

Statelessness and the ability to receive a residence permit based on impediments to enforcement

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Abstract

Being stateless, roughly means being without a citizenship of any nation. This is the definition of being stateless in legal terms, called *de jure* statelessness. There is also statelessness that entails being without the efficient protection of one's nation, called *de facto* statelessness. Two groups of stateless migrants that correspond to these definitions are Bidoons from Kuwait and Palestinians from Gaza. Both of these groups of migrants, face difficulties returning to their home countries due to different reasons.

Kuwaiti Bidoons are *de jure* stateless; they do not have Kuwaiti citizenship and are regarded as illegal residents by the Kuwaiti state. Once they have left Kuwait, they cannot return unless they are able to produce a travel document that is known to be very rarely issued. Palestinians from Gaza are regarded as *de facto* stateless, as the Palestinian State has limited control over its borders. Palestinian migrants from Gaza, face impediments to return to Gaza due to the difficulties to access the only available border crossing there is to enter Gaza, which is controlled by the Egyptian military.

In legal terms, an impediment to return to one's home country is called an *impediment to enforcement*. The issue arises when an asylum seeker is denied asylum and shall return. There is existing legislation in Sweden to grant a residence permit on the grounds of impediments to enforcement. However, Sweden's policy towards each of the above-mentioned groups is that Kuwaiti Bidoons cannot receive a residence permit on this ground, whereas Palestinians from Gaza can.

The purpose of this thesis is to develop an understanding as to why one of the groups' impediment to return has been regarded as 'sufficient' in order to receive a residence permit, while the other has not. The analysis will take off in two judicial positions used in the Swedish Migration Agency that address these particular issues. The analysis will be accomplished using Critical Discourse Analysis in combination with the Social Construction Framework. The research question will be as follows: *How can stateless migrants' ability to receive a residence permit on the grounds of impediments to enforcement be understood using Critical Discourse Analysis of Sweden's policies regarding de jure stateless Bidoons from Kuwait and de facto stateless Palestinians from Gaza?*

The findings will show that the groups are differently socially constructed in the material, and that this may be an explanation of the differences in outcome.

Key words: Statelessness, Bidoons, Palestinians, Impediments to enforcement, Critical Discourse Analysis

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Abbreviations and acronyms

EU – European Union

CDA – Critical Discourse Analysis

FCO – (UK) Foreign and Commonwealth Office

OSCE – Organization for Security and Co-operation in Europe

SCF – Social Construction Framework

UK – United Kingdom

UNHCR – United Nations High Commissioner for Refugees

US – United States

1 Introduction

According to the 1954 Convention relating to the Status of Stateless Persons, the legal definition for a stateless person is an individual who is not considered as a citizen or national under the operation of the laws of any country (UNHCRa).

One example of a stateless group of people is Kuwaiti Bidoons. ‘Bidoon’ is an umbrella term for certain groups of people in Kuwait whose claimed nationality remain unrecognized by the Kuwaiti state. Hence, Kuwaiti Bidoons are stateless, in accordance with the abovementioned definition (Home Office, 2016, p. 4). Bidoons are classed as illegal residents by the Kuwaiti state and, depending on their status (see section 2.3 for a full disclosure), they may be prevented from working, denied rights to medical care, housing, education, and documentation in Kuwait (Home Office, 2016, p. 5f). However, according to the Swedish policy on Kuwaiti Bidoons, the discrimination that Bidoons are subjected to in Kuwait is in general not so severe that it can be regarded as persecution (which is one of the pre-requisites to receive asylum). Hence, the discrimination alone cannot be a ground for receiving asylum in Sweden (Migrationsverket, 2016a, p. 2). Accordingly, Kuwaiti Bidoons who do not have personal reasons for having left Kuwait but whose grounds for asylum given is the general discrimination Bidoons are subjected to in Kuwait, are denied asylum in Sweden. Thus, the matter of expulsion arises. As Kuwait regards Bidoons as illegal residents and as Bidoons are denied rights to documentation, they cannot retain travel documents. In practice, this means that Kuwaiti Bidoons are impeded to return to Kuwait. Hence, they end up in a Catch 22-position, wherein they can neither return to their home country, nor start a new life in Sweden. In legal terms, the inability to return is called a *practical impediment to enforcement*; namely, a practical impediment to return.

There is existing legislation within the Aliens Act (the law that addresses issues of migration) that enables the Swedish Migration Agency to grant a residence permit for a foreigner who shall be subject to expulsion, on the basis of practical impediments to enforcement. However, this is often not taken into consideration in the asylum process. This results in the abovementioned Catch 22-dilemma, where stateless people whose asylum application has been denied, can neither return to their country of usual residence, nor start a new life in Sweden (SOU 2017:84, 2017, p. 29). Accordingly, people who face this dilemma have to wait until their case has reached a statute of limitation, which occurs after four years. Then, if they can prove that they have not been able to return despite having put in efforts to do so, they may be granted a residence permit in Sweden due to impediments to enforcement. Among the stateless groups of people who face this outcome are Bidoons from Kuwait.

Another example of a group of stateless people who face impediments to return to their home country are Palestinians from Gaza. However, unlike Kuwaiti

Bidoons, this is due to the fact that the only international border crossing into Gaza is rarely accessible, which makes the trip to Gaza very difficult (Migrationsverket, 2016c, p. 9). Another major difference to the case of Kuwaiti Bidoons, is that Sweden's starting-point in its policy towards Palestinians from Gaza, is that they shall be granted a residence permit in Sweden on the basis of the above-mentioned impediment to enforcement (Migrationsverket, 2016c, p. 1). Thus, Palestinians from Gaza do not have to wait until their case has reached a statute of limitation in order to be granted a residence permit. Hence, unlike Kuwaiti Bidoons, they are not put in the Catch 22-dilemma described above.

Since 2014, Sweden recognizes Palestine as a sovereign state. This means that Palestinians who claim Palestine is their country of residence, can in fact be Palestinian citizens. However, Palestinians remain to be regarded by Sweden as practically, or *de facto*, stateless (see definition in section 2.1), as Sweden regards the Palestinian citizenship as too insufficient in terms of being an institution that preserves the rights of its carriers (Migrationsverket, 2015, p. 1ff).

The ultimate purpose of this study is to get a deeper understanding as to why the above-mentioned policies have come to such different conclusions regarding the ability for these two groups of stateless migrants to receive a residence permit based on the inability to return. In other words, why is one of the impediments to enforcement regarded as 'sufficient' in order to generate a residence permit, while the other is not?

The analysis will be accomplished through a Critical Discourse Analysis of two judicial positions¹ used in the Swedish Migration Agency that address these two groups of people in relation to impediments to enforcement, as these documents constitute the very foundation for the above-mentioned policies.

1.1 Research aim and question

The aim of this study is to develop an understanding as to why the above-mentioned policies have come to two opposing conclusions regarding the ability to receive a residence permit based on impediments to enforcement for Bidoons from Kuwait and Palestinians from Gaza, despite that both groups face impediments to return.

Accordingly, the research question for this thesis will be as follows: *How can stateless migrants' ability to receive a residence permit on the grounds of impediments to enforcement be understood using Critical Discourse Analysis of Sweden's policies regarding de jure stateless Bidoons from Kuwait and de facto stateless Palestinians from Gaza?*

¹ Judicial positions provide recommendations for Case Officers in the Swedish Migration Agency for how to interpret and practice the law, and thus constitute the foundation for the decision-making in the Agency (see section 5.3).

1.2 Thesis outline

The thesis will be structured as follows. The preceding section two will lay the foundation for the following Literature review and Analysis, through a brief review of key concepts. Hereby, the section includes a definition of *de jure* and *de facto* statelessness, a definition of *impediments to enforcement*, along with a recapitulation of two groups of people that each represent one of the two categories of statelessness; namely, Kuwaiti Bidoons and Palestinians from Gaza. Subsequently, section three outlines some of the previous research that has been done on the subject of statelessness and impediments to enforcement. In section four, the Theoretical framework of Critical Discourse Analysis (CDA) along with the Social Construction Framework developed by Ingram and Schneider, will be presented. As theory and method are intertwined within CDA, the fourth chapter will address ontological and epistemological premises regarding the role of language in social practices, whereas the fifth, Methodology-section will contain methodological guidelines for how to approach the research problem (Jørgensen & Philips, 2002, p. 4). Hence, in the fifth section, a three-dimensional model of analysis according to Norman Fairclough will be presented, along with a presentation of the material that will be analyzed in the study. The ensuing, sixth section will cover the Analysis whereby the material will be analyzed according to the three-dimensional model by Norman Fairclough. Finally, section seven will cover Conclusions along with suggestions for further research.

2 Background

Before proceeding with the Analysis, a few key concepts will be clarified in this section, in order to avoid confusion and misperception.

2.1 Definitions of *de jure* and *de facto* statelessness

According to Article 15 in the Universal Declaration of Human Rights,

“[e]veryone has the right to a nationality” (United Nations, 1948)

However, statelessness remains to be a large problem for many people around the world (Weissbrodt et al, 2006, p. 245). The United Nations High Commissioner for Refugees (UNHCR) estimate the current number of stateless people in the world, to at least 10 million (UNHCRb). According to the definition in the 1954 Convention relating to the Status of Stateless Persons, a stateless person is:

“a person not considered as a national by any State under the operation of its law” (UNHCR, 2010, p. i).

Statelessness in this sense is called *de jure* statelessness, which refers to the lack of a legal status as citizen of a specific country (UNHCR, 2010, p. i). The right to citizenship is recognized in many international human rights treaties, as a fundamental human right. The elimination of *de jure* statelessness is thus an issue that has been widely targeted throughout the international human rights regime (Weissbrodt et al, 2006, p. 245). Having a nationality is in many states a requirement in order to retain full civil, social, economic and political rights. It also enables one to receive a nation’s diplomatic protection (Weissbrodt et al, 2006, p. 248).

However, statelessness can also refer to a situation where a person does have citizenship, but still cannot retain the concomitant benefits or protection from its country of residence. This definition is called *de facto* statelessness (Weissbrodt et al, 2006, p. 251). *De facto* statelessness may transpire when governments withhold benefits that normally come with citizenship, such as diplomatic protection and support. *De facto* stateless people thus have legal claim to the concomitant benefits of a citizenship, but are practically incapable of enjoying these benefits. Consequently, they may be regarded as being effectively without citizenship (Weissbrodt et al, 2006, p. 252).

2.2 Definition of *impediments to enforcement*

The Swedish definition of impediments to enforcement is stated in the Swedish Migrations Agency's *Judicial position on impediments to enforcement – SR 25/2016* (Migrationsverket, 2016b). According to this document, the most common impediments to enforcement are that the country of usual residence will not allow a migrant to return, that it is practically impossible for anyone to enter the country of usual residence, or for a minor without a custodian to lack an arranged reception in the place of residence (Migrationsverket, 2016b, p. 1, 8). In other words, an impediment to enforcement is a practical impediment for a person to return back home.

If the impediment is temporary, the migrant may be granted a residence permit in accordance with the Alien's Act, Section 5, § 11. If the impediment is permanent, a residence permit may be granted based on so-called 'particularly distressing circumstances' (the Alien's Act, Section 5, § 6), as there is no specific law that addresses permanent impediments to enforcement. For the latter regulation to be applicable, there is an additional requirement according to the Temporary Law Regarding the Limited Possibility to Receive a Residence Permit in Sweden ('the Temporary Law', SFS 2016:752). Namely, an expulsion must also violate a Swedish commitment according to an international convention (Migrationsverket, 2016b, p. 2). This means that the requirements are higher to grant a residence permit based on a permanent impediment to enforcement than for a temporary impediment to enforcement.

The burden of proof for impediments to enforcement is on the applicant, which means that it is the applicant who shall prove that he or she is unable to return. Additionally, the impediment to enforcement must be proved, which in legal terms is a relatively high level of evidentiary burden. Further, the impediment to enforcement must be concretely specified. According to the *Judicial position on impediments to enforcement – SR 25/2016* (Migrationsverket, 2016b), there is very limited room to grant a residence permit in accordance with the Alien's Act, Section 5, § 6 (namely, the law that is applicable when dealing with permanent impediments to enforcement). The room is a little larger after a case has reached a statute of limitation. However, in order for a residence permit to be granted after a statute of limitation, the applicant cannot have been the reason for the unaccomplished expulsion. In other words, the applicant must have been cooperative and cannot have remained in hiding, for example. In that case, the applicant may not be granted a residence permit on the grounds of impediments to enforcement and hence, a new expulsion order may be issued (Migrationsverket, 2016b, p. 4ff).

2.3 Introducing a *de jure* stateless group: Bidoons from Kuwait

‘Bidoon’ is used as an umbrella term in Kuwait for people who do not have citizenship. Hence, Kuwaiti Bidoons are *de jure* stateless, in accordance with the definition in section 2.1 (Home Office, 2016, p. 4f).

All Bidoons are classified as illegal residents by the Kuwaiti state. However, a minority of the Kuwaiti Bidoons have been granted Kuwaiti citizenship and consequently, are not regarded as stateless. These are people who once were registered by the state body in charge of the Bidoons, called ‘the Executive Committee’ (Home Office, 2016, p. 4f). The benefits that follow from having been registered by the Executive Committee are for example free health-care, free education, along with the ability to receive a birth certificate, death certificate, marriage contract and driver’s license. However, all official documentation list nationality for Bidoons as “non-Kuwaiti” (Home Office, 2016, p. 21ff). The requirements for Kuwaiti citizenship are stated in Kuwait’s Nationality Law from 1959. However, the law does not provide any clear stipulation of exactly how non-nationals may gain citizenship (Home Office, 2016, p. 14).

The Bidoons originate from tribal nomads and Bedouins who were not registered by the Kuwaiti authorities when in 1959 the Kuwaiti government attempted to register all Kuwaiti residents. The reason that they were not registered, was that many Bedouins were not aware of the government’s registration drive, or simply neglected to register (Home Office, 2016, p. 9).

About ten percent of Kuwait’s population are said to be Bidoons, but the numbers are ambiguous. In 2016, Human Rights Watch estimated the number of stateless Kuwaiti residents to a little over 100 000 people, while some Bidoon activists argue that the real number is 240 000 people (Home Office, 2016, p. 11).

2.3.1 Documentation and rights

Bidoons are not entitled to retain civil identification cards in Kuwait, as they are classed by the Kuwaiti state as illegal residents. Between 1996 and 2000, 106 000 Bidoons were registered by the Executive Committee, according to Human Rights Watch. The individuals who were registered, were issued with so-called green cards (also known as security cards). The green card does display the card holder’s name, date of birth and address, but does not suffice as an identity card (Home Office, 2016, p. 24ff).

From 2000 and forward, Bidoons may be issued with a so-called review card. The review card is valid for one or two years and verifies, according to the Kuwaiti state,

“[...] that the person is registered in state records with the Central System as an illegal resident. In addition, it establishes that its bearer has a set of rights, benefits,

and facilities that were enumerated in Cabinet Decree 409/2011.” (Home Office, 2016, p. 26).

Health care is not provided for Bidoons who hold the review card, whereas education is (Home Office, 2016, p. 26).

Bidoons have major difficulties retaining passports, which in turn generates problems applying for driver’s licenses, registering at schools and travelling abroad (Home Office, 2016, p. 9, 23). The US Department of State Country Reports on Human Rights 2015 asserts:

“Bidoon and foreign workers faced problems with or restrictions on foreign travel. The government restricted the ability of some bidoon to travel abroad by not issuing travel documents, although it permitted some bidoon to travel to Saudi Arabia for the annual Hajj (Islamic pilgrimage)” (Home Office, 2016, p. 17).

According to the UK Foreign and Commonwealth Office (FCO), travel documents are rarely issued for Kuwaiti Bidoons. However, Bidoons may under particular circumstances be issued a so-called Article 17-document, which is a travel document that resembles a passport. A holder of an Article 17-document may re-enter Kuwait, but only within the Article 17-document’s validity date. The most common reason for their issuance is for Bidoons to travel abroad within their government service. Article 17-documents may also be issued for Bidoons who require medical care elsewhere, for Bidoons to study abroad, or for Bidoons to participate in the Islamic pilgrimage. Article 17-documents are valid for two to five years and are only issued in Kuwait. Very few Bidoons have been issued an Article 17-document (Home Office, 2016, p. 28). None of the Bidoons who have come to Sweden to seek asylum have been able to produce one (Migrationsverket, 2016a, p. 2).

2.3.2 Impediments to enforcement

As previously mentioned, Bidoons have limited capabilities acquiring travel documents from the Kuwaiti government. This means that most Bidoons, who do not have travel documents, are prohibited to travel abroad. Even if they would be able to get out of Kuwait (for example with the help of people smugglers), they will not be allowed to return. Only Bidoons who are in the possession of a valid Article 17-document are allowed to re-enter Kuwait (Home Office, 2016, p. 28).

Herein lies the impediment to enforcement for Bidoons who have managed to exit Kuwait and seek asylum, and whose asylum application has been denied. According to the Swedish Migration Agency, none of the Bidoons who have come to Sweden have been able to show possession of an Article 17-document (Migrationsverket, 2016a, p. 2). This means that they have been practically impeded to return to Kuwait.

2.3.3 Sweden's policy on Kuwaiti Bidoons

The Swedish policy on the ability for Kuwaiti Bidoons to receive a residence permit based on impediments to enforcement, is stated in a judicial position issued by the Swedish Migration Agency, called *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a).

The policy states that a Bidoon shall be granted a residence permit following a statute of limitation, if the individual has not been able to return despite that he or she has exhausted every attempt available (Migrationsverket, 2016a, p. 1). Further, the policy clearly states that there is no legal support to grant a Bidoon a residence permit on the grounds of impediments to enforcement prior to a statute of limitation. The reason given is that arrangements to prompt Kuwait to accept returning Bidoons are in progress (Migrationsverket, 2016a, p. 2f).

2.4 Introducing a *de facto* stateless group: Palestinians from Gaza

In October 2014, Palestine was recognized by Sweden as a sovereign state. However, the Palestinian government has no control over its borders, there is no adequate governmental protection and citizens have very limited capabilities to acquire diplomatic protection and assistance from the Palestinian government. As a consequence of these circumstances, and despite that there are individuals that legally may be regarded as Palestinian citizens due to Sweden's recognition of the Palestinian State, Sweden regards the Palestinian citizenship as so tenuous and inefficient, that Palestinians are regarded as *de facto* stateless (Migrationsverket, 2015, p. 1).

The Gaza strip is one of the world's most densely populated areas. 1,8 million people of which 1,2 million are refugees, share the area of 350 square kilometers. Nearly 80 percent of the population is reliant on humanitarian aid (Lifos, 2016, p. 6).

The latest escalation of the Israeli-Palestinian conflict in 2014, resulted in the imposition of Martial law and curfew in the area, along with a mass evacuation of 3 200 families who lived along the border between Gaza and Egypt (Lifos, 2016, p. 15).

2.4.1 Documentation and rights

Palestinian citizens may obtain passports from the Palestinian government. This means that a Palestinian citizen who can provide a Palestinian passport with an identification number and which has been issued by a Palestinian administrative authority, can prove his or her identity (which in legal terms is a high level of

evidence). Others, who have their place of residence in Gaza, the West Bank or Eastern Jerusalem and are registered there, will be able to make their identity probable (in legal terms a lower level of evidence) (Migrationsverket, 2015, p. 2).

Palestinians who apply for asylum in Sweden and who do not have a valid passport, can apply for one at the Palestinian embassy in Stockholm (Migrationsverket, 2016c, p. 12).

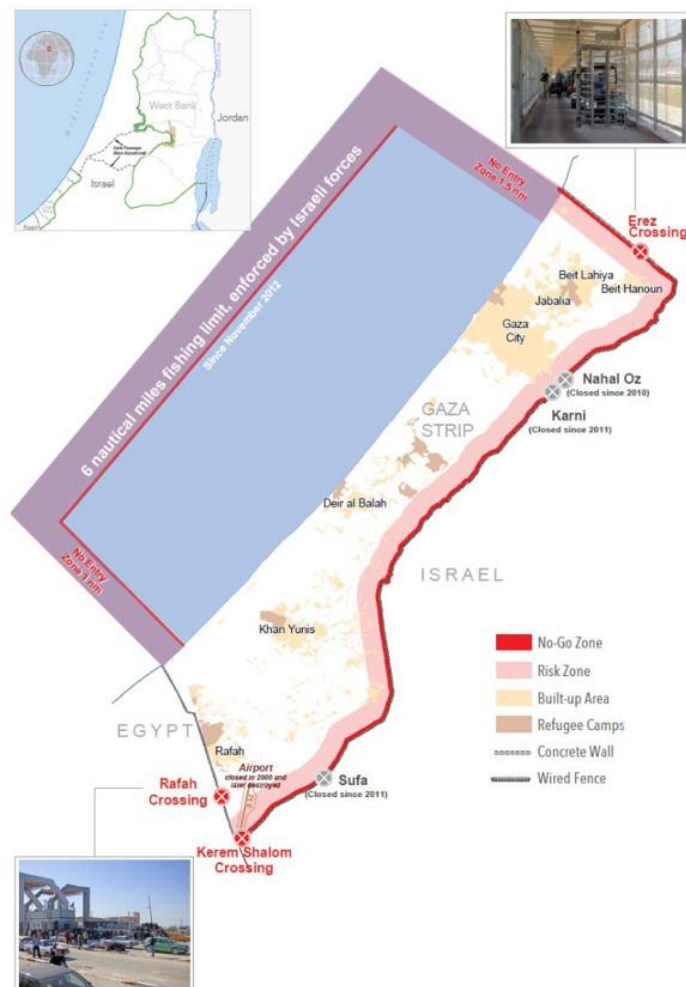
2.4.2 Impediments to enforcement

The only available entry to the Gaza strip, is at the Rafah Crossing by the Egyptian border (see Picture 1). Consequently, a return to Gaza requires access to the Rafah Crossing (Migrationsverket, 2016c, p. 9f).

The Rafah Crossing is only sporadically open during short time intervals and is under control by the Egyptian military. It is thus the Egyptian military who solely decides if the border shall be open. Furthermore, the border may be closed despite that it has been scheduled to be open, due to prevailing security circumstances (Migrationsverket, 2016c, p. 9f).

Due to the unstable security situation in the area, along with the imposition of Martial law and curfew, it would not be safe for a returnee to wait by the border until it opens again, in case it would be closed when the returnee arrives at the border. Additionally, in order to cross

Egypt, one requires a valid transit visa issued by the Egyptian authorities. Transit visas are currently issued ambiguously and it is therefore difficult to predict whether a returnee will be issued with one. (Migrationsverket, 2016c, p. 9f).



Picture 1. The Gaza Strip. (Lifos, 2016, p. 1)

2.4.3 Sweden's policy on Palestinians from Gaza

The Swedish policy on the ability for Palestinians from Gaza to receive a residence permit based on impediments to enforcement, is stated in a judicial position issued by the Swedish Migration Agency, called *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c).

Sweden's policy on Palestinians from Gaza, is that there is a practical impediment to enforcement due to the current difficulties to cross the Egyptian border, which entitles Palestinians from Gaza to receive a residence permit. The impediment is regarded as temporary, which means that Palestinians from Gaza are on the outset granted a temporary residence permit in accordance with the Aliens Act, Section 5, § 11 of one year (Migrationsverket, 2016c, p. 10f).

3 Literature review

In this section, a brief overview will be presented of what limited research has been done on the subject of statelessness in relation to impediments to enforcement. The research presented below has a slightly different approach to the issue than the approach in this thesis. The first study focuses not just on impediments to enforcement, but on several other issues as well that are specifically related to statelessness.

The latter is a study that has been done on behalf of the Swedish Government, which aims at mapping the reasons as to why impediments to enforcement are not taken into consideration in the initial process, along with questioning to which extent it is relevant to place the burden of proof for impediments to enforcement on the individual.

3.1 *”Protection of Stateless Persons in International Asylum and Refugee Law”* by Kate Darling

In the article *”Protection of Stateless Persons in International Asylum and Refugee Law”*, Kate Darling analyzes the impact of human rights law, international relations and domestic decision making, when it comes to protection of stateless people (Darling, 2009, p. 1). Darling lists five factors that are often encountered in the refugee determination process, specifically when dealing with statelessness. The five factors are (1) refugee definition, (2) country of reference, (3) discrimination amounting to persecution, (4) denial of re-entry, and (5) deportation. Through an exploration of how the judicial systems in Australia, Canada, New Zealand, the United Kingdom and the United States have approached these five issue areas in cases of stateless applicants, Darling demonstrates how stateless migrants are being excluded from international human rights protection (Darling, 2009, p. 1, 8). Hence, Darling’s conclusion is that stateless individuals’ human rights are ignored in the international human rights regime, due to a too narrow interpretation of the concept ‘refugee’, that does not take into consideration the issues that are exclusively related to statelessness (Darling, 2009, p. 14).

The fourth and fifth factors – denial of re-entry and deportation – are directly linked to the subject of analysis of this thesis, as denial of re-entry is a form of impediment to enforcement and thus may be an obstacle for deportation. In this sense, Darling concludes that there is simply no discussion on what a removal means for a stateless person, and that the result of a removal often is that the stateless individual remains in the country of destination under the constant risk of being deported (Darling, 2009, p. 13).

3.2 “*Residence permit due to impediments to enforcement and statute of limitation*” (SOU 2017:84) by Statens Offentliga Utredningar

In an Official Report from the Swedish Government called “*Residence permit due to impediments to enforcement and statute of limitation*” [the author’s translation] (SOU 2017:84), researchers have, on behalf of the Swedish Government, analyzed and mapped the adjudication of impediments to enforcement within the asylum process in Sweden. Subsequently, the researchers have recognized a number of reasons as to why stateless migrants have difficulties of receiving a residence permit due to impediments to enforcement, despite the fact that there is legal room within Sweden’s Aliens Act to grant a residence permit based on this ground (SOU 2017:84, 2017, p. 13).

The researchers highlight a number of factors within the Swedish asylum process that makes it very difficult for the individual to prove an impediment to enforcement. According to the researchers, these factors ultimately result in people ending up in a Catch 22-position where they can neither return to their country of usual residence, nor begin a new life in Sweden (SOU 2017:84, 2017, p. 26). After having mapped a number of obstacles that result in people ending up in the abovementioned dilemma, the researchers propose four modifications to Sweden’s asylum process that they argue would facilitate the individual’s ability to prove one’s inability to return to one’s country of usual residence.

The proposed modifications are (1) that “[t]he Aliens Act should clearly state that practical impediments to enforcement must be considered in the initial case and that a residence permit may be granted on this basis” (SOU 2017:84, 2017, p. 30), (2) that “[t]he concept of *practical impediments to enforcement* should be introduced in the provision that allows the Swedish Migration Agency to grant a residence permit following a final and non-appealable removal order” (SOU 2017:84, 2017, p. 31), (3) that “[a] new provision should be introduced explicitly stating that if a removal order has expired, a residence permit may be granted if the individual’s own actions are not the decisive reason for the removal order being unenforceable” (SOU 2017:84, 2017, p. 32), and (4) that “[a]n inquiry should be appointed on the legal status of stateless people and a statelessness determination procedure” (SOU 2017:84, 2017, p. 33).

4 Theoretical framework

In this section, the theoretical framework of Critical Discourse Analysis (CDA) by Norman Fairclough will be presented. As aforementioned, theory and method are intertwined within CDA, and thus CDA will constitute both theoretical framework as well as methodological assumptions in the study. However, CDA needs to be accompanied with another theory in order to study non-discursive elements. Accordingly, the ensuing theoretical part will cover the ontological and epistemological aspects of Fairclough's CDA, along with the Social Construction Framework, developed by Ingram and Schneider.

4.1 Critical Discourse Analysis

While CDA places weight on the active role of discourse in the social construction of the world, discourse is, according to Fairclough, just one of many features within social practices (Jørgensen & Philips, 2002, p. 7). Basically, discourse within CDA is considered a type of social practice which constitutes the social world while it is also constituted by other social phenomena (Jørgensen & Philips, 2002, p. 61). Consequently, discursive practice not only reinforces a prevailing structure, but also challenges it, by using words that lay outside the structure. This approach, among others, is what differentiates Fairclough's CDA from other poststructuralist approaches such as Laclau and Mouffe, who sees discourse as purely constitutive (Jørgensen & Philips, 2002, p. 65).

According to Fairclough, social structure consists of both discursive and non-discursive elements, and is constituted by social relations in both society in general, as well as in particular institutions (Jørgensen & Philips, 2002, p. 65). Hence, the discursive is just one mechanism that, when combined with other mechanisms (such as economical or psychological), constitute the non-discursive, social practice (Jørgensen & Philips, 2002, p. 71). Thus, while texts are considered to constitute demonstrations of processes transpiring in society, Fairclough emphasizes the interplay between texts and societal and cultural structures, and asserts that text-analysis is not sufficient when analyzing discourse. Hence, an analysis of the socio-cultural practice of which a given text constitutes one of many features, is essential within Fairclough's approach to CDA (Jacobsson & Sjöberg, 2012, p. 132ff). This is also one of his main critiques against other, discursive analytical approaches that only focuses on language, which he asserts gives rise to a simplistic and shallow understanding of the connection between text and society (Jørgensen & Philips, 2002, p. 66).

The main aim of Fairclough's approach to CDA is to study the connection between texts and social practice, hence, the main focus within his analytical framework is the role of discursive practices in the preservation of social structure and in social change. Discourse is thus, according to Fairclough, an essential part within a social practice, which both produces and transforms social relations including power relations, along with knowledge and identities (Jørgensen & Philips, 2002, p. 65). The discursive practice thus constitutes the very link between text and social practice, as it is through the discursive practice that texts constitute and are constituted by social practice (Jørgensen & Philips, 2002, p. 69).

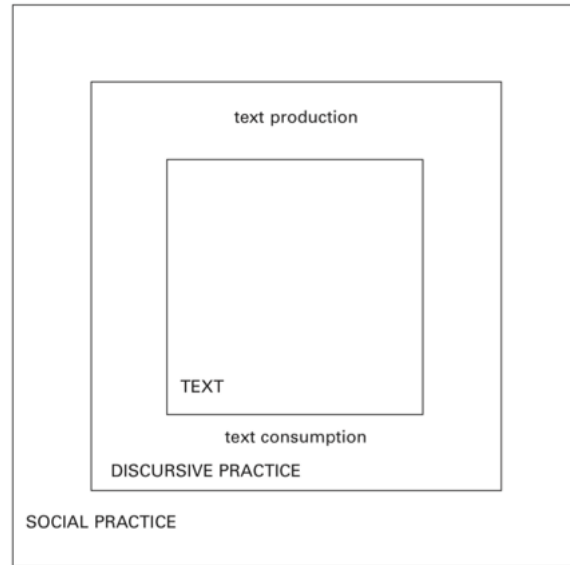


Figure 1. Fairclough's three-dimensional model. (Jørgensen & Philips, 2002, p. 68)

CDA aims at revealing the role that discursive practice has in maintaining unequal power relations in society. Ultimately, it aims to contribute to more equal power relations and social change. Thus, CDA is not politically neutral, but takes the side of politically oppressed social groups (Jørgensen & Philips, 2002, p. 63f). According to Fairclough, discursive change occurs when discursive practices are expressed in new ways. However, the possibility for change is limited by prevailing power structures because different actors have access to different discursive practices (Jørgensen & Philips, 2002, p. 74f).

Two dimensions of discourse that are important focal points within Fairclough's approach to CDA are the *communicative event* and the *order of discourse*; the former constituting an instance of language use, whereas the latter constitutes a mix of discourses and genres that are used in a particular social field (Jørgensen & Philips, 2002, p. 67). Fairclough holds that every communicative event works as a type of social practice, as it reproduces or challenges the order of discourse (Jørgensen & Philips, 2002, p. 69f). Accordingly, a central focal point within Fairclough's approach is the analysis of *change* through the concept of *intertextuality*. Namely, Fairclough holds that the production of text always builds on already existing discursive structures and meanings of other texts. Thus, through the study of intertextuality, one can explore both the reproduction of discourses whereby no new components are introduced, and discursive change through the introduction of new elements of discourse (Jørgensen & Philips, 2002, p. 7).

As aforementioned, CDA does not suffice for the analysis of non-discursive elements. Thus, in order to study the non-discursive social practice wherein a discourse takes place, CDA needs to be combined with another theory (Jørgensen & Philips, 2002, p. 86). Subsequently, in the ensuing analysis, the use of CDA will be combined with the use of the Social Construction Framework, which will be presented below.

4.1.1 The Social Construction Framework

The Social Construction Framework (SCF) is a framework developed by Schneider and Ingram, that illuminates how policies are shaped by the social construction of target populations. It also addresses the role that power has in this relationship. The framework allows for a deeper understanding of policy continuation and policy change through the reflection on whether a particular social group is positively or negatively socially constructed within the policy process. The framework can also be used to explain implications of policy, such as the presence of policy injustices and unequal citizenship. According to Pierce et al, the framework explicitly adheres to a normative approach, as it seeks to explain why some social groups are more advantaged than others in terms of policy outcomes, and how different policy designs can alter or reinforce such advantages. In other words, the framework seeks to understand why some groups of people receive benefits while others are left with burdens (Sabatier, 2014, p. 106ff; Pierce et al, 2014, p. 3).

Schneider and Ingram's definition of policy design includes nine observable elements: (1) target populations, (2) problem definition, (3) rules, (4) motivations, (5) assumptions, (6) burdens and benefits, (7) instruments, (8) structure of implementation, and (9) social constructions. These are to be found in the content of policies, within the practices of policies, and in the consequences of policies. According to the framework, there is thus a cyclical dynamic between policy design, target populations and policy development (Pierce et al, 2014, p. 6).

The framework builds on the notion that a large part of the political world is socially constructed and that issues that reaches the political agenda depends on social processes like framing and agenda setting, rather than their perceived seriousness. Further, the authors argue that political leaders gain political capital by doing 'good' things for 'good' people and, conversely, by being tougher towards people who are perceived by society as 'bad' (Sabatier, 2014, p. 106ff; Pierce et al, 2014, p. 1).

According to the framework, a negative social construction of a certain group of people in society often remains the prevailing image of that social group, once the negative construction has been successfully embodied in law. Consequently, the authors hold that courts play an essential role in adjudicating negative or positive perceptions of various social groups in a society (Sabatier, 2014, p. 125ff).

The framework lists four categories of social constructions of target populations, namely the *advantaged*, the *contenders*, the *dependents* and the *deviants*. The categories are graded within a matrix of two axes, where one indicates level of power, and the other grades social construction (Pierce et al, 2014, p. 5).

The two former categories – the *advantaged* and the *contenders* – refer to individuals in society who have political influence and consequently tend to benefit from public policies. The *advantaged* are positively socially constructed and consist of middle class taxpayers, the elderly, soldiers, job creators, etcetera. The *contenders* are negatively socially constructed and tend to be referred to as selfish, morally suspect and untrustworthy people (Sabatier, 2014, p. 110ff). Examples include mortgage banks and political activists (Pierce et al, 2014, p. 16).

The other two categories – the *dependents* and *deviants* – have relatively low political influence. The two target groups that constitute the subjects of analysis for this thesis are expected to have relatively low political influence, as they are not Swedish citizens. Hence, the focus for the ensuing analysis will be the *dependents* and *deviants*-categories. These will be explained in further detail below.

The *dependents* are a social group that are positively socially constructed. This category consists of unfortunate people that may be victims of disasters, homeless, poor or hungry. This category is viewed as ‘good’ people that are ‘deserving’ in terms of sympathy. However, they are perceived as considerably less eligible of benefits from public policy than the individuals categorized as the *advantaged*, as they do not actually contribute financially to the national wealth. Consequently, policymakers tend not to spend any extensive resources on this category unless it is absolutely required (Sabatier, 2014, p. 112).

The *deviants* are negatively socially constructed and are frequently held accountable for the misfortunes in society. This group tend to be subject to disproportional burdens and sanctions and are generally perceived as ‘undeserving’. This category often makes up a permanent underclass in society and contains criminals and welfare cheaters, along with illegal immigrants (Sabatier, 2014, p. 112).

In the ensuing analysis, the SCF will be used in order to acquire an understanding of what impact social constructions have had in Sweden’s policy design of two groups of stateless migrants. Ultimately, the use of SCF will allow for a deeper understanding as to why two groups of stateless migrants’ impediments to return have generated two complete different policy outcomes.

The initial expectation is that stateless Palestinians from Gaza will fall under the *dependents* category, as they have acquired the benefit of receiving a residence permit based on their impediment to enforcement. This may indicate that they are viewed by society as ‘deserving’ in terms of sympathy. Accordingly, the initial expectation is that Bidoons from Kuwait will fall under the *deviants* category. This is because their impediment to enforcement does not generate the ability to obtain a residence permit in the first trial of the asylum process. Hence, Kuwaiti Bidoons will have to wait in Sweden until their case has reached a statute of limitation in order to retain a residence permit, during which time they will be regarded as illegal immigrants.

5 Methodology

The methodological framework in the analysis will be based upon Norman Fairclough's approach to Critical Discourse Analysis (CDA), as it highlights the interplay between research and social practice. As mentioned in the theoretical framework, the use of CDA will be combined with the use of the Social Construction Framework (SCF) by Ingram and Schneider.

The overarching aim of CDA is

“[...] to reveal the role of discursive practice in the maintenance of the social world, including those social relations that involve unequal relations of power.” (Jørgensen & Philips, 2002, p. 63).

Accordingly, Fairclough's approach to CDA is a text-oriented analysis that tries to unite three traditions, namely (1) a thorough textual analysis that focuses on linguistic features within a certain *text*; (2) a macro-level analysis of social processes, relating to *discursive practice*, i.e. the production or consumption of the text; and (3) an analysis of *social practice* on a micro-level, i.e. an analysis of the context in which a certain discourse takes place (Jørgensen & Philips, 2002, p. 65ff). In order to carry out the analysis of the third dimension, the SCF will be incorporated.

The three dimensions will be elaborated on further in the following subsections.

5.1 Fairclough's three-dimensional model

5.1.1 Analysis of the *textual dimension*

The textual part of the analysis focuses on the linguistic aspects of the text and is carried out through the application of certain tools, such as wording, grammar and metaphors. The aim is to highlight how discourses are activated by texts and encourage a certain interpretation. In other words, this part of the analysis is supposed to give insight to how reality such as social identities and social relations are constructed through linguistics (Jørgensen & Philips, 2002, p. 83).

Two grammatical features that will be of particular focus for the textual analysis are *transitivity* and *modality*. *Transitivity* encompasses the relationship between a communicative event or a communicative process and the subjects and objects that are involved. In other words, transitivity focuses on whether there is an active agent or not in a sentence, thus emphasizes or reduces the agent's level of responsibility (for example: 'The Swedish Migration Agency concludes' versus 'it may be concluded'). *Modality* refers to the extent that the spokesman commits to the text,

namely if the text is expressed as a truth-claim, if there is use of hedges (the use of low affinity such as ‘well’ or ‘a bit’), or if there is use of permission, whereby the speaker permits the receiver to do something (Jørgensen & Philips, 2002, p. 83f).

5.1.2 Analysis of the *discursive practice*

The analysis of the discursive practice focuses on *interdiscursivity* and *intertextuality*; namely, how texts are constructed, distributed, interpreted and consumed (Jørgensen & Philips, 2002, p. 81).

Interdiscursivity transpires when different genres and orders of discourses are mixed together in a communicative event. A *genre* is a type of social life which is produced in a semiotic mode. For example, a precedent or a judicial position are two different types of genres that can produce different kinds of discourses (for example welfare discourses, human rights discourses, etcetera). Accordingly, an *order of discourse* constitutes a mix of different discourses and genres (Jørgensen & Philips, 2002, p. 69).

When different genres and orders of discourses are mixed together, creative discursive practices evolve that indicate change, whereas a mix of conventional orders of discourses and genres, indicate continuity and reproduction of the prevailing social order (Jørgensen & Philips, 2002, p. 73f, 82).

Subsequently, *intertextuality* refers to how texts draw on already existing discourses and texts, through which they compose an intertextual chain. Thus, through the analysis of intertextuality, one can observe how structure and content are transformed. Intertextuality may be displayed by texts making references to other texts or by texts using the same or similar wordings (Jørgensen & Philips, 2002, p. 74, 82).

5.1.3 Analysis of the *social practice*

The social practice constitutes the context in which the discourse is articulated. This level of the analysis involves reflections of whether the discursive practice reproduces or rearranges the prevailing order of discourse and what effects this has for the social practice. The guiding concepts here are *hegemony* and *ideology* (Jørgensen & Philips, 2002, p. 69).

Fairclough’s understanding of *hegemony* builds on the notion that there is a struggle between different and competing ideologies. Hegemony is both the consensus of meaning that emerges after a negotiation concerning meaning, but also the very process of negotiation. Ultimately, hegemony is never stable. Elements that challenge prevailing meanings provide people with means for resistance, and thus, hegemony is an ever-changing discursive struggle that is the result of the tensions of dominance (Jørgensen & Philips, 2002, p. 76f).

Accordingly, Fairclough understands *ideology* as the construction of meaning that results from social structures in society. Discourses contribute to the positioning of people within different ideologies and, according to Fairclough,

discourses that have ideological consequences are the ones that contribute to the maintenance or transformation of power relations (Jørgensen & Philips, 2002, p. 76f). An analysis of the social practice thus requires a mapping of the so-called social matrix of discourse: the social structures and cultural relations that constitute the context for the discursive practice (Jørgensen & Philips, 2002, p. 86). This part of the analysis requires the addition of a complementary theoretical framework, which in this analysis will be two guiding concepts from the Social Construction Framework, namely *deviants* and *dependents*. In accordance with the definition in section 4.1.1, *deviants* are negatively socially constructed and regarded as undeserving of social benefits, whereas *dependents* are positively socially constructed and regarded as deserving of social benefits due to society's sympathy. Both groups have relatively low political influence in society.

5.2 Operationalizations

In order to carry out the analysis according to Fairclough's three-dimensional model, the following objectives (motivated by Fairclough, 1992, pp. 232-238) will be directive.

GOALS	<i>Textual dimension</i>	<ul style="list-style-type: none"> Identify the agent or lack thereof in the sentence 	
		<ul style="list-style-type: none"> Identify what commitment (truth, hedges or permission) is most commonly expressed in the text 	
	<i>Discursive practice</i>	<ul style="list-style-type: none"> Identify connections between the texts, in terms of references to other texts 	
		<ul style="list-style-type: none"> Identify what genres and orders of discourses that are displayed in the material, whether they are conventional or unconventional 	
	<i>Social practice</i>	<ul style="list-style-type: none"> Identifying if there is a hegemonic discourse in the material 	
		<ul style="list-style-type: none"> Determine if there is a hegemonic discourse that encompass <i>de jure</i> and <i>de facto</i> stateless migrants in terms of <i>deviants</i> and <i>dependents</i>, that correspond to the criteria listed below 	
		<i>Deviants</i>	<i>Dependents</i>
		<ul style="list-style-type: none"> Low political influence Negatively socially constructed Perceived as undeserving Subjects to disproportional burdens and sanctions Illegal immigrants 	<ul style="list-style-type: none"> Low political influence Positively socially constructed Perceived as deserving due to sympathy Recipients of social benefits Constructed as victims of disasters

Figure 2. Operationalization's scheme.

5.3 Case selection

The cases that have been selected to constitute the subjects of analysis are Bidoons from Kuwait and Palestinians from Gaza. The reason for their selection is twofold.

Firstly, each case represents one aspect of statelessness, namely *de jure* and *de facto* statelessness. Both groups face impediments to enforcement, but are treated differently by Sweden, in terms of ability to receive a residence permit on that ground. Hence, the groups constitute a suitable foundation for a comparative case study, as they are similar in some aspects, and different in others. Their similarities are dependent (response) variables, and are constituted by impediments to enforcement, as both groups face this issue. The *de jure* and *de facto* statelessness is where they differ, as each one of the groups belongs to one of each category. Hence, *de jure* and *de facto* statelessness constitute the independent, or explanatory, variable, as this is expected to be able to explain the variation (Esaiasson et al, 2012, p. 50ff).

Secondly, from my previous experiences working as a Case Officer in the Swedish Migration Agency, it has come to my attention that these groups of stateless migrants are often encountered in the Agency, and that they are treated very differently, despite their similarities in facing the same issue; namely, a prevailing impediment to enforcement to return.

5.4 Material

The material used in the analysis will consist of judicial positions used in the Swedish Migration Agency. Judicial positions provide recommendations for Case Officers in the Swedish Migration Agency for how to interpret and practice the law, and thus constitute the foundation for the decision-making in the Agency. Judicial positions are conclusive and their purpose is to encourage uniformity within the decision-making in the Swedish Migration Agency (Migrationsverket, 2017). Due to their conclusive nature and that they are specifically directed towards the decision-making in certain key issues, they may be said to constitute Sweden's official position on the very issues that they address.

Judicial positions are partly based on precedents from the Migration Court and the Migration Court of Appeal, which in turn are directive for how the law shall be interpreted in lower courts. Precedents from the Migration Court and the Migration Court of Appeal are determinant for how case officers in the Swedish Migration Agency shall interpret and implement the law. The judicial positions are also based on government bills, the Aliens Act (SFS 2005:716), the Temporary Law Regarding the Limited Possibility to Receive a Residence Permit in Sweden ('the Temporary Law', SFS 2016:752), along with other judicial positions as well as other documents such as reports from the Swedish Migration Agency's Center for Country Information, Lifos.

The judicial positions that will constitute the material for this thesis have been selected due to their specific focus towards the two groups of stateless people that are the subject of analysis for this thesis, namely Kuwaiti Bidoons and Palestinians from Gaza, in relation to impediments to enforcement.

Hereby follows a short summary of each of the selected judicial positions.

5.4.1 *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a)

The *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a) is the only judicial position in the Swedish Migration Agency that specifically addresses Kuwaiti Bidoons in relation to impediments to enforcement. Accordingly, the main subject in the judicial position is Kuwaiti Bidoons' ability to receive a residence permit on the grounds of impediments to enforcement following a statute of limitation.

The position provides a short background information on Kuwaiti Bidoons, along with an argumentation concerning the ability to receive a residence permit on the grounds of impediments to enforcement. The position makes references to a judicial enquiry issued by the Swedish Migration Agency (Migrationsverket, 2014), along with other judicial positions, precedents, the Aliens Act, and the Temporary Law. None of the precedents that are mentioned in the position specifically address Kuwaiti Bidoons. Instead, they address issues that are relevant for Kuwaiti Bidoons as well as other groups of migrants, for example the ability to receive a residence permit based on an impediment to enforcement in the first trial of the asylum process, and whether a certain level of discrimination can be cumulatively regarded as persecution.

5.4.2 *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c)

The *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c) is said to be based on a report from the Swedish Migration Agency's Center for Country Information, Lifos, called "*Situation Analysis: Gaza*" [the author's translation] (Lifos 2016). In line with the title, substantive parts of the position cover the security situation in Gaza, and whether the situation in Gaza alone can suffice as grounds for asylum. The position concludes that the situation is not so severe that each and every one in Gaza can be regarded as persons in need of protection. Accordingly, the position concludes that the premises have to be considered individually in each case in terms of asylum. In terms of the possibility to return to Gaza, the position provides a relatively short summary of what the impediment to enforcement is, and concludes that it does suffice as grounds for receiving a residence permit in Sweden.

The judicial position makes references to several precedents, government bills, the Aliens Act, the Temporary Law, as well as other judicial positions. Similar to the judicial position regarding Kuwaiti Bidoons (Migrationsverket, 2016a), it makes references to several precedents that do not specifically address Palestinians from Gaza, but issues that are related.

5.4.3 Material overview

In order to provide an overview over the material, the judicial positions that constitute the material for the analysis are arranged in the scheme below. Aside of each judicial position follows a list of documents that have laid the foundation for that particular position.

	JUDICIAL POSITION	Judicial position makes references to these documents:
<i>De jure</i> stateless: Kuwaiti Bidoons	<i>Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016 (Migrationsverket, 2016a)</i>	<p><i>MIG 2007:46, MIG 2009:13 – It is less difficult to grant asylum on the grounds of impediments of enforcement after a case has been barred than in the first trial</i></p> <p><i>MIG 2008:21 – The level of discrimination is not cumulatively considered as persecution and is thus not ground for asylum</i></p> <p><i>Judicial enquiry regarding the pre-requisites to receive a residence permit after statutory limitation (Migrationsverket, 2014)</i></p> <p><i>Judicial position on impediments to enforcement – SR 25/2016 (Migrationsverket, 2016b)</i></p> <p>The Aliens Act (SFS 2005:716)</p> <p>The Temporary Law (SFS 2016:752)</p>
<i>De facto</i> stateless: Palestinians from Gaza	<i>Judicial position on the situation in Gaza – SR 54/2016 (Migrationsverket, 2016c)</i>	<p><i>Situation Analysis: Gaza (Lifos, 2016)</i></p> <p><i>MIG 2008:38 – An impediment of enforcement must be proved and concrete</i></p> <p><i>MIG 2011:24, MIG 2012:14 – A temporary residence permit may be granted on the basis of a temporary impediment to enforcement</i></p> <p><i>MIG 2007:30, MIG 2007:54 – In order to approve a residence permit, the applicant must have a valid passport</i></p> <p><i>MIG 2007:33 II, MIG 2013:2 – The question of whether an internal alternative of escape is at hand shall be considered in the trial of whether a person is a refugee or in need of protection</i></p> <p><i>MIG 2014:20 – An applicant that has been convicted for severe crimes may be granted a temporary residence permit</i></p> <p><i>Government Bill 2004/05:170 (Prop. 2004/05:170)</i></p> <p><i>Government Bill 2009/10:31 (Prop. 2009/10:31)</i></p> <p><i>Government Bill 2015/16:174 (Prop. 2015/16:174)</i></p> <p><i>Judicial position regarding refugee- and need of protection assessments in terms of applicants who belong to particularly vulnerable groups – RCI 11/2009 (Migrationsverket, 2009)</i></p>

Figure 3. Material [continued on next page].

		<p><i>Judicial position on the legal consequences for migration due to Sweden's recognition of the Palestinian state – SR 11/2015</i> (Migrationsverket, 2015)</p> <p><i>Judicial position on impediments to enforcement – SR 25/2016</i> (Migrationsverket, 2016b)</p> <p><i>Judicial position on the implication of Swedish commitments according to international conventions and Article 8 in the European Convention on Human Rights when practicing § 11 and § 13 in the Temporary Law – SR 24/2016</i> (Migrationsverket, 2016d)</p> <p><i>Judicial comment on the transitory clause in the Temporary Law – SR 60/2016</i> (Migrationsverket, 2016e)</p> <p><i>Judicial position on the assessment of need of protection in the presence of armed conflict and the demarcation towards the assessment on other severe conflicts – SR 30/2016</i> (Migrationsverket, 2016f)</p> <p><i>Judicial position on what is considered an acceptable governmental protection and prerequisites for immediate expulsion with reference to incumbent governmental protection – SR 22/2016</i> (Migrationsverket, 2016g)</p> <p>The Aliens Act (SFS 2005:716)</p> <p>The Temporary Law (SFS 2016:752)</p>
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Figure 3. Material [continued from previous page].

5.4.4 Delimitations

Other material that would have been relevant for the analysis are the Aliens Act (SFS 2005:716) and the Temporary Law Regarding the Limited Possibility to Receive a Residence Permit in Sweden ('the Temporary Law', SFS 2016:752), as these both address issues of migration. Government bills would also have been relevant, as these lay the foundation for the law. Additionally, precedents from the Migration Court and the Migration Court of Appeal would have been relevant, as these are directive for how the law shall be interpreted in lower courts such as the Swedish Migration Agency.

However, I have chosen to focus entirely on the judicial positions that have been presented in section 5.3.1 and 5.3.2. The reason for this is threefold. Firstly, the selected judicial positions are the only documents that are targeted directly towards the two specific groups of people that constitute the subjects of analysis for this thesis, in relation to impediments to enforcement. The Aliens Act (SFS 2005:716), the Temporary Law (SFS 2016:752), government bills, and precedents, either target other groups of migrants, or migrants in general. Secondly, as the selected judicial positions are more or less based on the above-mentioned documents, their content is, to various extent, included in the material. Thirdly, an analysis of all of the above-mentioned documents would require much more time and space than what is allowed for this thesis.

Another judicial position that may have been relevant for the analysis of impediments to enforcement is the *Judicial position on impediments to enforcement – SR 25/2016* (Migrationsverket, 2016b), as this provides guidelines for the

Swedish Migration Agency's Case Officers on how to treat cases in which there are practical impediments to enforcement present. The position especially addresses cases in which the applicant is not accepted in his or her country of residence, and cases in which children without a custodian do not possess an adequate reception in their home country. It does not address any particular group of migrant, but impediments to enforcement in general. As the aim of this thesis is to develop an understanding of why the impediments to enforcement in two cases (Bidoons from Kuwait and Palestinians from Gaza) have come to have two opposing outcomes, the abovementioned position has been excluded from the material. The *Judicial position on impediments to enforcement – SR 25/2016* would simply not have provided a suitable platform for an analysis of *differences* between the policies regarding the two groups' impediments to enforcement.

Part of the material cover other issues that are not relevant for the aim of this thesis, for example issues regarding refugee status and issues specifically regarding children. Due to the limited scope of this thesis, I will only take discourse related to *impediments to enforcement* and *statelessness* into consideration in the analysis. The discourse in the material concerning other issues such as the ones previously mentioned, will thus not be incorporated in the analysis.

6 Analysis

Hereby follows an analysis of the material presented in section 5.3, which will be analyzed according to the operationalization's scheme presented in section 5.2. Firstly, Fairclough's three-dimensional model will be applied on the judicial position concerning Bidoons from Kuwait, after which the model will be applied to the judicial position regarding Palestinians from Gaza.

The analysis of the *textual dimension* focuses on *transitivity* and *modality*, and is accomplished by (1) identifying the agent or lack thereof in the sentence, and (2) identifying what commitment (truth, hedges or permission) is most commonly expressed in the text.

The analysis of the *discursive practice* focuses on *intertextuality* and *interdiscursivity*, and aims at (1) identifying connections between the texts in terms of references to other texts, and (2) identifying what genres and orders of discourses that are displayed in the material, whether they are different or conventional.

Finally, the analysis of the *social practice* focuses on *hegemony* and *ideology*, and aims at (1) identifying if there is a hegemonic discourse in the material, and (2) determining if there is a hegemonic discourse that encompass *de jure* and *de facto* stateless migrants in terms of *deviants* and *dependents*, that correspond to the criteria listed in the operationalization's scheme in section 5.2.

6.1 Applying the three-dimensional model on a *de jure* stateless group: Bidoons from Kuwait

6.1.1 Analysis of the *textual dimension*

The very title of the judicial position *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a), expresses agency to Bidoons – it is the Bidoons who have the ability to acquire a residence permit following a statute of limitation. The word 'ability' is an expression that suggests *permission*. However, the wording 'following a statute of limitation' indicates that the ability requires a statute of limitation, hence, it implicates a rejection to the ability to receive a residence permit prior to a statute of limitation. The permission is thus inaccessible for cases that have not reached a statute of limitation.

In the following quotation, the judicial position expresses agency to the applicant (demarcated with *italics* text) in terms of burden of proof for an impediment to enforcement:

“[i]f *the applicant* can show that a statute of limitation has occurred without his or her own fault, hence, that the decision has not been enforced despite that *the applicant* has done everything that he or she could have done for the decision to be enforced, a residence permit shall *be granted* and a new trial of whether he or she shall be expelled shall not *be conducted*.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 1).

In the last part of the sentence, where it is asserted that a residence permit shall be granted after a statute of limitation and that a new trial shall not be conducted, the agent is omitted (demarcated with *italics* text), which, according to Fairclough’s approach is an indication of low commitment to the text, by the author.

The position devotes about a third of the length of the total document to describe where the Bidoons come from and how they are treated in Kuwait. The information given is partly delivered as *truth* claims, partly as *hedges* (demarcated with *italics* text):

“The group Bidoons *are* stateless. Most of them *reside* in Kuwait but they also *are* in Saudi Arabia, Egypt, Syria, and Iraq. They *may*, under certain circumstances, become Kuwaiti citizens. However, very few *are* actually offered a citizenship. The Bidoons who are registered as stateless and live in Kuwait *have* a ‘security card’.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2).

The words ‘are’ and ‘reside’ in the first two sentences of the citation above are interpreted as *truth* claims. Thus, the position asserts the statelessness of the Bidoons, as well as their origin, as facts. The word ‘may’ in the following sentence indicate an uncertainty, or *hedge*, of what exact circumstances may lead to citizenship for a Bidoon. Further, the words ‘are’ and ‘have’ in the last two sentences, indicate *truth* claims. Hence, the notion that very few Bidoons are offered citizenship, is stated as a fact.

Further, the description conveyed in the position of the situation that the Bidoons face in Kuwait, is stipulated as a *truth* claim (demarcated with *italics* text):

“However, there *are* also unregistered Bidoons who lack such a [security] card. The group Bidoons do not *have* the same rights as Kuwaiti citizens, *have* less access to medical care and education, as well as *certain* difficulties in the labor market.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2).

By the use of words such as ‘are’ and ‘have’ in the citation above, the position proclaims the discrimination that Bidoons face in Kuwait as a *truth* claim, or a fact. However, the use of the word ‘certain’ in terms of the situation on the labor market for Bidoons, indicates uncertainty, or a *hedge*.

The preceding paragraph, expresses an assessment of the discrimination that Bidoons are subjected to in Kuwait:

“[...] *the Swedish Migration Agency and the Migration Courts assess* that the group *in general* is not so severely discriminated that they are in the need of protection, notwithstanding if they have been registered or not.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2).

The word ‘is’ in the quotation above, indicates a *truth* claim; namely, it is a fact that the group in general is not so severely discriminated that they automatically are regarded as in need of protection. The wording ‘in general’ indicates a *hedge*.

Subsequently, the wording ‘in general’ opens up for the possibility that the discrimination may be ground for protection in certain cases. Further, agency is expressed to the Swedish Migration Agency and the Migration Courts (demarcated with *italics* text).

The following paragraph talks about Bidoons’ identification possibilities and their ability to return to Kuwait:

“Most of the applicants who have been assessed to make probable that they are Bidoons, have produced some sort of document, for example birth certificate, security card, marriage certificate, or driver’s license.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2).

In the citation above, ‘most applicants’ (hence, most Bidoons) is expressed as agents. The wording ‘been assessed’, omits agency, which indicates low commitment to the text by the author. However, one may assume that Swedish authorities are the implied agents as these are the ones that makes the assessment. The wording ‘have produced’ indicates a *truth* claim, namely the notion that most Bidoons have produced one of the documents that are listed in the above citation, is delivered as a fact.

Accordingly, the paragraph continues:

“Kuwaiti authorities will only accept a return journey for a Bidoon, who is in the possession of an Article 17-passport. Although, very few such passports have been issued and none of the Bidoons who reside in Sweden have been able to produce one.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2).

The emphasized wording in the first sentence in the citation above indicates a *truth* claim, namely that an Article 17-passport is required in order for a Bidoon to be able to return to Kuwait. The next sentence is also a *truth* claim, and asserts that the issuance of Article 17-passports are very rare and that none of the Bidoons who have come to Sweden have been able to produce one. Adding the two sentences together, one may conclude that the judicial position states the impediment for Bidoons to return to Kuwait as a fact.

The preceding paragraph talks about the Swedish Migration Agency’s efforts to have Kuwaiti authorities to accept returning Bidoons. In the first sentence, the Swedish Migration Agency is expressed as agents, whereas in the rest of the paragraph, agency is omitted (demarcated with *italics* text):

“The Swedish Migration Agency has, ever since 2012, examined different possibilities to determine identity, domicile, and status in Kuwait regarding Bidoons with an expulsion order to Kuwait. Several meetings have been held with various authorities in Kuwait. These meetings have not come to any major successes.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2)

The position continues:

“Efforts are however still ongoing in order to get Kuwait to accept that the Bidoons who previously resided the country and who lack need of protection get to return to their families and social networks.” [the author’s translation, emphasis added] (Migrationsverket, 2016a, p. 2)

In the citation above, the agent is omitted (demarcated with *italics* text) regarding the efforts to make Kuwait accept returning Bidoons. The implied agent is Swedish authorities, as these are expressed as agents in the previous quote.

The preceding section in the judicial position states the judicial assessment of the Bidoons' situation:

“Even if efforts *are still ongoing to have Kuwait to accept* return journey, this should normally not burden an individual at the assessment of a case that has been barred. The conclusion is thus that a person who has made probable that he or she is a stateless Bidoon from Kuwait, *shall be granted* a residence permit in Sweden with the support of Aliens Act, Section 5, § 6, *when* the previous expulsion order has been barred [...]” [the author's translation, emphasis added] (Migrationsverket, 2016a, p. 2f).

The citation above clearly states that a case has to reach a statute of limitation in order for a Bidoon to be granted a residence permit on the basis of impediments to enforcement. The agent who makes this conclusion is omitted (demarcated with *italics* text), which indicates low commitment to the text by the author, whereas the Kuwaiti state is expressed as the only agent who can make a difference for the Bidoons, through accepting their return journey. Responsibility of the Catch 22-dilemma that the Bidoons face, is thus put on the Kuwaiti state.

Summing up the analysis of the textual dimension of the *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a), the following conclusions may be drawn.

In terms of *transitivity*, agency is directed towards Bidoons mainly in terms of burden of proof regarding the impediment to enforcement. The Swedish Migration Agency and the Migration Courts are expressed as agents sporadically in the text, mainly in terms of assessments, as well as in terms of pursuing Kuwaiti authorities to allow Bidoons to return. However, in the majority of sentences where Swedish authorities are implied as agents, the agent is omitted in the text, which is an indication of low commitment to the text by the author.

In terms of *modality*, the analysis displays that most of the text in the position is delivered as *truth* claims. Examples of issues that are displayed as *truth* claims in the text are the Bidoons' situation in Kuwait, that there is an impediment to enforcement for Bidoons, and that very few Bidoons are offered citizenship in Kuwait. The only *hedges* displayed in the text concerns what exact circumstances may lead to citizenship for a Bidoon in Kuwait, as well as the notion the discrimination is not so severe that it may amount to persecution. The last assertion is however also partly delivered as a *truth* claim. In terms of *permission*, this is only displayed once in the text. The ability to receive a residence permit, which is expressed in the title of the judicial position, indicates a *permission*. However, the *permission* is immediately shut down by the statement that a statute of limitation is required in order for the ability to transpire.

We will now move on to the analysis of the *discursive practice*.

6.1.2 Analysis of the *discursive practice*

In terms of *intertextuality*, the *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a) show several signs of connections to other texts in terms of references.

Firstly, the judicial position makes a reference to a judicial enquiry, called *Judicial enquiry regarding the pre-requisites to receive a residence permit after statutory limitation* (Migrationsverket, 2014). The reference is as follows:

“The judicial unit has, on March 31st 2014, published a judicial enquiry regarding the preconditions to receive a residence permit after a statute of limitation. From the judicial enquiry, the following, among other things, is conveyed. It is the applicant who shall show that a statute of limitation has occurred without his or her own fault, and not executive authorities who shall show that the decision has not been enforceable.” [the author’s translation] (Migrationsverket, 2016a, p. 1).

Further, the judicial position makes three references to precedents, all of which come from the Migration Court of Appeal (MIG 2007:46, MIG 2009:13, MIG 2008:21). For example, the judicial position states:

“In MIG 2009:13 it is stated that a person does not have to remain hidden or otherwise avoid contact with the executive authorities in order for the person to be regarded as not having been cooperative if he or she otherwise has remained passive” [the author’s translation] (Migrationsverket, 2016a, p. 1).

The judicial position also makes references to the Temporary Law (SFS 2016:752) and the Aliens Act (SFS 2005:716), such as in the following sentence:

“An applicant whose application shall be assessed in accordance with the Temporary Law, may only be granted a residence permit in accordance with the Aliens Act, Section 5, § 6, if an expulsion of the alien would contravene a Swedish commitment according to an international convention.” [the author’s translation] (Migrationsverket, 2016a, p. 3).

Lastly, the judicial position makes reference to the *Judicial position on impediments to enforcement – SR 25/2016* (Migrationsverket, 2016b):

“The residence permit shall be limited in time (see SR 25/2016, ‘Judicial position on impediments to enforcement’).” [the author’s translation] (Migrationsverket, 2016a, p. 3).

The intertextual elements that are displayed through the references in the judicial position, indicates that the position is a part of an intertextual chain, which is composed mainly by precedents, but also sections of law, a judicial enquiry and one other judicial position. The amount of references to other documents is however rather low, compared to the judicial position concerning Palestinians from Gaza (displayed in the Material overview, section 5.3.4). As mentioned in section 5.1.2, the analysis of intertextuality allows us to observe how structure and content are transformed. The rather low amount of references compared to the judicial position concerning Palestinians from Gaza, would indicate that the judicial position concerning Kuwaiti Bidoons is part of a smaller intertextual chain and thus that it

is more constant than would have been the case with a more profound intertextual chain. The low amount of connections to other texts also indicates that the judicial position on Kuwaiti Bidoons does not reproduce meanings of other texts in any profound way.

In terms of *interdiscursivity*, there are several *genres* and *orders of discourses* that are displayed in the *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a).

As described in section 5.1.2, a discourse *genre* is a type of social life which is produced in a semiotic mode. For example, a precedent or a judicial position are two different types of genres that each can produce different kinds of discourses (the prevailing subject). Accordingly, an *order of discourse* constitutes a mix of different discourses and genres (Jørgensen & Philips, 2002, p. 69).

The prevailing *genres* that are displayed in the references of the material, are precedents from the Migration Court of Appeal. Other prevailing genres are judicial positions (Migrationsverket, 2016b) and sections of laws (the Aliens Act (SFS 2005:716) and the Temporary Law (SFS 2016:752)), along with one judicial enquiry (Migrationsverket, 2014).

The *discourses* that are prevalent in the genres vary. Starting with the *precedents genre*, MIG 2007:46 and MIG 2009:13 revolves around the ability to grant a residence permit prior to versus after a statute of limitation. This discourse is related to impediments to enforcement and thus also related to the case of Kuwaiti Bidoons. However, the precedents do not concern Bidoons per se, but other migrant groups. This is also the case in MIG 2008:21, which revolves around whether a certain level of discrimination can amount to persecution. The discourse in MIG 2008:21 thus revolves around discrimination and persecution. Similar to the abovementioned precedents, MIG 2008:21 addresses a different migrant group than Kuwaiti Bidoons. Thus, what is common among the precedents, is that none of them concern Bidoons from Kuwait in particular. Instead they address subjects that the author has deemed relevant for the case of the Bidoons as well.

The *judicial positions genre* revolves around impediments to enforcement. Although Bidoons are not explicitly mentioned in the discourse of the judicial position that the text refers to, the subject (impediments to enforcement) is highly relevant for the case of the Kuwaiti Bidoons.

The *sections of laws genre* (the Aliens Act (SFS 2005:716) and the Temporary Law (SFS 2016:752)) display discourses that do not explicitly address either impediments to enforcement, or statelessness. Instead they address the problem that Bidoons face in more general terms, namely through so-called ‘particularly distressing circumstances’.

As previously mentioned, an *order of discourse* constitutes a mix of different discourses and genres, and the goal in this part of the analysis is to identify whether the genres and orders of discourses that are displayed in the material, are different or conventional.

All of the genres that are displayed in the material revolves around subjects that are relevant in terms of the Kuwaiti Bidoons’ ability to receive a residence permit on the basis of impediments to enforcement. However, as the discourses in the

precedents genre concern other migrant groups than Bidoons or even stateless people, the material appears like a mixture of rather different discourses, which, according to Fairclough's approach, would be a sign of change. However, the precedents do address other issues that are connected to the Bidoons, and thus, the order of discourse in the material appears to be overall conventional. This would in turn be a sign of continuity and reproduction of meaning according to Fairclough's approach to CDA.

We will now move on the last dimension of the analysis, namely the analysis of the *social practice*.

6.1.3 Analysis of the *social practice*

The *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a) constitutes the context in which the social practice concerning the Kuwaiti Bidoons, is articulated. As described in section 5.1.3, a *hegemonic discourse* constitutes the consensus of meaning that emerges after a negotiation concerning meaning. The hegemonic discourse in the judicial position regarding Kuwaiti Bidoons, is that Bidoons cannot be granted a residence permit based on impediments to enforcement unless the initial case has reached a statute of limitation. The hegemonic discourse in the position thus appears as a consensus concerning meaning, rather than a negotiation concerning meaning. Namely, the hegemonic discourse pre-supposes that the impediment to enforcement that Bidoons face and that is addressed in the judicial position, is not sufficient as grounds for a residence permit in the first trial.

In the previous section 6.1.2, the conclusion was that the orders of discourses displayed in the material concerning Kuwaiti Bidoons' ability to receive a residence permit on the grounds of impediments to enforcement, appeared to be overall conventional, and thus, that they reproduce the prevailing social order. This has consequences for the analysis of *ideology*, as discourses that have ideological consequences are the ones that contribute to the maintenance or transformation of power relations. Ideology is, as described in section 5.1.3, the construction of meaning that results from social structures in society. Subsequently, this part of the analysis aims at determining if there is a hegemonic discourse that encompass Kuwaiti Bidoons in terms of *deviants* or *dependents* that contribute to the maintenance or transformation of power relations in society.

The social construction of Kuwaiti Bidoons that is conveyed in the *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a), may be said to take off in the quotation below:

“The group Bidoons are stateless. [...] They may, under certain circumstances, become Kuwaiti citizens. However, very few are actually offered a citizenship. [...] The group Bidoons do not have the same rights as Kuwaiti citizens, have less access to medical care and education, as well as certain difficulties in the labor market.”
[the author's translation] (Migrationsverket, 2016a, p. 2f)

The quotation conveys a portrayal of the Kuwaiti Bidoons as poor and unfortunate in terms of citizenship and rights in Kuwait, as they are said to have lesser rights than Kuwaiti citizens.

The following quotation states that none of the Bidoons that have come to Sweden have been able to return to Kuwait, as none of them have been able to produce an Article 17-passport which is required in order to return to Kuwait. It also states that Article 17-passports are rarely issued, which would indicate a presumption that the very majority of Bidoons will not be able to return to Kuwait:

“Kuwaiti authorities will only accept a return journey for a Bidoon, who is in the possession of an Article 17-passport. Although, very few such passports have been issued and none of the Bidoons who reside in Sweden have been able to produce one.” [the author’s translation] (Migrationsverket, 2016a, p. 2).

Accordingly, the following quotation discusses Bidoons’ deservedness in Sweden, in terms of being able to receive a residence permit on the basis of the impediment to enforcement that was proclaimed in the previous quotation:

“The conclusion is thus that a person who has made probable that he or she is a stateless Bidoon from Kuwait, shall be granted a residence permit in Sweden with the support of Aliens Act, Section 5, § 6, when the previous expulsion order has been barred [...]” [the author’s translation] (Migrationsverket, 2016a, p. 2f).

The above quotation implies that, even though Kuwaiti Bidoons are unfortunate in the sense that they are not able to return to Kuwait, they still are not deserving of a residence permit in the initial trial of the asylum process. Instead, the statement concludes that Bidoons have to wait until their case has reached a statute of limitation, in order to receive a residence permit on the grounds of impediments to enforcement. In effect, the statement renders Bidoons to become illegal immigrants in Sweden after their initial asylum process, as they will not be asylum seekers, nor legal immigrants, until their case has reached a statute of limitation.

The conclusion that Bidoons are regarded as undeserving of a residence permit despite that they cannot return to Kuwait, implies a low political influence of Kuwaiti Bidoons. This is established in the following quotation, where it is suggested that efforts have been ongoing since 2012, namely approximately for six years, without any major successes:

“The Swedish Migration Agency has, ever since 2012, examined different possibilities to determine identity, domicile, and status in Kuwait regarding Bidoons with an expulsion order to Kuwait. [...] Several meetings have been held with various authorities in Kuwait. These meetings have not come to any major successes. Efforts are [...] still ongoing in order to get Kuwait to accept that the Bidoons who previously resided the country and who lack need of protection get to return to their families and social networks.” [the author’s translation] (Migrationsverket, 2016a, p. 2f).

The analysis of the above quotations results in the conclusion that Bidoons, in the *Judicial comment on the ability for Bidoons to acquire a residence permit following a statute of limitation for an expulsion case – SR 32/2016* (Migrationsverket, 2016a) are socially constructed as unfortunate, as undeserving, as having low political influence, and as being submitted to the destiny of being

illegal immigrants in Sweden until their initial case has reached a statute of limitation. This conclusion is almost entirely in line with the working assumption, which was that the Kuwaiti Bidoons would correspond to the social construction of *deviants*.

However, the judicial position does not necessarily construct the Bidoons in a negative manner, which is one of the prevalent features in the deviants' category. Further, the Bidoons are in fact constructed as being deserving of a residence permit *after* their case has reached a statute of limitation. Thus, one could in fact draw the conclusion that Bidoons fall in-between the two categories of *deviants* and *dependents*, with Bidoons in the first trial being closer to the deviants' category, and Bidoons whose case has been barred ending up closer to the dependents' category.

6.1.4 Concluding remarks

The three-dimensional analysis according to Fairclough's model, has displayed that the Swedish policy on Kuwaiti Bidoons' ability to receive a residence permit based on impediments to enforcement, is continuous and thus, that it reproduces the social construction of Bidoons as undeserving.

The analysis of the *textual dimension* found that most text in the judicial position is conveyed as truth claims, which is an indication of stability. Agency was found to be omitted in large parts of the text, which indicates a low commitment to the text by the author. Similarly, the analysis of the *discursive practice* resulted in the conclusion that the position indicates continuity due to a rather stable structure. Finally, the *social practice* concluded that there is a hegemonic discourse in the judicial position which presumes that Bidoons cannot acquire a residence permit on the basis of impediments to enforcement prior to a statute of limitation. Further, the analysis of the social practice concluded that Bidoons fall in-between the deviants and the dependents category, depending if their initial case has reached a statute of limitation or not.

6.2 Applying the three-dimensional model on a *de facto* stateless group: Palestinians from Gaza

6.2.1 Analysis of the *textual dimension*

The judicial position that encompasses Palestinians from Gaza in relation to impediments to enforcement is called *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c).

The judicial position begins with a summary of the situation in Gaza, whereby it is concluded that there is a temporary impediment to enforcement to return to Gaza:

“*There is* presently a practical impediment to enforcement regarding return journeys to Gaza. *Normally*, the impediment cannot *be regarded* as permanent, whereby a temporary residence permit in accordance with the Aliens Act, Section 5, § 11 or Section 12, § 18, the second part, *may be granted*.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 1).

The wording ‘there is’ in the above quotation, which refers to the presence of an impediment to enforcement to return to Gaza, is stated as a *truth* claim. The word ‘normally’, which refers to the permanence of the impediment, is stated as a *hedge*. Finally, the wording ‘may be granted’ in the last sentence, is stated as a *permission*; namely a *permission* to grant a residence permit on the grounds of a temporary impediment to enforcement. Throughout the paragraph, the agent is omitted (see for example the wording ‘may be granted’). The implied agent is however Swedish authorities, as these are the ones that either grant or deny a residence permit.

The position further states:

“If reasons for protection are missing, along with other reasons for granting a residence permit, and when there are no particularly distressing circumstances present, the question of expulsion arises. When *the Swedish Migration Agency assesses* the question of expulsion, *the decision maker shall* take into consideration if the applicant, in accordance with the regulations in the Aliens Act, Section 12, cannot be sent back to a certain country, or if there are other impediments to enforcement present. This follows from the regulations in the Aliens Act, Section 8, § 7.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 9).

In the above citation, agency is directed towards the Swedish Migration Agency and ‘the decision maker’ (demarcated with *italics* text). The statement is further expressed as a *truth* claim, namely ‘the decision maker *shall*’. This statement entails that it is a requirement for the decision maker to take the impediment to enforcement into consideration.

The next paragraph regards the ability to return to Gaza:

“For an applicant who shall return to Gaza, the Rafah Crossing between Northern Sinai in Egypt and Gaza, *constitutes* the only international border crossing. A return thus pre-requisites that it is practically conceivable to travel through Egypt. From current country information *it follows* that *it is* the Egyptian military who decides whether the border can remain open. A decision regarding this issue is made on the basis of the current security situation [...]” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 9).

The above quotation is delivered as a *truth* claim. Further, the agent is omitted throughout the paragraph (see for example ‘it follows’, demarcated with *italics* text), which is an indication of low commitment to the statement by the author.

The paragraph continues:

“The border *has* so far during 2016 *been held* open very sporadically and only during short time intervals, sometimes only during a few hours. In order to travel through Egypt, a valid transit visa from the Egyptian Ministry of Interior *is required*. Even if Egyptian authorities notify a plan to keep the border crossing open at a certain date, *it is* ultimately the *Egyptian military* who, based on prevailing security circumstances, *decides* if that will happen. A person who has acquired a transit visa *risks*, when arriving to Egypt, to be sent back to Sweden, or to be referred to supervised places at Cairo Airport in the wait for a further journey, if the border

crossing is not open at the current point in time. Further, the security situation in Rafah *is* bad. [...] Martial Law *has been* declared and curfew *prevails* in the area, which *means* that *there is* no possibility for a person from Gaza to remain in the area, waiting for the border crossing to open.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 10).

The quotation above describes the impediment to enforcement to return to Gaza, which is entirely conveyed as a *truth* claim (demarcated with *italics* text). The quotation almost entirely omits agency, except regarding the decision to keep the border open (‘the Egyptian military [...] decides’, demarcated with *italics* text).

The preceding headline in the judicial position reads ‘Assessment’, after which the judicial position states:

“A concrete impediment to return *must prevail* in order for it to *be regarded* as a practical impediment to enforcement in the sense of the Aliens Act.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 10).

The above sentence is conveyed as a *truth* claim (demarcated with *italics* text). Agency is omitted through the use of the wording ‘be regarded’.

The judicial position continues:

“*It is clear* that *there are considerable* practical difficulties to return to Gaza. Presently, *it is very uncertain* if Egyptian authorities will issue transit visas for Palestinians who aim for Gaza.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 10).

The above statement is an assessment of the impediment of enforcement to return to Gaza. The use of wordings such as ‘it is clear’ and ‘there are considerable’, indicate *truth* claims, and clearly assert that there is an impediment to enforcement to return to Gaza. The wording ‘it is very uncertain’ is interpreted as a *hedge*. Namely, the text opens up for a possibility for the border crossing to be open, even though it is stated as a very small possibility.

The judicial position continues:

“*Even if* such [transit] visas would be granted; the profound *uncertainty remains* regarding the opening hours of the border crossing. [...] *It appears* as though it is no longer possible for Palestinians to exist in Rafah, waiting for the border towards Gaza to open. In addition, the very bad security situation in the area surrounding Rafah arises.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 10).

The quotation above, mostly consists of *hedges* (demarcated with *italics* text). In the sentence that follows (the quotation below), *permission* is expressed regarding the assessment of the impediment to enforcement (demarcated with *italics* text):

“At an aggregative assessment, the profound uncertainties regarding the ability for Palestinians to return to Gaza *may generate* the assessment that the impediment to enforcement concerning return to Gaza, generally is proved.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 10).

In the following statement, the impediment to enforcement to return to Gaza is assessed as being temporary:

“The currently prevailing situation *is assessed* to be changing. The impediment to enforcement *may* therefore, *generally be regarded* as temporary. As a starting point, *there are thus* preconditions to grant an applicant from Gaza a temporary residence permit in accordance with the Aliens Act, Section 5, § 11.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 11).

The above assessment displays *hedges* and *permissions* (demarcated with *italics* text). The wording ‘is assessed’ is interpreted as a *hedge*, whereas ‘may [...] generally be regarded’ is interpreted as a *permission*; namely a permission regarding the assessment of the impediment to enforcement as being temporary. Further, the wording ‘there are thus’ is interpreted as a *truth* claim; namely, that there are preconditions present in order to grant a residence permit. Finally, agency is omitted throughout the statement.

In the following quote, *permission* is displayed to grant a permanent residence permit on the grounds of impediments to enforcement in certain cases:

“In exceptional cases, the individual circumstances in a case *may purport* that the impediments to enforcement are enduring. Then, a permanent residence permit *may be granted* in accordance with the Aliens Act, Section 5, § 6.” [the author’s translation, emphasis added] (Migrationsverket, 2016c, p. 11).

Similar to the previous quote, agency is omitted throughout the statement.

In summary, the analysis of the *textual dimension* of the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c), displays very little agency. Agency is omitted throughout almost all of the quotations, however, Swedish authorities are often implied as agents.

In terms of *modality*, the analysis of the judicial position displays almost equal amounts of *truth* claims, *hedges* and *permissions*. The situation in Gaza is displayed as *truth* claims, whereas the security situation by the Rafah border crossing mainly is expressed as *hedges*. *Permission* is displayed mainly regarding the assessment of the impediment to enforcement, along with the length of the residence permit.

We will now move on to the analysis of the *discursive practice*.

6.2.2 Analysis of the *discursive practice*

In terms of *intertextuality*, the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c) makes several references to other documents, such as the Aliens Act, the Temporary Law, precedents, government bills, other judicial positions and country information on Gaza (see the Material overview, section 5.3.4, for a full disclosure).

Examples of references to sections of law made in the position are:

“Normally, the impediment cannot be regarded as permanent, whereby a temporary residence permit in accordance with the Aliens Act, Section 5, § 11 or Section 12, § 18, the second part, may be granted.” [the author’s translation] (Migrationsverket, 2016c, p. 1).

Another example is:

“In this context it can be affirmed that the Aliens Act, Section 5, § 11, is applicable even if the applicant is subject to the regulations of the Temporary Law.” [the author’s translation] (Migrationsverket, 2016c, p. 11).

As previously mentioned, references are also made to several precedents (MIG 2008:38, MIG 2011:24, MIG 2012:14, MIG 2007:30, MIG 2007:54, MIG 2007:33 II, MIG 2013:2 and MIG 2014:20). The precedents that are referred to do not address Palestinians from Gaza per se. Instead, they concern issues that the author has deemed relevant for Palestinians, such as identification requirements in order to be granted a temporary residence permit and issues related to impediments to enforcement in general.

Further, the position makes reference to several other judicial positions, among which one is the *Judicial position on impediments to enforcement – SR 25/2016* (Migrationsverket, 2016b). This is done, for example in terms of the quotation below (reference is made through a footnote preceding the statement):

“When the Swedish Migration Agency assesses the question of expulsion, the decision maker shall take into consideration if the applicant, in accordance with the regulations in the Aliens Act, Section 12, cannot be sent back to a certain country, or if there are other impediments to enforcement present. This follows from the regulations in the Aliens Act, Section 8, § 7.” [the author’s translation] (Migrationsverket, 2016c, p. 9).

Another precedent that is referred to in the text is the *Judicial position on the legal consequences for migration due to Sweden’s recognition of the Palestinian state – SR 11/2015* (Migrationsverket, 2015). The reference is made through a footnote in the end of the following statement:

“People who make probable that they are registered in the West Bank, Gaza, or Eastern Jerusalem, are regarded as citizens of the Palestinian State.” [the author’s translation] (Migrationsverket, 2016c, p. 5).

The judicial position further refers to a country information text, issued by the Swedish Migration Agency’s Center for Country Information, Lifos, called “*Situation Analysis: Gaza*” [the author’s translation] (Lifos 2016):

“Lifos’ situation analysis regarding Gaza constitutes the foundation for this position.” [the author’s translation] (Migrationsverket, 2016c, p. 2).

As stated above and as has been displayed in the Material overview (section 5.3.4), the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c) poses an immense battery of references to various documents. It thus appears as though the judicial position is a part of a profound intertextual chain. According to Fairclough’s analysis of the discursive practice, the connection to other texts which is displayed by the judicial position’s references to other texts, is an indication of reproduction of meaning. The battery of references thus indicates that the judicial position consumes other texts, and thus, reproduces the meaning that is conveyed in the referred documents.

In terms of *interdiscursivity*, there are several *genres* and *orders of discourses* (see section 5.1.2 for a definition of the concepts) that are displayed in the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c).

The *genres* displayed in the judicial position are precedents from the Migration Court of Appeal, government bills (Prop. 2004/05:170; Prop. 2009/10:31; Prop. 2015/16:174), sections of laws (the Aliens Act (SFS 2005:716) and the Temporary Law (SFS 2016:752)), other judicial positions (Migrationsverket 2009; Migrationsverket 2015; Migrationsverket 2016b; Migrationsverket 2016d), and country information on Gaza (Lifos 2016).

The *precedents genre* displays discourses regarding impediments to enforcement, which is directly related to the subject of the judicial position. Further, they encompass the issue of identification, namely that an applicant must have a valid passport in order to receive a residence permit. This is also related to the judicial position, as this is one of the very conclusions of the position. Accordingly, the discourses displayed in the precedents genre are interpreted as conventional in relation to the judicial position.

The *government bills genre* displays discourses that encompass the imposition of the Temporary Law (Prop. 2015/16:174), the implementation of the Council Directive 2004/83/EC (Prop. 2009/10:31), and the succession process of cases regarding foreigners and citizenship (Prop. 2004/05:170). All of the government bills that are referred to in the judicial position display discourses that appear conventional in relation to the judicial position as they encompass issues that are directly addressed in the position.

The *judicial positions genre* displays discourses that encompass particularly vulnerable groups (Migrationsverket, 2009), the legal consequences for migration due to Sweden's recognition of the Palestinian State (Migrationsverket 2015), impediments to enforcement (Migrationsverket, 2016b), and the implication of Swedish commitments according to international conventions (Migrationsverket, 2016d). All the above-listed positions handle issues that are directly addressed in the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c), and thus, the order of discourse in terms of judicial positions appears conventional.

Lastly, the *country information genre* displays a discourse that encompasses the security situation in Gaza. The document is said to constitute the very basis for the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c) and thus, the discourse conveyed in the country information is very much related to the issues that are addressed in the judicial position. Accordingly, the order of discourse appears conventional.

In summary, all of the genres listed above display discourses that are directly addressed in the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c). The orders of discourses that are displayed thus appear conventional in relation to the material. According to Fairclough's approach, this would be a sign of continuity, which in turn indicates reproduction of the prevailing social order.

We will now move on to the third dimension of the analysis, namely the analysis of the *social practice*.

6.2.3 Analysis of the *social practice*

The context in which the social practice concerning Palestinians from Gaza in relation to impediments to enforcement is articulated, is constituted by the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c).

As addressed earlier in the analysis, a *hegemonic discourse* constitutes the consensus of meaning that emerges after a negotiation concerning meaning (described in section 5.1.3). As we saw in the analysis of the *textual dimension*, the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c) displays many *hedges* and *permissions*, which, as oppose to *truth* claims, opens up for a discussion concerning meaning. The negotiation of meaning concerning the impediment to enforcement that takes place in the position, is partly conveyed as *permissions* or *hedges*. However, a discussion never arises in the position whether the impediment should not be considered as grounds for a residence permit. Similar to the judicial position regarding Kuwaiti Bidoons, the hegemonic discourse in the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c), is perceived to pre-suppose that the impediment to enforcement that Palestinians from Gaza face, and that is addressed in the judicial position, is sufficient as grounds for a residence permit. Accordingly, the hegemonic discourse in the judicial position regarding Palestinians from Gaza, is that there is a prevailing impediment to enforcement due to the prevailing security situation in the area, which is regarded by Sweden as grounds for a residence permit.

The previous section 6.2.2, came to the conclusion that the orders of discourses displayed in the judicial position appear conventional, and thus that the discursive practice reproduces the prevailing order of discourse. This has consequences for *ideology*, as discourses that have ideological consequences are the ones that contribute to the maintenance or transformation of power relations in society (see section 5.1.3). Subsequently, this last part of the analysis aims to determine if there is a hegemonic discourse in the judicial position that contributes to the maintenance or transformation of the social construction of Palestinians from Gaza, in terms of *deviants* or *dependents*.

The following quotation from the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c), states that impediments to enforcement must be taken into consideration when the question of expulsion arises. The judicial position thus conveys a construction of Palestinians from Gaza as deserving of having their impediment to enforcement being taken into consideration in the first trial:

“When the Swedish Migration Agency assesses the question of expulsion, the decision maker shall take into consideration if the applicant, in accordance with the regulations in the Aliens Act, Section 12, cannot be sent back to a certain country, or if there are other impediments to enforcement present. This follows from the regulations in the Aliens Act, Section 8, § 7.” [the author’s translation] (Migrationsverket, 2016c, p. 9).

Accordingly, the following citation states that Palestinians are deserving in terms of receiving a temporary residence permit on the grounds of their inability to

return to Gaza. It is also stated that a permanent residence permit may be granted in certain cases:

“There is presently a practical impediment to enforcement regarding return journeys to Gaza. Normally, the impediment cannot be regarded as permanent, whereby a temporary residence permit in accordance with the Aliens Act, Section 5, § 11 or Section 12, § 18, the second part, may be granted. [...] In exceptional cases, the individual circumstances in a case may purport that the impediments to enforcement are enduring. Then, a permanent residence permit may be granted in accordance with the Aliens Act, Section 5, § 6.” [the author’s translation] (Migrationsverket, 2016c, p. 1, 11).

The preceding quotation dwells on the notion that Palestinians cannot access the Rafah border crossing, which may be interpreted as a social construction of Palestinians being unfortunate, and victims of disasters:

“The border has so far during 2016 been held open very sporadically and only during short time intervals, sometimes only during a few hours. In order to travel through Egypt, a valid transit visa from the Egyptian Ministry of Interior is required. Even if Egyptian authorities notify a plan to keep the border crossing open at a certain date, it is ultimately the Egyptian military who, based on prevailing security circumstances, decides if that will happen. A person who has acquired a transit visa risks, when arriving to Egypt, to be sent back to Sweden, or to be referred to supervised places at Cairo Airport in the wait for a further journey, if the border crossing is not open at the current point in time. Further, the security situation in Rafah is bad. [...] Martial Law has been declared and curfew prevails in the area, which means that there is no possibility for a person from Gaza to remain in the area, waiting for the border crossing to open. [...] It is clear that there are considerable practical difficulties to return to Gaza. [...] At an aggregative assessment, the profound uncertainties regarding the ability for Palestinians to return to Gaza may generate the assessment that the impediment to enforcement concerning return to Gaza, generally is proved.” [the author’s translation] (Migrationsverket, 2016c, p. 10).

In the above statement, the impediment to enforcement, namely the ability to access to the border, is said to be uncertain. However, the position also states that the impediment to enforcement is considered as having been proved. These two seemingly contradictory assessments – namely, that the impediment to enforcement is regarded as both uncertain and proved – may imply that sympathy has been a factor in the conclusion of how to address Palestinians from Gaza’s inability to return.

The general conclusion from the analysis of the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c) is that the position constructs Palestinians from Gaza as unfortunate, as victims of disaster and as deserving in terms of sympathy. The judicial position does not construct Palestinians in either a positive or a negative manner, as it does not address the Palestinian people per se, but primarily the security situation in Gaza. Hence, this feature within the social construction is not addressed and can thus not be evaluated.

The working assumption was that Palestinians from Gaza would correspond to the social construction of *dependents*. Accordingly, the analysis does not fulfil all of the features of any of the deviants or dependents category. However, in line with

the working assumption, the findings from the analysis indicate that Palestinians from Gaza end up closely to the dependents category.

6.2.4 Concluding remarks

The three-dimensional analysis of the Swedish policy on Palestinians from Gaza's ability to receive a residence permit on the grounds of impediments to enforcement has come to the following conclusions.

The analysis of the *textual dimension* found that agency, with a few exceptions, is almost entirely omitted throughout the *Judicial position on the situation in Gaza – SR 54/2016* (Migrationsverket, 2016c), which is an indication of low commitment to the text by the author. Further, the text displays an approximately even amount of *truth claims*, *hedges* and *permissions*. The analysis of the *discursive practice* found that the orders of discourses that are displayed in the material appear conventional, which according to Fairclough indicates reproduction of the prevailing social order; namely that there is an impediment to enforcement for Palestinians from Gaza, which is recognized by Sweden as grounds for a residence permit. Finally, the analysis of the social practice found that there is a hegemonic discourse in the material that constructs Palestinians from Gaza as unfortunate, as victims, and as deserving in terms of sympathy. Accordingly, the analysis did not find that the social construction of Palestinians fulfils all of the features of any of the deviants or dependents category. However, the findings indicated that Palestinians from Gaza end up closely to the dependents category.

7 Conclusions

The aim of this thesis has been to develop an understanding as to why the Swedish policies regarding impediments to enforcement for Kuwaiti Bidoons and Palestinians from Gaza have come to two opposing conclusions. Accordingly, the research question for the thesis was: *How can stateless migrants' ability to receive a residence permit on the grounds of impediments to enforcement be understood using Critical Discourse Analysis of Sweden's policies regarding de jure stateless Bidoons from Kuwait and de facto stateless Palestinians from Gaza?*

The analysis is rooted in two judicial positions from the Swedish Migration Agency that address the ability for Bidoons from Kuwait and Palestinians from Gaza to receive a residence permit on the grounds of impediments to enforcement. As the obtainable material that address these particular issues is relatively limited, the conclusions that can be drawn from an analysis of it will be less reliable than they would have been if the obtainable material would have been more profound.

With the above notion in mind, the three-dimensional model of analysis according to Fairclough has displayed both similarities and differences between the two groups of migrants that constituted the subjects of analysis for the thesis. The analysis found that the material in both cases, indicate stability or continuity and thus that both discourses contribute to the reproduction of meaning and prevailing power structures. Further, agency was in large parts omitted throughout both texts, indicating low commitment to the text by the authors.

In terms of modality, both texts display conclusions that are interpreted as truth claims in terms of a prevailing impediment to enforcement in both cases. In other words, both texts conclude that there is an impediment to enforcement for both Kuwaiti Bidoons and Palestinians from Gaza. However, in terms of the description of the actual impediment, the texts display differences. The text on Palestinians describes the possibility for a Palestinian to be able to cross the border to Gaza as 'very uncertain', which is interpreted as a hedge. The text on Kuwaiti Bidoons describes the inability for a Bidoon to retain an Article 17-document (a travel document that is required for a Bidoon in order to return) as a fact. Further, when it comes to the very assessment of the impediments to enforcement – namely, whether they should be regarded as sufficient grounds for a resident permit – the texts also display differences. The text on Kuwaiti Bidoons states that the impediment to enforcement is insufficient, which is interpreted as a truth claim. The text on Palestinians states that a residence permit 'may be granted' on the grounds of the inability to return, and thus is interpreted as permission.

The discursive practice is according to Fairclough the very link between a text and the social practice. We have seen that the material display differences in terms of the descriptions and assessments of the two groups' impediments to enforcements. In the analysis of the discursive practice we have also seen that the

discourses in both cases display indications of continuity and hence that they reproduce the prevailing social order. Subsequently, the analysis of the social practice found that the two groups are differently socially constructed in the material. The Kuwaiti Bidoons are constructed as poor and unfortunate, as undeserving, as having low political influence and as deemed to become illegal immigrants in Sweden. Palestinians are constructed as unfortunate, as deserving in terms of sympathy, and as victims of disaster.

In summary, the differences in assessment of the two groups' inability to return, may be explained by the differing hegemonic discourses that construct the two groups differently. In turn, the social constructions of the two groups and thus the social power structures, are prevailed by the continuity of the discursive practice.

What is interesting, is that both texts refer to the *Judicial position on impediments to enforcement – SR 25/2016*, where it is stated that an impediment to enforcement shall be considered when the Swedish Migration Agency assesses the issue of expulsion of an applicant (see section 6.2.2). This statement is only reproduced in the text regarding Palestinians from Gaza; the text on Kuwaiti Bidoons does not take the above statement into consideration, despite the fact that the judicial position is also a reference in the text on Bidoons.

As previously mentioned, the conclusions that can be drawn from the analysis in this thesis are limited, due to its limited scope. In order to generalize from its findings, more research would have to be done. However, the findings from the analysis in this thesis indicate that the difference in assessment of the impediments to enforcement for Kuwaiti Bidoons and Palestinians from Gaza, may be explained by a difference in social construction of the two groups.

In order to conclude, I would like to look into potential future projects. I would find it interesting to look into how other countries have dealt with the issue of statelessness in general, and impediments to enforcement in particular. Accordingly, it would be interesting to look into whether there are regulations in other countries that address impediments to enforcement in relation to issues that are particularly connected to statelessness. It would also be interesting to look into whether other countries' policies differ in terms of *de jure* and *de facto* stateless people's ability to receive a residence permit on the grounds of the inability to return.

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