

11 • Caught between national and global jurisdictions: displaced people's struggle for rights

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Modern politics is a spatial politics. Its crucial condition of possibility is the distinction between an inside and an outside, between citizens, nations and communities within and enemies, others and absences without. (Slater 1997: 261)

Citizenship and displacement in a globalizing world

Arjun Appadurai talks of different 'scapes' to describe the new global world. By ethnoscares he is referring to:

Landscapes of people who constitute the shifting world in which we live: tourists, immigrants, refugees, guestworkers and other moving groups and persons constitute the essential feature of the world, and appear to affect the politics of and between nations to a hitherto unprecedented degree. This is not to say that there are not anywhere relatively stable communities and networks, of kinship, friendship, of work and of leisure, as well as of birth, residence and other filiative forms. But this is to say that the warp of these stabilities is everywhere shot through with the woof of human motion, as more persons and groups deal with the realities of having to move, or the fantasies of wanting to move [...] (Appadurai 2002: 158–9)

Indeed, mobility, displacement and emplacement have become defining features of our times. While we, in part, share Appadurai's celebration of the shifting world and its moving inhabitants, we are concerned with the phenomenon of forced displacement that compels a displaced person to leave her home, family, loved ones and livelihood, maybe never to return.

As long as there are wars and large-scale development projects, forced uprootedness is here to stay. At the end of 2008, globally 42 million people were in situations of forced displacement. Of those 15.2 million were refugees, with the rest asylum seekers with cases pending, and internally displaced people (IDPs) (UNHCR 2009). Some estimate that, owing to intractable conflicts, about eleven million people lack

citizenship or effective nationality worldwide, situations which violate Article 15 of the Universal Declaration of Human Rights (UDHR), which upholds that every person ‘has a right to a nationality’ (Frelick and Lynch 2005). Many of these are also displaced people.¹

The problem of displacement is here to stay, meaning that the rights of refugees are at risk (Grabska and Mehta 2008). States, which should be rights providers, are failing refugees, and international actors are often de facto bearing their responsibilities, at times failing miserably to mediate between host states and refugees. Where citizenship is not granted or where neither the state nor international agencies are acting as duty bearers, many refugees are defining what rights are important and are reshaping what citizenship looks like, through the very fact of their movement, through mobilization or through the realization of rights locally. How does increasing displacement pose challenges for citizenship ‘without nation-states’? How do refugees understand their rights and whom do they see as duty holders with respect to these rights – national or global actors? How do refugees claim their rights? Who is accountable to them? How do refugees force us to rethink conventional understandings of citizenship, and can they be considered to be ‘global citizens’? These questions are the focus of the chapter.

We begin with a brief review of how refugees² are challenging conventional understandings of citizenship and how displaced people are realizing rights without having access to formal citizenship and rights. We go on to show how displaced people are participating in protest and mobilization efforts to have formal rights granted and abuse of rights stopped, and how transnational alliances across global–local spaces take place in efforts to change citizenship rights. We conclude with an examination of what global citizenship means for refugees.

Who is responsible anyway?

Who is supposed to protect the rights of these ‘international orphans’ and those crossing international borders? In principle, by ‘voting with their feet’ (Hathaway 1991: 120), refugees fleeing from oppressive state regimes and the abuse of their human rights can expect protection from international law and from host countries. Legislative frameworks that embrace protection for refugees are based on the framework of the UDHR (1948)³ and specific conventions such as the 1951 Convention relating to the Status of Refugees. Under international law, states are obliged to protect non-citizens and those residing within their national borders, giving refugees a strong basis for protection against the abuse of their civil and political rights. But official duty-bearing states do not

always step up to meet their obligations – or meet them fully. And the social, economic and cultural rights of refugees⁴ – including the right to development and self-determination, food, health, education, participation and livelihood – remain very neglected, often viewed as ‘second generation’ rights. Host states are reluctant to award them to refugees, as we shall demonstrate.

In reality, refugees often cannot claim entitlements from host states that deny them their basic rights and often abdicate responsibility to international organizations, primarily the Refugee Settlement Commission of the League of Nations, the United Nations Relief and Works Agency for Refugees in the Near East (UNRWA) and the United Nations High Commissioner for Refugees (UNHCR). But UNHCR, for instance, is not supposed to provide direct assistance, and instead has a mandate to lobby for states to meet refugees’ rights. UNRWA, which works only with displaced Palestinians, has the mandate to provide direct assistance but not to lobby states.

Moreover, there are broad and narrow definitions of who is a refugee, and many would-be refugees are denied this status. The power of categorization and awarding status is linked to the ‘right’ to have ‘rights’. Owing to the strict requirements for refugee status provided in the 1951 Convention and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, being granted refugee status is difficult for most displaced people. In fact, the strict legal criteria and status determination procedures often employed by either host governments or on their behalf by UNHCR mean that many remain outside the protection of international refugee law.⁵ In other cases, governments simply choose not to apply the definition, whether narrow or not. For example, refugees in Egypt are treated like mere ‘foreigners’ in terms of access to rights (Grabska 2008). Perceived as temporary guests on their way to resettlement in a Western country, refugees from Sudan, Somalia and Palestine are not provided with access to formal citizenship, even though Egypt is a signatory to several refugee conventions. Egypt turns to UNHCR to protect and assist refugees; they in turn see UNHCR as the guarantor of their rights.

At the same time, however, the category ‘refugee’ or ‘displaced person’ establishes rights and entitlements. For example, illegality and lack of refugee status mean limited and disadvantaged access to jobs,⁶ lack of access to education for children,⁷ lack of access to health services, and the inability of refugees to claim their other rights in the host society,⁸ including freedom of movement.⁹ Rights, however, are granted to refugees temporarily, pending a durable solution to the refugee ‘problem’.¹⁰