of the US Congress, Resolution 139 (1 May 2007).

<sup>35</sup> 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).

<sup>36</sup> 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](http://www.europarl.europa.eu/comparl/deve/meetings_hr/20061218/divakar.pdf) (accessed 10 July 2009).

<sup>37</sup> See, for example, UN Doc. A/CONF.211/PC.2/7 (n.d): 11-12.

<sup>38</sup> 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).

Parliament resolutions on Dalits.<sup>39</sup> 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, norm institutionalisation, and state socialisation in these institutions has been vital to norm emergence and will be considered in some depth in the next section.

### **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”.<sup>40</sup> 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”.<sup>41</sup>

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<sup>39</sup> Other British MEPs have been instrumental in securing the resolutions, such as Jean Lambert (Greens, UK) and Claude Moraes (Party of European Socialists, UK).

<sup>40</sup> UN Doc. E/CN.4/Sub.2/2000/SR.8 E (11 August 2000): para 48.

<sup>41</sup> *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 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”.<sup>42</sup> 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.

Goonsekere 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. 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”.<sup>43</sup> 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.

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 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 authors demonstrate a clear desire to

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<sup>42</sup> UN Doc. E/CN.4/Sub.2/2001/16 (14 June 2001): para 4.

<sup>43</sup> UN Doc. E/CN.4/Sub.2/2003/24 (26 June 2003): para 58.

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.<sup>44</sup>

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 and argued at the presentation of the August 2004 expanded working paper, that “it would be counterproductive for the Sub-Commission to develop a set of principles and guidelines on the question”.<sup>45</sup> 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 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.<sup>46</sup>

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”.<sup>47</sup> 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, namely transfer of mandates to the new Human Rights Council. With India as 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

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<sup>44</sup> *Ibid*, para 76.

<sup>45</sup> UN Doc. E/CN.4/Sub.2/2004/SR.8 (10 August 2004): para 27.

<sup>46</sup> Interview with Peter Prove, May 2008.

<sup>47</sup> Sub-Commission Resolution 2004/17 (12 August 2004): para 4.



the principles and guidelines. The principles and guidelines were finally made public in May 2009, submitted only as a working paper of the Council 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”.<sup>48</sup> 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”.<sup>49</sup> 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.<sup>50</sup>

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 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”.<sup>51</sup>

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

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<sup>48</sup> UN Doc. A/HRC/11/CRP.3 (18 May 2009).

<sup>49</sup> *Ibid*, p. 8, para 4.

<sup>50</sup> *Ibid*, p. 8, para 2.

<sup>51</sup> *Ibid*, p. 19, para 64.

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.

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.<sup>52</sup> 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:

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<sup>52</sup> *Report of CERD to the General Assembly, 42nd session, Supplement 18*, UN Doc. A/42/18 (1 January 1987): paras 745-783.

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 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.<sup>53</sup>

India submitted its next (consolidated) periodic report in 2006. The position on caste within ICERD is maintained.<sup>54</sup> 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”.<sup>55</sup> 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”.<sup>56</sup> 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”,<sup>57</sup> 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”.<sup>58</sup> 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 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

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<sup>53</sup> CERD/C/299/Add.3 (29 April 1996): para 7.

<sup>54</sup> CERD/C/IND/19 (29 March 2006): paras 16-17.

<sup>55</sup> CERD/C/SR.1796 (2 March 2007): para 7.

<sup>56</sup> *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).

<sup>57</sup> *Ibid*: para 8.

<sup>58</sup> CERD/C/IND/CO/19 (5 May 2007): para 8.

was complemented by several other NGO submissions,<sup>59</sup> including a coalition-based submission by the NCDHR.<sup>60</sup>

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.<sup>61</sup>

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.<sup>62</sup> 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 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”.<sup>63</sup>

CERD has been active in raising the issue of descent-based discrimination with an increasing number of countries (Thornberry 2005, 39).<sup>64</sup> In this dialogue, states have taken a range of responses, from openly accepting that ICERD includes caste (Nepal),<sup>65</sup> to adopting the Indian interpretation and rejecting that ICERD includes caste (Japan),<sup>66</sup> to denying that caste-affected

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<sup>59</sup> See <http://www.ohchr.org/english/bodies/cerd/cerds70-ngos.htm> (accessed 10 August 2007) for a list of NGO electronic submissions.

<sup>60</sup> <http://www.ohchr.org/english/bodies/cerd/docs/ngos/shadow-report.pdf> (accessed 10 August 2007).

<sup>61</sup> CERD/C/SR.1796 (2 March 2007): para 21.

<sup>62</sup> See, for example, UN Doc. A/42/18 (1987): para 777.

<sup>63</sup> CERD/C/SR.1796 (2 March 2007): para 21.

<sup>64</sup> 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).

<sup>65</sup> 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.

<sup>66</sup> 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.

communities exist within their territory (Nigeria).<sup>67</sup> 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.<sup>68</sup> 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 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).<sup>69</sup> 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 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<sup>70</sup> 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 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

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<sup>67</sup> 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.

<sup>68</sup> "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.

<sup>69</sup> For CESCR, see the Concluding Observations on India's report, from 2008: UN Doc. E/C.12/IND/CO.5 (5 August 2008).

<sup>70</sup> There are no summary records for this part of the discussion with NGOs.

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.<sup>71</sup> 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, efforts to bring non-Indian and non-Asian NGOs to the discussion was equally prudent.

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" for states either within ICERD or (ultimately) adjacent to it.

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<sup>71</sup> For Mr. Pillai's testimony, see CERD/C/SR.1531(16 August 2002): paras 4-10.

### *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, 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.<sup>72</sup> 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”.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup> 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:*

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 formally from benefiting from the WCAR follow-up mechanisms. These human rights bodies have therefore served as an important alternative space. The regularised

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<sup>72</sup> See, for example, A/HRC/4/19/Add.1 (5 June 2007) and E/CN.4/2006/16/Add.1 (27 March 2006).

<sup>73</sup> A/58/313 (22 August 2003): para 42.

<sup>74</sup> A/HRC/4/19 (12 January 2007): para 28.

<sup>75</sup> A/HRC/4/19/Add.1 (5 June 2007): para 100.

<sup>76</sup> A/HRC/5/SR.2 (5 July 2007): para 12.

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. 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 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 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 Dr. 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. Dr. 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. He 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.

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.<sup>77</sup> 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. Dr. 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 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

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<sup>77</sup> [http://blhri.org/blhri\\_e/blhri/buraku.htm](http://blhri.org/blhri_e/blhri/buraku.htm) (accessed 30 August 2007).

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 project 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.

### **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.

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” (Tarrow 2005) 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).<sup>78</sup> 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

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<sup>78</sup> Interview with Paul Divakar, November 2008.

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 in the international sphere that states have firmly accepted emerging norms on caste-based discrimination. 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 (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 and Dalit solidarity networks have usually focused their attention on countries of origin rather than locally affected individuals.

In achieving wider norm recognition, 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. 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 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.<sup>79</sup> 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 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”.<sup>80</sup> 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

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<sup>79</sup> 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).

<sup>80</sup> *Statement by Navanethem Pillay, High Commissioner for Human Rights at the National Human Rights Commission, Delhi (23 March 2009): p. 5.*

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 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 internalisation through the back door.

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