

Palestinians and the search for protection as refugees and stateless persons in Europe

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This briefing draws on the findings of a research collaboration between the European Network on Statelessness (ENS) and the Resource Centre for Palestinian Residency and Refugee Rights (BADIL). It summarises key issues facing Palestinians in their search for protection as refugees and stateless persons in Europe and makes a series of recommendations to relevant actors. For a comprehensive review of the issues and jurisprudence in this area and all references see the [full report](#).

Introduction

There has been progress in recent years in some jurisdictions towards an increased awareness of refugeehood and statelessness among Palestinians. However, despite this limited progress, Palestinians continue to face discrimination due to inadequate legal frameworks or discriminatory practices, and remain unable to access protection in many European countries as refugees or stateless persons (or face lengthy legal battles to do so). There are divergent approaches taken as to whether they are considered stateless persons, and five key issues are evidenced through our research.

Issue 1: Gaps in the international framework and mandates for the protection of Palestinians

Approximately 9.1 million Palestinian refugees constitute the longest-persisting and largest refugee population in the world. Approximately five million people are 'Palestine refugees' eligible for services of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in the West Bank (including East Jerusalem), the Gaza Strip, Lebanon, Jordan, and Syria. UNRWA, the United Nations Conciliation Commission for Palestine (UNCCP), and the Office of the United Nations High Commissioner for Refugees (UNHCR) have distinct mandates. UNCCP has a protection mandate, but the organisation has been largely dysfunctional since shortly after it was created in 1948. UNHCR's mandate does not cover Palestinians who reside in UNRWA's area of operation, and UNRWA's mandate does not include seeking durable solutions for Palestine refugees. UNRWA registration does not bring any legal status, protective or otherwise, and should not be considered a form of identification or proof of nationality or statelessness.

Although conditions vary to some extent from one field to another, Palestinians face significant discrimination in all UNRWA's area of operation and other deprivation of human rights, including but not limited to: inadequate socio-economic conditions, restrictions on freedom of movement and property ownership, and in some cases, threats to life. These factors combine to mean that Palestinians in UNRWA's area of operation do not have access to the same level of protection to which non-Palestinian refugees are generally entitled under the 1951 Refugee Convention. This disparity is not in line with the

object and purpose of the 1951 Convention, particularly the inclusion clause of Article 1D, drafted to ensure continuity of protection for Palestinian refugees.

Issue 2: Lack of (consistent) recognition that Palestinians are stateless

Palestinians who have not acquired a nationality (other than Palestinian) should be considered stateless under the definition set out in the 1954 Convention relating to the Status of Stateless Persons. This is mainly because Palestine remains under occupation by Israel, does not have full sovereignty, does not have full control over issuance of official documentation or entry and exit to its territory, and because attempts to enact a Palestinian nationality law have failed. This does not negate the fact that Palestinians have an entitlement to Palestinian nationality under international law; rather it is a recognition that Palestinians are *“not considered nationals by any state under the operation of its law”*.¹ It is also a recognition that the details of a future Palestinian nationality law are undetermined. For example, will the law give equal rights to men and women to confer their nationality; will Palestinians whose ancestors left Palestine before a certain date be entitled to nationality; and what evidence will be required to prove entitlement to nationality?

The lack of consistent recognition that Palestinians are stateless, either in refugee status determination procedures under the 1951 Convention or as stateless persons under the 1954 Convention, has a significant impact on Palestinians’ ability to access protection in Europe. It also impacts on the ability of Palestinian children to acquire a nationality in some countries, which do not apply safeguards to prevent childhood statelessness to Palestinian children on the grounds that Palestinians are not stateless.² Furthermore, it impacts on the reliability of data, as some countries record Palestinians as stateless, others record them under a separate nationality category ‘Palestine’, and it is not clear where or whether these overlap.

Issue 3: Gaps and developments in Article 1D jurisprudence on international protection

Having a protective legal status – refugee status – is vital to the concept of international protection under the 1951 Convention and European Union law, and necessarily entails fulfilment of the rights set out in the 1951 Convention and durable solutions. Article 1D of the 1951 Convention conditionally excludes from its protection Palestinians who are protected or assisted by a UN agency other than UNHCR. However, this provision also automatically includes Palestinians if that assistance or protection has ceased “for any reason”.

Recent jurisprudence on Article 1D and policy developments in Europe vary widely. Some of the core issues raised in recent jurisprudence include the conditions in which UNRWA assistance should be considered to have ceased; the importance of being able to live a dignified life; whether a person who has left UNRWA’s area of operation is entitled to protection as a refugee and in what circumstances; and whether the possibility of returning to any part of UNRWA’s area of operation should influence entitlement to protection. The Court of Justice of the European Union (CJEU) has issued several key judgments on these issues, sometimes contributing to the protection of Palestinians as refugees, but sometimes resulting in narrow or confusing interpretations that give rise to differing implementation of the judgments across Europe. Key gaps identified include:

- Inadequate consideration of the lack of effective assistance or protection in UNRWA’s area of operation in some jurisdictions

- Problematic interpretations of Article 1D by government decision-makers and judges (for example, requiring that a person has left UNRWA's area of operation recently or involuntarily)
- Uncertainty and divergent practices as to whether a person that is not excluded under Article 1D is automatically entitled to refugee status
- Lack of awareness and knowledge about statelessness and the correct application of Article 1D among legal practitioners advising Palestinians

However, there has also been relative progress in some countries, including recognition that adequate UNRWA assistance has ceased in some of UNRWA's fields of operation, and discussions of the concept of human dignity, which should be expanded upon in future cases. In Belgium, for example, recent jurisprudence has concluded that because of the financial difficulties faced by UNRWA, the agency was no longer able to provide adequate assistance to Palestinians in Gaza and Lebanon, considering that UNRWA assistance had therefore ceased for the purposes of Article 1D. In the Netherlands, courts have focused in recent cases on whether applicants can actually access protection or assistance from UNRWA.

Issue 4: Gaps and developments in 1954 Convention jurisprudence and approaches

The 1954 Convention contains a similar but not identical clause to Article 1D of the 1951 Convention, which excludes from its scope of application people who are at present receiving protection or assistance from UN organs or agencies other than UNHCR, and implicitly includes people to whom the clause does not apply. Both progress and inconsistencies can also be identified in recent 1954 Convention jurisprudence and approaches in European domestic jurisdictions with respect to whether Palestinians are stateless and therefore entitled to protection on this basis. In addition to similar divergences as those seen in Article 1D jurisprudence, key challenges include:

- Inconsistent approaches as to whether Palestinians are stateless
- Divergent approaches to the recognition of Palestine as a State, which impacts on recognition of Palestinians as stateless persons
- Laws and policies that do not fully comply with the 1954 Convention
- Government failure to provide applicants with adequate information about statelessness determination procedures
- Poor legal advice relating to statelessness
- Mis-recording of statelessness in civil registration procedures, data collection, or birth certificates

Issue 5: Palestinians' lack of access to resettlement to some countries

UNRWA does not currently make referrals for resettlement; and UNHCR does not have a mandate to assist or protect Palestinians in UNRWA's area of operations. This means that Palestinians physically present in UNRWA's area of operations generally have no access to resettlement to third countries that only accept resettlement referrals from UNHCR, even if the Palestinian concerned otherwise meets resettlement criteria. This has a clearly discriminatory impact.

Conclusion and recommendations

Our research has shown that there is an urgent need for more reasoned and fairer decisions for Palestinians on their applications for refugee status or statelessness status in Europe. This includes a need for more and better information, awareness-raising, and capacity-building to address gaps in the international and national frameworks, and to provide clarity on mandates and access to protection. This should lead to more consistent decision-making by competent authorities and courts, and a harmonisation of protection for Palestinians across Europe, advancing an interpretation of international law that is aligned with human rights and the protective purpose of the 1951 and 1954 Conventions.

Drawing on the research and consultation with experts, we make the following recommendations:

European States should:

- Sign and accede to the 1954 and 1961 Conventions (where they are yet to do so).
- Enact and implement adequate, fair, and accessible procedures for refugee status determination (RSD) and statelessness determination (SDP) with procedural safeguards that enable Palestinians to access a right of residence and all other rights enshrined in the 1951 and/or 1954 Conventions.
- Establish in law that the burden of proof in SDP and RSD procedures should be shared between competent authorities and applicants and the appropriate standard of proof applied (i.e., ‘real risk’/‘reasonable likelihood’).
- Enact laws to ensure that all children born stateless on the territory, including those born to Palestinian parents, acquire nationality in line with the 1961 Convention and remove all barriers to this (e.g., lack of a procedure to identify where a child born on the territory would otherwise be stateless, legal residence requirements, lack of access to legal advice, high fees, long delays, or dependence on the parents’ documentation or nationality status).
- Provide a facilitated route to naturalisation for Palestinian and other refugees and stateless persons on their territory (e.g., by removing fees and applying other exemptions), implementing Article 34 of the 1951 Convention and Article 32 of the 1954 Convention.
- Ensure that Palestinians, including those residing in UNRWA’s area of operations, can access resettlement programmes, including by accepting referrals from organisations other than UNHCR.
- Build the capacity of competent authorities through training, guidance, monitoring, and provision of relevant tools to support improved and more consistent decision-making on Palestinian cases, and ensure that Palestinians are registered as ‘stateless Palestinians’ in official records.
- Improve the recording of data on Palestinians so that data categories are harmonised, clearly defined, do not overlap, and provide accurate data on stateless populations within the country.

European institutions should:

- Draft or update, and promote, regional guidance on effective protection for Palestinians as refugees and stateless persons, which should clarify: UNRWA’s mandate; conditions and rights in UNRWA’s area of operation; eligibility for inclusion under Article 1D; the protective purpose of the 1951 and 1954 Conventions; and that Palestinians are refugees and stateless persons for the purposes of international law.
- Produce and maintain adequate, up-to-date jurisprudence databases and country of origin information relevant to Palestinians for decision-makers and judges in refugee and statelessness status determination procedures, with the involvement of independent experts.

- Include Palestinians, both those living in UNRWA's area of operation and those beyond in the personal scope of the EU proposal setting up an Union Resettlement Framework ([COM\(2016\)468 final](#)).
- Undertake research relating to issues relevant to Palestinians, for example, whether Palestinians can access refugee resettlement schemes, in theory and practice.
- Take steps to improve the collection and publication of data on Palestinians so that data categories are harmonised, clearly defined, do not overlap, and provide accurate data on stateless populations in Europe.

International organisations, civil society, judiciary, and bar associations should:

- Facilitate engagement between governments, regional institutions, civil society, and representatives of Palestinian communities to discuss challenges, find solutions and ensure that issues relating to access to protection and rights for Palestinians in Europe are addressed consistently, fairly, and in line with international law.
- Provide training and develop tools on relevant jurisprudence and country information relating to Palestinians to improve the quality and consistency of decision-making and develop the expertise of those providing legal advice and assistance to applicants.
- Support the research and production of improved country-of-origin information relating to Palestinians in UNRWA's area of operation and elsewhere, including information about their legal status and access to effective protection.
- Use [our report](#) and other relevant resources in human rights advocacy to secure recommendations that enhance the protection of Palestinians, including before the Universal Periodic Review and UN treaty bodies.

All relevant actors should:

- Facilitate the participation of Palestinians and representatives of Palestinian communities in Europe in work to address these issues and find legal, policy, and practice solutions ensuring that the voices, views, and expertise of affected populations are heard and acted upon.

ENDNOTES

¹ Definition of a stateless person, found in the UN Convention Relating to the Status of Stateless Persons, Article 1(1).

² See, for example, an analysis of this issue in Belgium: VAN DOREN, W., LEJEUNE, J., CLAES, M., KLEIN, V., 'The broadening protection gap for stateless Palestinian refugees in Belgium', *Statelessness and Citizenship Review*, Vol.2 no 2 (2020), <https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/123/99>